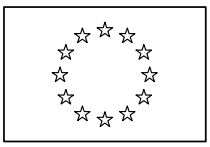


COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.7.2006
SEC(2006) 999

COMMISSION STAFF WORKING DOCUMENT

Annex to the

23rd ANNUAL REPORT FROM THE COMMISSION ON MONITORING THE APPLICATION OF COMMUNITY LAW (2005)

{COM(2006) 416 final}

SITUATION IN THE DIFFERENT SECTORS

TABLE OF CONTENTS

Each year the European draws up a report on the monitoring of application of Community law, in response to requests made by the European Parliament (resolution of 9 February 1983) and the Member States (point 2 of Declaration No 19 annexed to the Treaty signed at Maastricht on 7 February 1992). The report also responds to the requests expressed by the European Council or the Council in relation to specific areas of activity.

1. INTRODUCTION –STATISTICS

1.1. Transposition of directives

The percentages set out in the various tables which follow show the efforts made by the Member States to notify the Commission of national implementing measures (MNE) adopted.

The table below provides an overview of the directives for which the deadline for implementation had expired on 31 December 2005 and the directives for which implementing measures had been notified by the Member States. It is possible to see that, as this reference publication permits a degree of control/monitoring and the Commission supplies information to the Member States, the transposition rates have improved as a result of a sustained effort on the part of the Member States:

COMMISSION EUROPEENNE. Secretariat General.

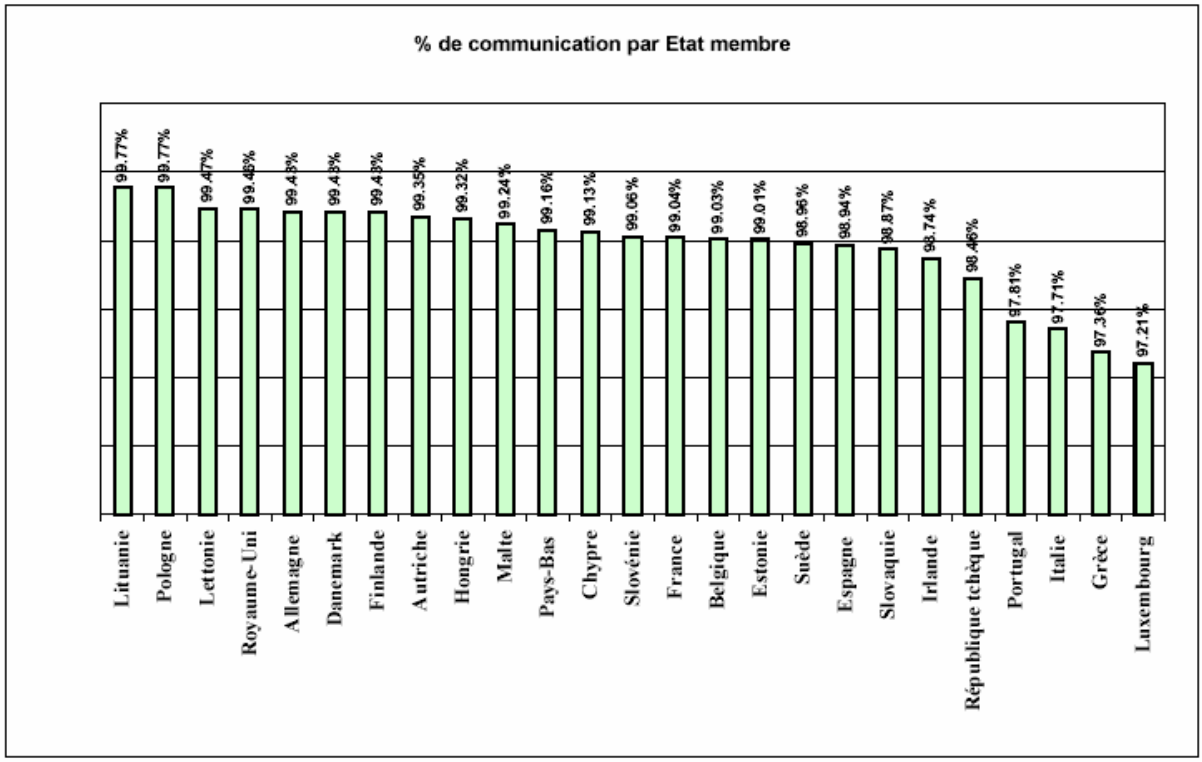
Etat de la communication des mesures nationales d'exécution des directives

Date de référence : 04/01/2006 Source: ASMODEE II

Rang	Etats membres	total des directives arrivées à échéance à la date de référence	total des directives pour lesquelles des mesures nationales ont été communiquées	pourcentage de communication
1	Lituanie	2664	2658	99.77%
2	Pologne	2648	2642	99.77%
3	Lettonie	2666	2652	99.47%
4	Royaume-Uni	2609	2595	99.46%
5	Allemagne	2615	2600	99.43%
6	Danemark	2612	2597	99.43%
7	Finlande	2610	2595	99.43%
8	Autriche	2618	2601	99.35%
9	Hongrie	2651	2633	99.32%
10	Malte	2649	2629	99.24%
11	Pays-Bas	2614	2592	99.16%
12	Chypre	2652	2629	99.13%
13	Slovénie	2656	2631	99.06%
14	France	2616	2591	99.04%
15	Belgique	2669	2643	99.03%
16	Estonie	2635	2609	99.01%
17	Suède	2597	2570	98.96%
18	Espagne	2632	2604	98.94%
19	Slovaquie	2657	2627	98.87%
20	Irlande	2627	2594	98.74%
21	République tchèque	2657	2616	98.46%
22	Portugal	2654	2596	97.81%
23	Italie	2623	2563	97.71%
24	Grèce	2618	2549	97.36%
25	Luxembourg	2619	2546	97.21%
	Moyenne CE	2635	2606	98.93

To make comparison easier, the data are set out here in the form of tables, in columns and ranked by Member State, for the two reference dates given:

- 4 January 2006:



These percentages reflect the efforts made by the Member States to notify the Commission of the national implementing measures adopted. The tables include all the communications received through official channels by the Secretariat General for all directives. All directives (both those in force and those that have been repealed) listed in the "Infringements" database[1] are included. The regular updating of this data involves changes to each new edition. The data on the notification of national implementing measures is published on the EUROPA website[2] every two months (six times a year) for information. The information set out above is taken from the final list for 2005.

1.2. Cases referred to the Court of Justice under Article 228 of the Treaty establishing the European Community (developments in 2005) – table

New cases tried in 2005 are in bold.

[1] The "Infringements" database is an internal tool for managing infringement cases and monitoring the communications that the Member States must make in order to comply with their proactive obligation to give official notification of national implementing measures for the transposition of directives.

[2] http://ec.europa.eu/community_law/eulaw/index_en.htm#transpositions

SAISINES 228 CE						
EM	Année/Numéro	Objet	Date arrêt	Astreinte (€ / jour)	Date décision	Etat
BE	1990/0291	Oiseaux sauvages	8/07/1987	7.750	10/12/1997	C
	1989/0457	Financement des étudiants (nationalité)	3/05/1994	43.400	22/12/1999	C
	2000/0038	Non communication des mesures de transposition de la Directive 98/76/CE	6/06/2002	31.000	16/12/2003	C
DE	1987/0372	Eaux superficielles	17/10/1991	158.400	29/01/1997	C
	1986/0222	Oiseaux sauvages	3/07/1990	26.400	29/01/1997	C
	1986/0121	Eaux souterraines	28/02/1991	264.000	29/01/1997	C
	1990/4710	Directive impact	22/10/1998	237.600	21/12/2000	D
	1997/4540	Marché de services - Enlèvement d'ordures de la ville de Brauschweig	10/04/2003	126.720	13/10/2004	
	1998/4905	Marchés publics de services - Abwasser bockhorn	10/04/2003	31.680	13/10/2004	
ES	1989/0418	Dir. 76/160/CE – Quality of bathing water	12/02/1998	45.600	23/05/2001	C
EL	1989/0165	Ecoles privées (nationalité)	15/03/1988	61.500	10/12/1997	C
	1991/0668	Diplômes enseignement supérieur	23/03/1995	41.000	10/12/1997	C
	1993/0711	Marchés publics de services	2/05/1996	39.975	24/06/1998	C
	1989/0138	Décharge de Kouroupitos	7/04/1992	24.600	26/06/1997	C
				arrêt 04/07/2000 =		C
				20000		C
	1991/0583	Accès aux emplois publics	2/07/1996	57.400	1/07/1999	C
FR	1984/0445	Pêche – mauvais contrôle du respect des mesures techniques de conservation	11/06/1991	316.500	20/12/2001	
	1989/0146	Produits défectueux	13/01/1993	158.250	31/03/1998	C
	1984/0121	Oiseaux sauvages	27/04/1988	105.500	24/06/1998	C
	1990/2109	Travail de nuit des femmes	13/03/1997	142.425	21/04/1999	D
	1992/2248	**Non-conformité Directive 90/219**	**27/11/2003**	**168.800**	**12/12/2005**	
	1995/2046	Transposition non conforme des troisièmes directives assurances (mutuelle)	16/12/1999	242.650	22/05/2002	D
	1999/2247	Non respect des décisions communautraires relatives au boeuf britannique	13/12/2001	158.250	18/07/2002	D
	1998/2245	Responsabilité des produits défectueux	25/04/2002	137.150	16/12/2003	
				astreinte modifiée 13.715	**12/04/2005**	D partiel
IT	1990/0240	Protection radiologique	9/06/1993	159.300	29/01/1997	C
	1988/0239	Plan de gestion des déchets	13/012/1991	123.900	29/01/1997	C
	1993/0786	Eaux urbaines résiduaires	12/12/1996	185.850	2/12/1998	C
	1996/0997	Sécurité maritime ; prévention de la pollution et conditions de vie et de travail à bord des navires	11/11/1999	88.500	21/12/2000	C
	1996/2208	Discrimination des lecteurs de langue étrangère	26/06/2001	309.750	3/02/2004	
	1997/0095	Aménagement du temps de travail	9/03/2000	289.950	17/12/2002	D
	1998/2055	Entraves à la prestation de services d'agents en brevets étrangers	13/02/2003	172.575	14/12/2004	

IE	**1989/0425**	**Impact – Directive 85/337 Art. 4(2) et 7**	**21/09/1999**	**astreinte modifiée 2,880**	**1/09/2005**	C
	1997/2047	Non ratification de l'acte de Paris (1971) de la convention de Berne	19/03/2002	3.600	16/12/2003	D
LU	1991/0222	Accès aux emplois publics	2/07/1996	14.000	2/12/1998	C
	1995/0142	Assistance médicale à bord des navires	29/10/1998	6.000	22/12/1999	C
	1997/0107	Enquêtes sur les accidents et incidents dans l'aviation civile	16/12/1999	9.000	20/12/2001	D
	1997/4533	Obligation de résidence pour les agents en brevet	6/03/2003	9.100	14/12/2004	C
	2001/2126	**Mise sur le marché et contrôle des explosifs à usage civil**	**2/10/2003**	**9.000**	**12/10/2005**	
PT	**1994/2236**	**Mauvaise transposition de la Directive 89/665/CEE**	**14/10/2004**	**21.450**	**12/10/2005**	
UK	1986/0214	Qualité des eaux de baignade (Blackpool & Southport)	14/07/1993	106.800	21/12/2000	D

C = Closed / D = withdrawn / Blank = before the Court.

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

In the **education and culture sector**, as regards access to education and vocational training, Member States may not, under Article 12 of the EC Treaty, allow any direct or indirect discrimination on grounds of nationality. The legal bases for which DG Education, Training, Culture and Multilingualism is responsible therefore include Articles 12, 149 and 150 of the EC Treaty. DG Education, Training, Culture and Multilingualism is not responsible for monitoring application of the directives.

Infringement procedures are initiated following complaints. Complainants must be dealt with in accordance with the Commission's Code of good administrative behaviour, as required by the Communication. DG Education, Training, Culture and Multilingualism keeps complainants informed systematically of the progress of the infringement procedure which concerns them. If an infringement procedure cannot be initiated as a result of a complaint, the complainant is informed and, if appropriate, is advised to use the legal remedies available at national level.

In sensitive cases, DG Education, Training, Culture and Multilingualism organises meetings with the Member States' authorities to discuss any problems and remind them of their duty to comply with Community law. A working party was set up with the participation of the Member States' authorities following the Court judgment in Case C-209/03; it discussed the consequences of this judgment, and of judgments C-65/03 and C-147/03.

DG Education, Training, Culture and Multilingualism cooperates with the SOLVIT Problem Solving Network, which deals with individual cases which do not entail any problems of incompatibility of national law with Community law.

Since the infringements which DG Education, Training, Culture and Multilingualism is responsible for monitoring undermine the fundamental principle of equal treatment under Article 12 EC, it has not as yet called upon the priority criteria relating to the seriousness of cases. It has successfully taken action against all the cases of non-compliance with this principle in the field of access to education.

In the employment sector, infringements for which DG Employment is responsible cover the panoply of the priority criteria set out in the 2002 Communication.

On the one hand, a number of cases concern the presumed wrong application of treaty articles and/or secondary legislation rules (i.e. provisions in regulations) in the area of social security and the free movement of workers: they concern in particular infringements that risk to undermine the foundations of the rule of law (i.e. criterion a) and/or the smooth functioning of the Community legal system (criterion (b). On the other hand, infringements in the area of labour law, health and safety at the work place, as well as in the area of non discrimination (directives ex Article 13 EC, for which the deadline of transposition expired in 2003), mostly concern a lack of communication of the necessary national transposition measures or incorrect transposition (criterion c). The infringements in the area of equal treatment between men and women mainly deal with non conformity issues (usually originated by individual complaints, written questions or petitions). Furthermore, in all the areas concerned, a systematic follow-up has been provided, if necessary, in cases where a Member State has failed to comply with a judgment of the ECJ for violation of its obligations under Community law.

In respect of the use by the 'EU-15' Member States of the safeguard clauses provided for in the transitional provisions of the Accession Treaties for the free movement of migrant workers, and related similar issues, the relevant national legislation(s) has been examined and, if necessary, infringements were launched.

Unfortunately a systematic examination of all the potential (non) conformity issues raised could not always be provided, due to lack of resources and of availability of the necessary translations. In particular, it has been nearly impossible to systematically follow-up on all potential issues raised in QE and petitions. Furthermore, it has proven impossible to systematically pursue all individual situations which, at first sight, did not necessarily amount to (or revealed) a constant administrative practice contrary to Community law.

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

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

In 2003, DG **Enterprise and Industry** introduced a preventive mechanism to offer advice and assistance to Member States in implementing "difficult" directives in certain sectors. The aim was to anticipate problems which might arise with national implementing measures. In 2005 this mechanism was called upon for the implementation of the legislative package "Review 2001" which includes Regulation (EC) No 726/2004 and Directives

2004/27/EC and 2004/28/EC and reviews in depth the regulatory framework applicable to pharmaceutical products.

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

- the Pharmaceutical Committee in its meetings of June, September and December 2005,
- the Committee for Veterinary Medicinal Products and
- the "Notice to applicants" group, which at its monthly meetings in 2005 examined the various chapters of the guidelines for notices to applicants by interpreting the requirements of the legislation as regards requests for marketing authorisation.

The Committee on Technical Standards and Regulations met three times in 2005. It raised a variety of questions with the Member States and applicant countries, such as the proper use of the notification procedure and its role as an instrument of transparency, prevention and mutual monitoring.

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

Four package meetings were organised in 2005 with particular Member States (Germany, Denmark, France and Slovenia) in connection with the application of Articles 28-30 of the Treaty. Of the 28 cases discussed, 10 were resolved or are on the point of being resolved. Of the rest, there are only three cases left in which there are major differences between the positions of the Commission and the Member States.

Now that the harmonised and non-harmonised products sectors are both the responsibility of DG Enterprise and Industry, all important bilateral problems relating to the transposition of directives in these sectors will in future be included on the agenda of these package meetings.

In the environment sector, 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[3].

These non-legal instruments include the production of interpretation and guidance documents for many pieces of legislation. In the waste sector a guidance document was issued in 2005 on

[3] COM(2002) 725 final, 13.12.2002.

the end-of-life vehicles Directive[4] and on Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment ("WEEE" Directive) and on Council 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 ("RoHS" Directive)[5]. In the air sector the Commission adopted in December 2005 a guidance document on allocation plans for the 2008 to 2012 trading period of the EU Emission Trading Scheme[6]. As regards impact assessment, a working group involving Member States and Commission experts prepared during 2005 a new guidance document[7] on Article 2(3) of the EIA Directive[8]. Consultants have also prepared a report[9] to the Commission on the relationship between the EIA and SEA Directives[10]. In the nature sector, guidelines are being developed on compensatory measures required under Article 6(4) of the Habitats Directive[11], species protection (Articles 12 and 16 of the Habitats Directive) and marine issues in order to clarify implementation problems. These documents are valuable tools to prevent implementation problems due to a poor understanding of what is actually required under EC environmental law.

In the water sector, the Commission worked closely with Member States during 2005 in the preparation of guidance on key provisions of the Urban Waste Water Treatment Directive[12]. This document should be finalised in 2006. The Common Implementation Strategy of the Water Framework Directive (WFD)[13], an informal collaborative joint effort of Member States and the Commission to provide guidance and exchange of experiences in implementation issues, also continued in 2005. Furthermore, a guidance document on eutrophication assessment[14] was drafted including a read across between different EC environmental Directives, in particular the Water Framework Directive, the Nitrates Directive[15] and the Urban Wastewater Treatment Directive.

Better implementation is also promoted through multilateral contacts with Member States in expert groups and committees to discuss implementation issues. Under some Directives, technical committees are established, for instance the ORNIS Committee created on the basis

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4 Directive 2005/53/EC of the European Parliament and of the Council of 18 September 2000 end-of-life vehicles. The guidance document is available on the website: http://europa.eu.int/comm/environment/waste/guidance_doc.pdf

5 http://europa.eu.int/comm/environment/waste/pdf/faq_weee.pdf

6 available on the website: http://www.europa.eu.int/comm/environment/climat/pdf/nap_2_guidance_en.pdf

7 available on the website: http://europa.eu.int/comm/environment/eia/home.htm

8 Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and 2003/35/EC

9 Available on the website: http://europa.eu.int/comm/environment/eia/final_report_0508.pdf

10 Directive 2001/42/EC of the European Parliament and of the Council of 2 June 2001 on the assessment of the effects of certain plans and programmes on the environment

11 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

12 Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment

13 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

14 Website: http://forum.europa.eu.int/Public/irc/env/WFD/library?l=/framework_directive/thematic_documents/13_eutrophication&vm=detailed&sb=Title

15 Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources

of Article 16 of the Wild Birds Directive[16], the Habitats Committee created on the basis of Article 20 of the Habitats Directive and the standing Committee on Biocidal Products established by Article 28 Directive 98/8/EC concerning the placing on the market of biocidal products[17]. Furthermore, package meetings between the Commission and the Member States[18] and ad-hoc meetings, workshops and seminars in Member States with the participation of national, regional and local authorities are another means to improve better implementation. For some Directives the Commission gives technical advice to Member States prior to transposition in order to address implementation problems at an earlier stage. In this respect, the Environment Directorate General has begun with the WEEE and RoHs Directives to discuss with Member States how they will implement them before transposition.

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.

Along with the 6th Environmental Action Programme the core of IMPEL's activities concerns, amongst others, exchange of information and experiences on implementation and enforcement of existing EU environmental legislation and the development of common views on the coherence and practicality of this legislation.

A new informal network of practitioners focusing on the implementation of EC provisions in the fields of Nature and Forestry, called "**GreenEnforce**" (name still to be confirmed by the members), has been established. This network was created as an informal organisation where experts from the EU-25 and candidate countries can share information and experiences, discuss problems and offer each other practical advice.

Meeting twice in 2005, the Environment Policy Review Group (**EPRG**) provided an opportunity for Directors General of the EU Member States Environment Ministries (or equivalent) to exchange views on key topics of current interest in the environmental domain. These discussions look at innovative approaches on implementation, as well as best practices in pursuit of effective enforcement of legislation.

Created in 2003, the **European Forum of Judges for the Environment** aims to promote, from the perspective of sustainable development, 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 the field of competition, the Communication on better monitoring of the application of Community law is implemented primarily via the annual report on the implementation of the

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16 Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds

17 Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing on the market of biocidal products

18 During 2005, package meetings were held with Austria, France, Germany (2), Greece, Italy, Portugal, Spain (2) the United Kingdom and Ireland

2002 regulatory framework for electronic communications, produced jointly with DG Information Society and Media, which involves contacts with the national electronic communications regulators and businesses operating in the sector. At the same time DG Competition, together with DG Information Society and Media, is involved in the consultation mechanism on the market analyses and remedies proposed by the national regulatory authorities in implementation of the new regulatory framework, via communication by national regulatory authorities under Article 7 of the framework Directive 2002/21/EC (more than 100 communications in 2005). Businesses in the sector are also a direct source of information for detecting the incorrect application of the Competition Directive.

In July 2005, the Commission approved an amendment to the "Transparency" Directive[19], following the ruling by the Court of Justice in the Altmark case[20]. This amendment provides Member States with the necessary legal certainty to allow the "old" Member States to pursue their efforts to transpose the Transparency Directive and the new Member States to fulfil their obligation to notify transposition measures.

In the information and media sector, in line with the Commission Communication on better monitoring of the application of Community law, DG INFSO has put great efforts from the very beginning into preventing the need for formal infringement proceedings.

In the field of electronic communications, the Commission continued to address implementation issues with Member States in the Communications Committee (COCOM) and with national regulatory authorities in the European Regulators Group (ERG). Following discussion in COCOM, several Recommendations on the harmonised application of the regulatory framework for electronic communications were adopted[21], namely two Recommendations concerning the provision of leased lines[22], one Recommendation on broadband electronic communications through powerlines[23], and one Recommendation on accounting separation and cost accounting systems[24]. The latter was based on input from the ERG. Other issues addressed in the ERG included the treatment of voice over broadband services, international roaming and follow-up to the 2004 ERG common position on regulatory remedies. In the field of mobile communications, the Commission set up a website containing information on international roaming tariffs across the EU[25]. This action aimed at increasing consumer awareness and was successful, with over 120,000 visitors to the site within the first week of its launch. Emphasis was also given to the implementation of the single European emergency number 112, in close cooperation with the civil protection unit of DG Environment. This issue was discussed extensively in the Communications Committee, and in October 2005 a conference was organised with public and private stakeholders[26]. In 2005 the Commission also continued to scrutinise draft measures submitted by national regulators under the so called "Article 7" mechanism which grants the Commission certain

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19 Commission Directive 2005/81/EC of 28 November 2005 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 312, 29.11.2005, p. 47).

20 Judgment of 24 July 2003. Case C-280/00.

21 Such recommendations are based on Art. 17 of the Framework Directive; they are subject to comitology procedures.

22 Recommendation 2005/58/EC, OJ L 24, 27.1.2005, p. 39; Recommendation 2005/268/EC, OJ L 83, 1.4.2005, p. 52.

23 Recommendation 2005/292/EC, OJ L 93, 6.4.2005, p. 42.

24 Recommendation 2005/698/EC, OJ L 266, 11.10.2005, p. 64.

25 http://europa.eu.int/information_society/activities/roaming/index_en.htm

26 http://europa.eu.int/information_society/policy/ecomm/implementation_enforcement/112/index_en.htm

oversight powers for internal market matters. Over 200 notifications were assessed. Three cases reached the second phase of the procedure[27], for one of them the Commission issued a veto decision[28]. Furthermore, the Commission issued 61 comments letters. In November 2005, a seminar was organised to raise awareness of national judges on the issues related to national appeals for Article 7 proceedings. This was a first step towards improved cooperation with judiciaries in this field. In addition, DG INFSO for the eleventh time prepared for the Commission's sector specific annual implementation report[29] and thereby continued to monitor the general state of implementation of the regulatory framework, in close contact with the national authorities and other stakeholders.

As regards the Television without Frontiers Directive (TVWF), the questions of interpretation which might be raised by the application of certain rules have been discussed with the Member States in the contact committee set up under Article 23a of the TVWF Directive. If necessary, the rules in force will be clarified for the public, as was the case in 2004 with the adoption by the Commission of an interpretative communication on the rules on TV advertising[30]. The contact committee met twice in 2005 to facilitate the actual implementation of the Directive. Practical questions were also discussed at these meetings, notably the possibility of conflicts of jurisdiction between Member States over broadcasting companies. Although no such provision is made in the Television without Frontiers Directive, there is also an *ad hoc* group of regulators, made up of representatives of the Member States' regulatory authorities, which meets on average twice a year also with the aim of ensuring that the regulatory framework is applied consistently within the European Union. In March 2005 Ms Reding decided that for the first time the Chairmen of these authorities would meet in Brussels to discuss the particular problem of how to apply the ban on programmes inciting hatred when the programmes concerned are transmitted by channels such as Al Manar or Sahar 1, which are based in a third country. It was decided at the meeting that there was a need for the regulators to step up their cooperation.

Regarding the Directive on Public Sector Information (PSI), the Commission has been closely monitoring the transposition process and application of the Directive both before and after the transposition deadline (1 July 2005). The accompanying measures undertaken include mainly four issues. First of all, the Commission organises and chairs the PSI Group, where experts from Member States meet from time to time, in order to provide assistance regarding transposition issues and to facilitate the exchange of good practices. Member States give up-to-date information on the state of transposition of the PSI Directive and provide examples of good practices as practical measures to enhance re-use of PSI, and the Commission gives assistance for example with the interpretation of the key provisions of the Directive. Secondly, the Commission provides expert assistance to Member States through bilateral contacts and contributes to awareness-raising activities by participating in seminars and

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27 Article 7 proceedings foresee the possibility of the Commission expressing concerns if it has serious doubts as to the compatibility of the proposed national measure with Community law or if it believes that the proposed measure would create a barrier to the internal market. The Commission then has two months to take a final decision and can require the national authority to withdraw the proposed measure.

28 For more details see the Commission's Communication on Market Reviews under the EU Regulatory Framework - Consolidating the internal market for electronic communications" COM(2006) 28 of 6.2.2006.

29 "European Electronic Communications Regulation and Markets 2005 (11th Report)", COM(2006) 68 of 20.2.2006.

30 Example of Commission interpretative communication of 23 April 2004 on certain aspects of the provisions on televised advertising in the "Television without frontiers" Directive [COM(2004) 1450 – OJ C 102, 28.04.2004].

workshops organised in Member States (in 2005 in Aix-en-Provence, Athens, Birmingham, Bristol, Ljubljana, Paris, Prague, Riga and Vilnius). Thirdly, the Commission has ordered a baseline study on Exploitation of PSI – Benchmarking of the EU Framework Conditions. The aim of this study is to assess the impact of the Directive on the framework conditions for PSI re-use for the review of the Directive (foreseen for 2008). The study will be finalised in April 2006. Finally, the Commission undertakes stimulation and communication actions (e.g. the Commission's PSI website contains the transposition status of each Member State, as well as examples of good practices and links to national portals), networking across Europe and co-funding PSI show-case projects through the eContent programme.

In the field of **justice, freedom and security**, and especially with regard to free movement of people and actions of prevention and control, the Commission services held a meeting with Member States' representatives on 27 June 2005 on the state of play of transposition of Directive 2004/38[31] which will replace as from 30 April 2006 the existing *acquis* on free movement and residence. Such meetings will continue in order to prevent future infringement proceedings and ensure correct application of the Directive.

In the field of judicial co-operation in civil matters priority is given to the publishing of all legal information notified by Member States in the Official Journal of the EU, as well as to conformity checks of national legislation with Community law.

In the field of personal data protection, the "structured dialogue" with the national authorities will continue with view to preventing infringement proceedings and ensuring correct application of the Directive 95/46.

DG Internal Market and Services has continued to promote dialogue and cooperation with the Member States in order to ensure the full and timely transposition of the directives for which it is responsible. Working sessions were organised with all the Member States, either on an informal *ad hoc* basis or within existing committees, to identify the problems they have encountered when preparing their transposition measures. Sessions of this type were held for the new directives on public procurement (2004/17/EC and 2004/18/EC[32]), the enforcement of intellectual property rights (2004/48/EC[33]) and supervision of institutions for occupational retirement provision (2003/41/EC[34]). DG Internal Market has also continued to organise package meetings devoted specifically to the transposition of directives. In 2005 such meetings were held with Belgium and the Czech Republic, the first of the ten new Member States to be visited. They allowed the best possible use to be made of the transposition periods laid down in the directives by anticipating and wherever possible taking action with the Member States to deal in advance with problems of transposition. In line with the 2002 Communication, DG Internal Market has also pursued its policy of making greater use of the complementary mechanisms to the infringement procedure, one of the most important of which is SOLVIT. In 2005 SOLVIT dealt with 469 cases (63% more than in 2004) and found

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31 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158 of 30.4.2004, p. 77 and Corrigendum OJ L 229 of 29.6.2004, p. 35.

32 OJ L 134, 30.04.2004, pp. 1 and 114.

33 OJ L 157, 30.04.2004, p. 45.

34 OJ L 235, 23.9.2003, p. 10.

a solution in 78% of them. These very positive results show how useful and effective this mechanism is.

In the field of health and consumer protection, in 2005 the Commission took the initiative of launching an examination of a number of directives, in particular those relating to blood products and general product safety.

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

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

In the field of prevention, too, the Commission continues to be active. Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations requires Member States and Members of the European Free Trade Association who have signed the Agreement on the European Economic Area plus Switzerland to give each other and the Commission prior notification of all draft rules containing technical standards or rules in order to avoid raising new barriers to trade in the internal market. In this context, in 2005 the Commission examined 204 notifications relating to draft regulations affecting public health or consumer protection.

The examination of these draft texts in the above areas led the Commission to issue detailed comments (24 cases) and opinions (12 cases) calling for the notifications to be brought into line with Community law.

In the transport and energy sector, with a view to implementing its 2002 Communication on better monitoring of the application of Community law, the Commission endeavoured to improve its prevention of infringements by reminding Member States of the deadlines for transposing directives (2005 saw a marked improvement in transposition rates).

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

Cooperation with the Member States has been strengthened as a result of the exchange of information and best practice at meetings of committees and networks of experts in the fields of both transport and energy.

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

Checks on the conformity with Community law of measures transposing directives have also been stepped up and have led to twice as many decisions to send letters of formal notice and reasoned opinions in 2005.

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

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

In the fisheries sector, concerning the implementation of the actions laid down in the Communication, the following comments are relevant as regards the common fisheries policy and in relation to the points in the Communication listed below.

Improving cooperation between the Commission and the Member States in the field of prevention. The Directorate-General for Fisheries carries out regular analyses of the technical regulations in the fisheries sector in connection with the application of Directive 98/34/EC (notification of technical regulations in the context of the internal market).

Providing more information on Community law. To improve transparency concerning the way in which the Member States fulfil their obligations as regards the enforcement of Community regulations, they are requested to notify the Commission each year of the measures they have taken when infringements have been detected.

In this connection, on 30 May the Commission published a Communication to the Council and Parliament on reports from Member States on forms of behaviour which seriously infringed the rules of the Common Fisheries Policy in 2003[35].

In addition, for the purposes of information on the application of Community law by the Member States, the Commission regularly publishes a "scoreboard"[36] which sets out the situation in all the Member States. This scoreboard contains all information on compliance with Community regulations, especially as regards serious infringements and the prosecution of infringements (handling of cases by the Commission and judgments by the Court of Justice of the European Communities).

Effective use of the available instruments in accordance with the seriousness of the infringements and infringements that undermine the smooth functioning of the Community legal system. The Commission has been keeping a very close watch on the infringement proceedings relating to the failure to monitor the fisheries sector as a whole in some Member States (Spain, UK).

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35 COM (2005) 207 of 30 May 2005.

36 The text is available on DG Fisheries' website. The latest edition, published in 2005, relates to information for 2004.

It has also brought a case against one Member State for failure to comply with a judgment by the Court of Justice following a referral for non-implementation of Community law (Article 228 of the EC Treaty). This case led to the sentencing of a Member State to pay a lump sum of EUR 20 million and a penalty payment of EUR 57 761 250[37].

Complaints and their importance for monitoring the application of Community law. A complaint lodged by the Regional Government of the Azores, alleging that Spain had infringed a Regulation on the conservation of resources[38] and calling for the adoption of preventive measures under Article 26 of Council Regulation (EC) No 2371/2002[39] and the initiation of the Article 226 EC procedure against Spain, was closed with no further action being taken.

In the field of taxation and the customs union, considering the unanimity requirement in Council, harmonisation of legislation in the area of direct taxation is not very developed and the main source of conflict remains infringements of the freedoms provided for in the Treaty. Although the legislation has already evolved towards a more harmonised system within the area of indirect taxation, the best instrument to provide a correct application of Community law remains mainly the use of an infringement procedure. The increasing case law of the ECJ, also triggered by an increasing number of requests for preliminary rulings by national tribunals, has given further guidance for an enhanced control of infringement cases and a large number of *ex officio* cases have been initiated.

Nevertheless Member States have shown some reluctance as regards the initiative of DG TAXUD to co-ordinate the follow-up of Court judgements. However, bilateral meetings with Member States are considered a useful tool in the litigation procedure.

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

In the financial programming and budget sector, the principle of sound financial management is applied (as expressed in Article 73 of the Financial Regulation applicable to the general budget of the European Communities). This means in practice that infringements are evaluated under the aspects of their gravity and their impact on the budget and treated correspondingly. Legal action is only taken if preliminary correspondence and/or discussions with Member States in the Advisory Committee for Own Resources do not solve the controversy.

In the field of **statistics**, the White Paper on European Governance, published by the Commission in 2001, states that responsibility for applying Community law lies in the first instance with the Member States' authorities and the national courts.

Statistical legislation is no different from other Community law. As soon as it enters into force it must be applied without exception by the Member States. Eurostat must ensure that it is complied with in a way that is unconditional, consistent and strict.

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37 Judgment of 12 July 2005, Case C-304/02 *Commission v France* ECR …

38 Council Regulation (EC) No 1954/2003 (OJ L 289, 7.11.2003, p. 1).

39 OJ L 358, 31.12.2002, p. 59.

The availability of high quality statistics is not only an operational necessity, it is a legal obligation; Community statistics must be produced in accordance with the principles set out in Article 285 of the EC Treaty and in Regulation (EC) No 322/97[40] as well as in the various sectoral legislative acts. A coherent strategy for compliance with Community law on statistics must be introduced.

In this connection Eurostat has undertaken a comprehensive action to monitor the application of statistical legislation.

To this end, the first step is to *check* progress on the application of Community statistical legislation by the Member States from the operational point of view; this is followed by an *evaluation* stage after which *decisions* are taken on the political and legal implications. The Eurostat management is informed of the situation twice a year and decides on the specific action to be taken in each case.

Overall, the application of Community legislation in the statistical field poses no major problems.

Eurostat is working to develop close cooperation with the Member States in order to prevent infringements and to speed up the process of bringing national texts and practices into line with Community law.

This specific action is based on a global and coherent strategy which rests on these two principles:

(1) a realistic legislative policy: Eurostat exercises the Commission's right of initiative with moderation. New legislative measures are discussed with national experts at all levels and are accompanied by analyses of their effects and consequences.

(2) Systematic monitoring of conformity: Eurostat endeavours to identify, upstream and in time, potential sources of error and practices which could influence quality. The DG is in permanent dialogue with data suppliers at operational level and establishes appropriate quality control instruments for each domain.

The working parties and committees will continue to raise Member States' awareness and push the simple message that *legislation which is adopted must be applied*.

DG Trade places heavy emphasis on preventing infringements in accordance with the Commission Communication on better monitoring of the application of Community law. In this connection DG Trade makes full use of its participation in Council bodies dealing with trade, particularly the Article 133 Committee, to maintain an ongoing dialogue with the Member States and to ensure that the Community's powers in trade matters are respected. If necessary, bilateral contacts are also used if there is a danger of unilateral action by a Member State on a trade matter.

These preventive measures can also sometimes be used to put an end to actions by Member States which could be seen as the beginnings of an infringement which could get worse if the

[40] Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics (OJ L 52, 22.2.1997, p.1).

Commission did not intervene. DG Trade therefore does its best to make effective use of the available instruments in accordance with the seriousness of the infringements.

As regards directives, DG Trade plays a limited role as it has responsibility for only two directives. However, problems of implementation remain for these two texts. DG Trade maintains regular contacts with the Member States concerned, as required by the Commission Communication, in order to help them in their efforts to transpose the directives.

DG Regional Policy has highlighted the following points in relation to the implementation of the Commission Communication.

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

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

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

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

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

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

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

This being said, the Commission has had to examine cases in which the full amount of the Community aid had not been received by the recipient because the national authorities had kept a percentage of it, and cases where the project chosen did not correspond to the programming documents.

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

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

In 2005 **DG Enterprise and Industry** handled 10 petitions, all of which related to the non-harmonised area. Eight of them concerned slot machines or importation/registration of second-hand cars.

In the area of the **environment**, petitions to the European Parliament and complaints continue to represent a valuable source of information for the Commission in detecting violations of Community law. This is of particular importance since the Commission does not have any "inspection" powers for verifying the practical implementation of EC law on the ground in situations in the area of the environment.

However, in many cases a citizen simultaneously lodges a complaint with the Commission and a petition with Parliament concerning the same grievance, so that the complaint and petition are handled simultaneously. The treatment of complaints and the parliamentary procedures relating to implementation results in a significant workload for DG Environment, involving communications to the European Parliament and correspondence with the national authorities and with complainants to obtain information, as well as assessment (from a legal and technical point of view) in order to decide whether to open an infringement proceeding or close the dossier.

At the end of 2005, the number of open petitions in the environment sector was 179[41]. Around one third of these petitions revealed a potential breach of community law in the nature, impact, water, waste and air sectors.

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

This "preventive role", in terms of the Commission's handling of complaints and petitions, provides positive results and helps to ensure better implementation on the ground. However, in the field of the environment it is particularly important that the petitioners/complainants provide clear identification of potential breaches of community law, with supporting data, in order to make it easier to handle the dossiers.

Furthermore, the petitions relating to the environment cover a wide range of issues. Many of the petitions that relate to an ongoing infringement proceeding concern a specific project alleged to be in breach of the obligation under Community law to carry out an environmental impact assessment. A number of projects for building motorways and motorway slip roads in Europe have been handled through infringement proceedings resulting from petitions relating to the failure to carry out an assessment in accordance with Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment. When petitions are presented, such projects are also examined by the

[41] In 2005 the Commission registered 279 new complaints alleging breaches of Community environmental law. The number of complaints concerning the new Member States was 21.

Commission to ascertain their detrimental effects on special areas of conservation or sites of Community importance.

A major infrastructure project examined by the Commission in this connection is the "Campo de Calatrava" airport project, located in a rare volcanic area. Since 1998 the Commission has been monitoring the development of the project, the proposed site for which was originally in a bird protection area, in terms of its compliance with Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds and Directive 85/337/EEC referred to above.

At the same time, projects for high-voltage lines have also given rise to complaints and proceedings for infringement of Community law owing to insufficient environmental impact assessment. One of the projects still being studied by the Commission is the high-voltage line crossing the Verdon Gorges in France. The planned line would traverse sites of Community importance proposed for Natura 2000 and areas of Community importance for the conservation of birds. The petitioners raise issues concerning the compliance of the project with Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds and Directive 85/337/EEC. Similar issues were raised in petitions concerning the detrimental effects of projects to build windfarms. One of the issues frequently raised is the risks for the wild birds in protection areas near the windfarms.

Inadequate protection of wild birds is also the subject of petitions concerning hunting in Malta and Cyprus. In the area of protection of fauna, the protection of wolves has been the subject of two petitions. The situation in all the Member States is being monitored by the Commission, as is the situation of Caretta-caretta sea-turtles in the Gulf of Lagana, which was the subject of two petitions. A petition and a complaint concerning the primates used in research laboratories was also handled by the Commission in 2005.

As regards protection of water in the Community, a number of petitions raised issues concerning urban wastewater, groundwater, bathing water and non-compliance with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption. A case illustrating the problems in the area of urban wastewater, to which considerable attention has been devoted, is the petition concerning the discharge of untreated sewage into the Thames. Some of the petitions concerning the protection of groundwater related to illegal discharge of waste. All the petitions concerning this issue were in relation to a specific situation in a particular site - a type of problem difficult for the Commission to identify, since it lacks "inspection powers".

Air pollution problems resulting either from a specific project such as construction of a motorway or from the lack of structural measures, were also referred to in some petitions.

Petitions concerning projects with detrimental effects on flora and fauna in Community protection area were also handled. However, a small number of the petitions and infringement proceedings relate to the failure of Member States to designate these protection areas. For example, the Natura 2000 network in Poland, which is alleged to be insufficient, was the subject of one of the first (and as yet rare) petitions giving rise to an infringement proceeding concerning the situation of this new Member State.

With regard to the **information society and media**, solely in the area of electronic communications the implementation of the Single European Emergency Number (112) was the subject of a petition to the European Parliament (Petition 688/2005), launched on behalf of

the "European Emergency Number Association (EENA)" which had also submitted complaints to the Commission and the Ombudsman.

In 2005 **DG Internal Market** replied to over 100 requests from the European Parliament falling within its area of competence, a quarter of which concerned infringement proceures. Two areas were particularly significant. As regards recognition of diplomas, the petitions concerned delays in the transposition of directives by certain Member States as a result of which immigrants are not able to get their degrees recognised. As regards public procurement, a number of petitions were addressed to the European Parliament concerning urban development laws in the Valencia region in Spain (the petitions covered other areas apart from public procurement). These were the subject of a Commission report on the petitions, which was adopted by the European Parliament on 13 December 2005[42].

In 2005 DG Internal Market and Services (DG MARKT) sent around 130 letters to the European Parliament, was assigned 75 new petitions coming under its area of responsibility and sent replies responding to the specific current concerns of members of the public in areas of their daily lives. Around a quarter of the petitions concerned infringements.

Recognition of diplomas is the main concern, accounting for 30% of the replies provided by DG MARKT. The professions to which the highest number of petitions relate are health practitioners (doctors, nurses) and legal practitioners, in both of which areas there is a significant proportion of immigrants. Some of the replies concerned old petitions in relation to which there are still ongoing infringement proceedings. Requests from the public were very varied and often included a request for analysis and explanation of the decisions taken by the national authorities.

The areas associated with financial services, financial institutions and company law accounted for 25% of the replies sent by DG MARKT. The petitions concerned three areas: shareholders' rights, the banking sector and the insurance sector. In numerous cases the Commission, after analysis, replied that the question raised did not fall within the province of Community law. In the insurance sector, a number of replies related to the "Lloyd's" case; the Commission closed the related infringement proceeding when the UK authorities changed their regulations. Other requests concerned the Equitable Life Assurance Society and UK life assurance regulations. Replies were also sent to consumers concerning crossborder payments in euros. In most cases, the problems encountered by people in this area were not owing to poor application of existing Community law but rather to poor information or incorrect interpretation of their rights.

Services is the third area, accounting for around 20% of the replies sent. In 2005 several replies related to two areas: the installation of satellite dishes (regarding which the Commission referred petitioners to Court of Justice case law and the national courts) and the chimney sweeps' monopoly in Germany, where an infringement proceeding is in progress.

Public procurement accounted for 15% of the petitions handled by DG MARKT. A number of these were addressed to the EP on the subject of the urban development laws in Valencia, Spain (the petitions covered other areas apart from public procurement). As regards public procurement, the Commission brought an infringement proceeding concerning problems relating to public supply contracts. These were the subject of a Commission report on the

[42] Fourtou report of 5.12.2005 (A6-0382/2005).

petitions, which was adopted by the European Parliament on 13 December 2005 (Fourtou report of 5 December 2005). It is not possible to summarise the other petitions handled by DG MARKT.

In the area of **taxation and customs union**, a number of complainants lodged petition procedures with the European Parliament at the same time as a complaint to the Commission. Given the different procedures involved and the different roles of the two institutions, the two types of case have been handled differently. The petitions concern the problems in different areas of EC customs laws encountered by members of the public when crossing the external borders of the Community or importing a car in a Community Member State. Within the area of indirect taxation, various aspects of car tax is a subject often broached, as are the problems encountered in the reimbursement of VAT. Petitions concerning direct taxation dealt with the differences in the taxation of of residents and non-residents as well as with double taxation.

In the area of **regional policy,** none of the petitions handled related to infringement proceedings in progress. However, in 2005 the Regional Policy DG had to deal with six petitions concerning management of Community funds, five of which also concerned compliance with environmental legislation.

1.5. Consultation with the Member States and Commission departments on "improving the application of Community law"

Following the adoption of its 2002 Communication on better monitoring of the application of Community law (COM(2002)725) and in the wake of EU enlargement, in 2005 the Secretariat General launched two questionnaires, one for Member States and one for the relevant Commission Directorates General. These questionnaires raised questions concerning current practice, asked for evaluations of existing methods and sought suggestions for improvements that could be made. The answers have been fed into an inter-service consultation within the Commission, which is examining a wide range of issues with a view to drawing conclusions in 2006.

2. THE SITUATION IN THE DIFFERENT SECTORS

2.1. Agriculture

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

The trend towards removing the traditional barriers to free movement of agricultural produce was reinforced.

However, the Commission addressed a reasoned opinion to Italy concerning the non-conformity of the Italian law transposing Directive 2000/36/EC of the European Parliament and of the Council relating to cocoa and chocolate products intended for human consumption.

In the area of quality policy, the Commission referred to the Court of Justice a case concerning the refusal of the German authorities to extend the protection provided by Regulation (EC) No 1107/96[43] to the protected designation of origin (PDO) "Parmigiano Reggiano" to include its French translation "Parmesan", despite the requirements of Article 13(2) of Council Regulation (EEC) No 2081/92[44], which states that names registered at Community level are protected against any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated. The German authorities take the view that "Parmesan" has become a generic name and that it is therefore acceptable to use it for products that do not meet the product specifications for "Parmigiano Reggiano".

In the area of monitoring existing aid, the Commission filed an action against Luxembourg with the Court of Justice for failing to submit annual reports on all the existing State aid schemes in the agricultural sector, which it is required to do under Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 88 EC)[45], as implemented by point 23.2.4 of the "Community guidelines on State aid in the agricultural sector".

As regards the application of Directive 98/34/CE[46], which requires the Member States and EFTA countries to give notification, prior to adoption, of all draft legislation containing technical standards or regulations that risk creating barriers to inter-Community trade in the area of agriculture, numerous draft legislation was notified to the Commission in connection with the application of this directive.

In 2005 **154** draft legislative texts relating to the agricultural sector notified by the Member States and EFTA countries were examined with respect to Article 28 of the EC Treaty and secondary legislation.

2.2. Education, training, culture and multilingualism

DG Education, Training, Culture and Multilingualism (EAC) is aware of the difficulties that remain regarding the recognition of diplomas. However, there have been improvements in the situation with respect to previous years. Any action taken by the Commission in this field must be strictly within the limits of the powers granted to it by the Treaty, Article 149 of which states that the Community must fully respect the Member States' responsibility for the

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43 Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92. OJ L 148, 21.6.1996, p. 1–10.

44 Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. OJ L 208, 24.7.1992, p. 1–8.

45 OJ L 83, 27/03/1999, p. 1 – 9.

46 Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations. OJ L 204, 21/07/1998, p. 37 - 48.

content of teaching and the organisation of education systems, as well as their cultural and linguistic diversity. The Commission's actions in the area of academic recognition are aimed at encouraging full recognition of studies carried out in another Member State. However, harmonising the recognition of academic qualifications through legislation is excluded, and instead the Commission aims to encourage policy cooperation and the approximation of systems and to provide all the necessary instruments to facilitate the recognition of diplomas and qualifications.

The academic recognition of diplomas falls within the province of the Member States. The national authorities have the right to make access to education subject to obtainment of recognition of qualifications. In particular, they can assess whether the training received by the holder of a diploma corresponds to that required under national legislation. However, under Article 12 EC they must avoid any direct or indirect discrimination on the grounds of nationality.

DG EAC dealt with cases relating to the *cost* and *duration* of procedures for recognition of academic qualifications.

With regard to the administrative fees charged for academic recognition of diplomas, DG EAC considers that students can be asked to contribute to the costs of handling their applications. However, the contribution required must not be disproportionate with respect to the actual expenses incurred by the national authorities in examining the student's qualifications. Charging excessively high fees for recognition of qualifications obtained in other Member States can create barriers to the free movement of students between countries and to their access to education. This makes it difficult or even impossible to exercise the rights to free movement guaranteed by the Treaty.

DG EAC launched a proceeding against a Member State in which the fees charged by a university for recognition of university diplomas obtained in another Member State are much higher than the actual costs of examining the diplomas. The Member States cannot evade Community law on the grounds of the autonomy of universities.

An infringement proceeding brought against a Member State by DG EAC for *delays* in the procedure of academic recognition of diplomas contributed to the adoption of a new national law on the restructuring of the competent national authority.

With regard to the conditions for access to education, Community law as interpreted by the Court of Justice guarantees equal treatment of national students and Community students as regards access to education (Articles 12, 159 and 150 of ECT). Under these Articles, Community students are entitled to be treated in exactly the same way as nationals of the host Member State as regards the conditions of access to higher education. In 1998 DG EAC brought an infringement proceeding against Austria concerning access by Community citizens to Austrian university education, which was referred to the Court in 2004. The Austrian legislation in question stipulated that students who have obtained their secondary school certificate in a Member State other than Austria and who wish to pursue their higher or university studies in a particular branch of the Austrian education system had not only to produce their diplomas but also prove that they fulfilled the conditions for access to higher or university education in the State in which they obtained their diploma (e.g. passing an entrance examination or obtaining a sufficient level for inclusion in the numerus clausus).

Consequently, the national legislation treated students differently, which was detrimental to those who had obtained their seconday school certificates in another Member State. The Court found against Austria and declared that "by not adopting the necessary measures to ensure that the holders of secondary education diplomas obtained in other Member States can have access to higher and university education organised by it under the same conditions as the holders of secondary education diplomas obtained in Austria, the Republic of Austria has failed to fulfil its obligations under Articles 12, 149 and 150 EC". Austria has adopted certain measures in order to comply with the Court judgment, which are being analysed by the Commission. DG EAC is monitoring this case to ensure that the principle of equal treatment is applied.

DG EAC contacted the authorities of a Member State after receiving several complaints relating to failure to respect the principle of equal treatment with respect to registration fees for nationals of new Member States registered at the universities of the Member State in question prior to accession.

DG EAC continues to receive numerous letters from members of the public regarding students' entitlement to maintenance grants, loans, etc. following the Bidar judgment (C209/03) in which the Court declared that "assistance, whether in the form of subsidised loans or of grants, provided to students lawfully resident in the host Member State to cover their maintenance costs falls within the scope of application of the Treaty for the purposes of the prohibition of discrimination laid down in the first paragraph of Article 12 EC". As a result of this judgment, maintenance grants and loans are now considered to fall within the scope of the Treaty, and this gives rise to many questions concerning the conditions for awarding such grants and loans to Community nationals.

2.3. Employment, social affairs and equal opportunities

In the area of the free movement of workers, the Commission has to tackle problems of incorrect application of certain provisions of the EC Treaty and the applicable regulations brought to its attention by complaints from individual members of the public, written questions and petitions. However, in the other areas (working conditions, health and safety at the workplace, non-discrimination under Article 13 EC and equal treatment for women and men), the main problems giving rise to infringement proceedings are non-conformity and failure to notify transposition measures.

2.3.1. Free movement of persons

In the field of free movement of persons, problems remain owing to flawed application of the relevant provisions of the Treaty (Articles 39 and 42 EC) and Regulations (EEC) Nos 1408/71 and 1612/68[47]. A large number of proceedings already initiated were continued. One example related to the difficulty of obtaining recognition in the public service in several Member

[47] See also in this connection the Communication from the Commission "Free movement of workers – achieving the full benefits and potential", COM (2002) 694 final, 11.12.2002.

States of work experience acquired in another Member State. The cases against Belgium, France and Italy still continue despite the fact that progress has been made in achieving conformity with Community law. However, the action against Austria has been closed.

Following the judgment by the Court of Justice[48] concerning a family benefit during a career break (*allocation d'interruption de carrière*), payment of which is conditional upon the beneficiary residing in Belgium, Article 228 proceedings were brought against Belgium. A proceeding was also brought against Belgium concerning a similar residence condition which needs to be fulfilled in order to qualify for pre-retirement benefit, although progress has been made in bringing national law into line with Community legislation after Belgium was sent a reasoned opinion.

Proceedings continued against Denmark and Finland under Article 228 EC concerning the obligation of an employee to register (and therefore pay registration tax on his vehicle), in the Member State in which he is resident, a vehicle made available to him by his employer established in another Member State, following the Court judgment[49] which found that such a system constituted an unjustified restriction on the free movement of workers under Article 39 EC.

Furthermore, following the decision to apply once again to the Court of Justice under Article 228 EC, the proceeding against Italy for failure to notify national measures taken in order to comply with the Court's ruling[50] against it for non-recognition by certain Italian universities of the acquired rights of former foreign-language assistants (*'Lettori'*), is still pending[51]. Since this judgment has not yet been fully and properly enforced by Italy, the Commission has asked the Court to impose a penalty payment of €309.750 for each day of delay.

The proceedings against the Netherlands and Finland concerning the possibility of taking into account pensions paid by another Member State when calculating sickness and maternity insurance contributions in cases where this insurance risk is their responsibility, and the compatibility of their national legislation in this field with Regulation No 1408/71, are still pending, following the decision to apply to the Court of Justice[52].

2.3.2. Equal treatment of men and women

With regard to infringement proceedings for *non-notification*, a reasoned opinion was sent to the Czech Republic for failure to notify the national measures transposing Directive 86/378[53] and amending Directive 96/97.

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48 Judgment of 7 September 2004, Case C-469/02.

49 Judgments of 15 September 2005, case C-464/02, and of 23 February 2006, case C-232/03, respectively.

50 Judgment of 26 June 2001 in Case C-212/99.

51 Case C-119/04; Conclusions AG of 26 January 2006.

52 Pending cases C-66/05 and C-105/05, respectively.

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

Following the judgment of the Court of Justice[54], Article 228 proceedings for *non-conformity* were brought against Luxembourg for incorrect transposition of Directive 96/34/CE on parental leave, concerning the restriction of the right to parental leave to parents of children born after 31 December 1998 (or in respect of whom adoption proceedings were initiated after that date) and the substitution of maternity leave for parental leave without the possibility of deferring the portion of the parental leave which the parent was unable to take. The proceeding against Austria for incorrect transposition of the same Directive (96/34) is still running after it was sent a reasoned opinion.

As regards Directive 76/207/EEC, the proceeding against Austria concerning the general prohibition on women working in high-pressure environments and atmospheres and in underground mines in contravention of Articles 2 and 3 of this Directive was closed after Austria took the necessary national measures following a Court ruling[55]. The proceeding against Germany[56] concerning the compatibility with Directive 76/207/EEC (in particular Articles 1 and 2 thereof) of national legislation that precludes part-time employees in the public sector from serving on staff committees, which was referred to the Court of Justice, was withdrawn after the necessary measures were taken. The Commission considers that in reality this has a greater effect on female workers and therefore constitutes indirect sex discrimination contrary to this Directive.

The case against Italy for imposing an absolute ban on night work in the manufacturing industry from the start of pregnancy until seven months after the birth, in contravention of Directive 76/207, and in particular Article 2(3) thereof, was closed for procedural reasons after an additional reasoned opinion had been sent.

2.3.3. Equal treatment – non-discrimination (Article 13 EC)

Following the judgment by the Court of Justice for failure to take and notify national transposition measures for EC Directive 2000/43/EC[57] (on *implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*), due for transposition by 19 July 2003, the Article 228 proceedings initiated against Germany[58], Austria[59] and Luxembourg[60] for *failure to notify* continued. However, the proceeding against Finland[61] was closed after the necessary transposition measures were taken.

With regard to Directive 2000/78/EC[62] (establishing *a general framework for equal treatment in employment and occupation*), due for transposition by 2 December 2003, the Article 228 proceedings against Germany[63], Austria[64], and Luxembourg[65] for failure to notify continued

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54 Judgment of 14 April 2005 in Case C-519/03.
55 Judgment of 1 February 2005 in Case C-203/03.
56 Pending case C-204/04.
57 OJ L 180, 19.7.2000, p. 22.
58 Judgment of 28 April 2005 in Case C-329/04.
59 Judgment of 4 May 2005 in Case C-335/04.
60 Judgment of 24 February 2005 in Case C-320/04.
61 Judgment of 24 February 2005 in Case C-327/04.
62 OJ L 303, 2.12.2000, p. 16.
63 Judgment of 23 February 2006 in Case C-43/05.
64 Judgment of 23 February 2006 in Case C-133/05.
65 Judgment of 20 October 2005 in Case C-70/05.

following the ruling of the Court of Justice. The proceeding against Finland[66] was recently withdrawn after the necessary national transposition measures were taken.

2.3.4. Working conditions

As regards (*non) transposition* of Directive 2001/86[67] (*involvement of employees - the statute for a European company)*, due for transposition by 8 October 2004, the infringement proceedings *for failure to notify* against certain Member States continued. Reasoned opinions were sent to Greece, Spain, Ireland, Luxembourg and Slovenia.

With regard to Directive 2002/14[68] *(informing and consulting employees)*, due for transposition by 23 March 2005, the infringement proceedings for *failure to notify* against the Member States that had not reported their national transposition measures by the deadline also continued. Reasoned opinions were sent to Belgium, Estonia, Greece, Spain, Ireland, Italy, Luxembourg, Malta and Poland.

As regards the *(non) transposition* of Directive 1999/63[69] (*working time of seafarers*) due for transposition by 30 June 2002, the infringement proceeding against France[70] for failing to notify its national transposition measures by the deadline continued to run at the Court of Justice. However, those against Austria[71] and Italy[72] were withdrawn or discontinued following adoption of the necessary transposition measures.

Following the ruling of the Court of Justice for failure to transpose Directive 2000/34[73] *(working time – sectors excluded),* the Article 228 proceedings against France[74] and Luxembourg[75] continued.

With regard to Directive 2000/79 (*European agreement on the organisation of working time of mobile workers in civil aviation*), the infringement proceedings against certain Member States for *failure to notify* also continued. It was decided to refer the case against Greece[76] to the Court of Justice. Following the recent ruling by the Court of Justice[77], the proceeding

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66 Case C-99/05.

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

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

69 Council Directive 1999/63/EC 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) - Annex: European Agreement on the organisation of working time of seafarers. OJ L 167, 2.7.1999, p. 33.

70 Pending case C-319/04.

71 Case C-10/04.

72 Judgment of 16 December 2004 in Case C-313/03.

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

74 Judgment of 17 November 2005, Case C-73/05.

75 Judgment of 27 October 2005, Case C-23/05.

76 Pending case C-369/05.

77 Judgment of 23 February 2006, Case C-46/05.

against Ireland continued under Article 228 EC. However, the proceedings against Italy[78] and Sweden[79] were withdrawn after these countries adopted the necessary measures to transpose the Directive.

With regard to proceedings for *non-conformity* of the national measures transposing Directive 93/104/EC (*working time*)[80], initiated following adoption of the report on progress in transposing this directive[81], the case against the UK[82] is still running before the Court of Justice. Following a Court ruling, the proceedings against Sweden and Belgium[83] were terminated after the adoption of the necessary national measures.

The action against Germany[84] for *non-conformity* of its transposition of the *posting of workers* Directive[85] continued under Article 228 EC following the judgment[86] of the Court of Justice on the interpretation of the concept of "minimum wage rates". A reasoned opinion was sent to Luxembourg for incorrect transposition of the same Directive (96/71).

A reasoned opinion was sent to France for incorrect and insufficient transposition of Directive 80/987 (*insolvency*), in particular Article 8.

As regards Directive 98/59/EC[87] on *collective redundancies*, the infringement proceedings against Italy[88] and Portugal[89] for *non-conformity* were closed when the necessary measures were taken to comply with the Court of Justice judgment.

2.3.5. Health and safety at work

With regard to the protection of employees' health and safety at work, the infringement proceedings against Member States which had *failed to notify* the national measures transposing Directives 1999/38/EC[90] and 2000/39/EC[91] continued. With regard to Directive 99/38, the proceeding against Austria under Article 228 EC continued following a ruling of

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78 Case C-21/05.

79 Case C-58/05.

80 Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time. OJ L 307, 13.12.1993, p. 18.

81 Commission report on progress in transposing Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time: OJ L 307, 13.12.1993, p. 18.

82 Pending case C-484/04; Conclusions AG of 9 March 2006.

83 Judgment of 26 May 2005 in Case C-287/04 and Judgment of 17 November 2005 in Case C-22/05, respectively.

84 Case C-341/02.

85 Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services. OJ L 18, 21.1.1997, p. 2.

86 Judgment of 14 April 2005.

87 Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies. OJ L 225, 12.8.98, p. 16.

88 Judgment of 16 October 2003 in Case C-32/02.

89 Judgment of 12 October 2004 in Case C-55/02.

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

91 Commission Directive establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work

the Court of Justice[92]. However, with regard to Directive 2000/39, the proceeding against Austria[93] was terminated following a Court sentence.

The proceeding against Austria under Article 228 EC for failure to report the national measures transposing Directive 1999/92/EC[94] continued following the Court of Justice sentence[95]. However, the case against Luxembourg[96] for failure to transpose the same directive was terminated following the adoption of the necessary national transposition measures.

As regards *(non) transposition* of Directive 2001/45/EC[97], due for transposition by 19 July 2004, infringement proceedings were brought against Member States that had *failed to notify* the national transposition measures within the time limit. A reasoned opinion was sent to Austria and Belgium (the case against Belgium was closed when it adopted the necessary national transposition measures) and the cases against Ireland[98] and the UK[99] were referred to the Court of Justice.

With regard to the *non-conformity* of the transposition of *framework directive 89/391/EEC*[100] and its individual directives, many proceedings already in progress continued. The proceeding against Sweden[101] was still before the Court of Justice and it was decided to refer the case against France[102] to the Court. Regarding transposition of the same directive by the UK, it was also decided to refer the case concerning application and the conformity of this directive with the "so far as is reasonably practicable" (SFAIRP) clause to the Court of Justice[103]. However, the case initiated against Ireland concerning the same problem was closed when the necessary national measures were taken. Following a Court ruling, proceedings continued under Article 228 against Luxembourg[104], Spain[105] and Austria[106]. However, the proceeding against the Netherlands[107] was terminated when the necessary national measures were adopted.

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92 Judgment of 17 November 2005 in Case C-378/04.

93 Judgment of 28 October 2004 in Case C-360/03.

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

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

96 Judgment of 9 December 2004 in Case C-333/04.

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

98 Pending case C-88/06.

99 Currently being enforced.

100 Council Directive on the introduction of measures to encourage improvements in the safety and health of workers at work.

101 Pending case C-459/04.

102 Currently being enforced.

103 Pending Case C-127/05.

104 Judgment of 22.5.2003 in Case C-335/02.

105 Judgment of 12 January 2006 in Case C-132/04.

106 Judgment of 6 April 2006 in Case C-428/04.

107 Judgment of 22.5.2003 in Case C-441/01.

With regard to individual directives, following a Court of Justice ruling the proceeding against Italy[108] for incorrect transposition of Directive 89/655/EEC (work equipment) continued under Article 228EC and a reasoned opinion was sent under that Article. However, this case was closed recently after adoption of the necessary national measures. The proceeding against Austria for failure to transpose Directive 90/269/EEC[109] in all the Länder was also closed after adoption of the last transposition measures required.

[108] Judgment of 10.4.2003 in Case C-65/01.

[109] Judgment of 16 December 2004 in Case C-358/03.

2.4. Enterprise and industry

2.4.1. Chemicals

In the chemicals sector three directives fell due for transposal in 2005 (in one other case the due date was 31 December 2004). This represented a significant drop compared with 2004, when seven directives had to be transposed. At the same time a regulation was adopted on drug precursors and three regulations entered into force, confirming the tendency to replace directives with regulations.

There were considerably fewer cases of Member States *failing to notify* implementing measures. A total of 52 infringement proceedings were initiated against Member States in 2005 for failure to notify national measures by the prescribed deadline. However, the great majority of these proceedings and those commenced in previous years were terminated following the notification of national measures. In December 2005 only 11 infringement proceedings for failure to notify were still pending.

Article 228 proceedings continued against Luxembourg for its failure to comply with the judgment given by the Court of Justice on 2 October 2003 in Case C-89/03. The point at issue was a failure to transpose Directive 93/15/EEC on the placing on the market and supervision of explosives for civil uses. However, Luxembourg notified national implementing measures in December 2005 and, after having referred the matter to the Court, the Commission withdrew its case.

Four complaints had been received in 2004 concerning *incorrect transposal* of Directive 99/45/EC by Denmark and Sweden. To clear up this matter, the Commission departments responsible held meetings with the Danish authorities and examined the findings of a study designed to check whether transposal was correct in these two countries.

A complaint was also registered relating to incorrect transposal in the Netherlands of Directive 2001/90/EC. The case concerns wood treated with creosote and is complicated by the fact that the Netherlands enjoys derogations under Article 95(5) EC.

Infringement proceedings were commenced against Lithuania, Latvia and Luxembourg for *incorrect application* of Directive 2004/10/EC of the European Parliament and of the Council on good laboratory practice, in particular Article 3(2) thereof.

2.4.2. Pharmaceutical products

The Commission decided to bring actions before the Court of Justice against France and the Netherlands for failure to notify measures implementing Directive 2001/20/EC on the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use and Directive 2003/94/EC laying down the principles and guidelines of good manufacturing practice in respect of medicinal products for human use and investigational medicinal products for human use. A few weeks after its decision, the Netherlands notified measures transposing the two Directives.

The Commission sent 20 letters of formal notice for failure to notify measures to implement Directive 2004/24/EC amending, as regards traditional herbal medicinal products, Directive 2001/83/EC.

As regards the legislative package forming part of the "review of pharmaceutical legislation", the Commission sent 18 letters of formal notice for failure to notify measures to transpose Directive 2004/27/EC amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, and 21 letters of formal notice for failure to notify measures to transpose Directive 2004/28/EC amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products.

Following the judgments handed down by the Court of Justice in cases brought against Germany for failure to notify measures transposing Directives 2000/37/EC (Case C-118/03) and 2001/38/EC (Case C-139/03) on pharmacovigilance, Germany notified national implementing measures for the above Directives in 2005 and the Commission was able to terminate the proceedings.

Discussions continued with a number of Member States regarding the application of Directives 2001/83/EC and 2001/82/EC.

In the clinical trials field, the Commission departments responsible set up a working group with the Member States (*Ad hoc* group for the development of implementing guidelines for Directive 2001/20/EC) to facilitate application of Directive 2001/20/EC and its implementing Directives. This group met several times in 2005.

There are still problems in a number of Member States with the application of Directive 89/105/EEC relating to the transparency of measures regulating the prices of medicinal products and their inclusion in the scope of national health insurance systems. The Commission feels that the Member States in question do not comply with the Directive's procedural requirements regarding decisions on the price of and reimbursement for medicines. In 2005, discussions on the application of the Directive were begun with Austria, Malta, Poland and the Czech Republic. Talks also continued with Belgium, Spain, Greece and Italy. Finally, complaints against a number of countries are currently being investigated.

2.4.3. Cosmetics

In 2005 the Commission adopted four Directives designed to adapt the Cosmetics Directive to technical progress. Two Directives fell due for transposal during the year (the deadlines for the other two are in 2006).

Infringement proceedings were commenced in 2005 against Member States for *failure to notify* national measures implementing these Directives: eight relating to Directive 2005/42/EC and seven relating to Directive 2005/9/EC.

2.4.4. Equipment (gas appliances, measuring equipment, pressure vessels)

In the gas appliances sector, one case concerning *incorrect application* of Directive 90/396/ECE was terminated, as there was no evidence of any infringement on the part of the French authorities. Complaints against Germany required detailed investigation to clarify the situation regarding the conditions on the entry into service of such appliances. A complaint against Spain for *incorrect application* of the Directive was terminated after the Spanish authorities took steps to comply with the Directive.

In the pressure vessels sector, a complaint is currently being investigated concerning barriers to the entry into service in Germany of equipment that meets the requirements of Directive 97/23/EC as regards the fixing of intervals for periodic inspections. A complaint was also lodged against Greece concerning obstacles to the entry into service of equipment that meets the Directive's requirements. The Commission departments responsible continued to examine two complaints relating to *incorrect application* of the Directive in Italy as regards inspections on entry into service.

In the measuring equipment sector, Commission departments continued their dialogue with the UK authorities to ensure the implementation of Directive 80/181/EEC on units of measurement. Progress has been achieved in the use of the metric system in administration, on public websites and in the distribution sector. Dialogue is continuing with a view to finding an appropriate solution for setting a date for the use of the metric system in the few remaining sectors, in particular road signs, in accordance with Article 1(b) of the Directive.

2.4.5. Mechanical and electromechanical equipment

The Commission sent reasoned opinions to Greece, Ireland and Portugal, the only Member States not to have notified measures transposing 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.

Directive 2004/26/EC amending Directive 97/68/EC on emissions from internal combustion engines to be installed in non-road mobile machinery also fell due for transposal. Nine reasoned opinions were sent to Member States for failure to notify implementing measures by the deadline. The main reason for failure to transpose the Directive appears to be delays in internal implementation procedures.

In connection with Directive 98/37/EC on machinery, a reasoned opinion was sent to France because of the obstacles to the free movement of industrial dry-cleaning machinery. Discussions are continuing with the French authorities with a view to amendment of the disputed national provisions.

As regards Directive 95/16/EC on lifts, a case of *incorrect application* concerning the minimum height of landing doors on lifts in residential buildings was terminated after the Dutch authorities took steps to comply with the Directive.

In the proceedings brought against Germany for incorrect application of Directive 89/686/EEC on personal protective equipment, following the judgment given by the Court of Justice in Case C-103/01, a letter of formal notice was sent under Article 228 of the Treaty. This ultimately led to the revision of the German legislation, and the proceedings have been terminated accordingly. Another case of *incorrect application* of this Directive – relating to the technical characteristics of jackets and vests with high-visibility retro-reflective strips worn by drivers of vehicles parked on the carriageway – was closed following measures taken by Italy to comply with the Directive.

2.4.6. Medical devices

In 2005 the Commission terminated three cases against Cyprus for failure to notify measures implementing Directive 84/539/EEC on electro-medical equipment used in human or veterinary medicine, Directive 2003/12/EC on the reclassification of breast implants in the framework of Directive 93/42/EEC concerning medical devices and Directive 2003/32/EC introducing detailed specifications as regards the requirements laid down in Council Directive 93/42/EEC with respect to medical devices utilising tissues of animal origin.

In three other cases infringement proceedings for failure to notify implementing measures have been withdrawn (this is equivalent to termination): two cases against Italy concerning Directives 2003/12/EC and 2003/32/EC and one against France concerning Directive 2003/32/EC.

Three cases for failure to notify national measures are still in motion: two against Latvia concerning Directives 2003/12/EC and 2003/32/EC and one against Estonia concerning Directive 84/539/EEC.

2.4.7. Motor vehicles, tractors and motorcycles

In 2005 the number of infringement cases was kept down by effective monitoring of transposal by the Member States. Six directives - on the type-approval of motor vehicles, agricultural and forestry tractors and motorcycles - fell due for transposal in 2005. The Commission commenced 22 proceedings for failure to notify measures implementing these Directives. In 14 of these cases the proceedings were soon terminated following notification by Member States of their implementing measures.

However, some Member States did not notify any transposal measures despite proceedings being opened against them. The Commission therefore decided to send a reasoned opinion to Belgium concerning Directive 2003/97/EC and brought a case before the Court against Slovakia in relation to Directives 2004/78/EC and 2004/11/EC.

The proceedings already opened against Austria (Directive 2004/86/EC) and Slovakia (Directive 2004/86/EC) were terminated during the year. The Commission also ended two cases relating to tyres (brand restrictions) against Austria and Germany, following an expert study on tyres.

Nevertheless, the complexity of the legislation and the constant evolution of technology still give rise to problems of interpretation regarding the type-approval of vehicles, which calls for close and constant cooperation between the Commission and the type-approval authorities.

2.4.8. Construction products

Infringement proceedings were brought against seven Member States (Spain, Germany, United Kingdom, Austria, Sweden, Netherlands and France) concerning their implementation of Council Directive 89/106/EC, as some provisions of their national legislation are not in line with the Directive.

Since most of these proceedings are based on complaints, in two cases (France and Germany) the Commission first sent a warning letter to the relevant authorities in the Member State in order to be sure of the facts relating to the complaint before sending a letter of formal notice.

In June and December 2005, the Commission published in the Official Journal a consolidated list of measures, updated with the titles and references of the standards harmonised under the Directive. [*]

2.4.9. Recreational craft

At the end of 2005, the Commission terminated the infringement proceedings brought against 12 Member States which had failed to notify before the end of 2004 their transposal measures for Directive 2003/44/EC amending Directive 94/25/EC on recreational craft.

2.4.10. Cableway installations

At 31 December 2005, all 25 Member States had transposed Directive 2000/9 on cableway installations designed to carry persons. No infringements were detected during 2005.

2.4.11. Payment delays

During 2005 the European Commission received complaints leading to the opening of infringement proceedings for non-conformity (Greece) and incorrect application (Italy) in respect of this Directive. Proceedings against Italy for non-conformity are pending before the Court of Justice. The Maltese authorities communicated an amendment to their national implementing measures, leading to the closure of infringement proceedings.

[*] OJ C139, 8.6.2005, p.3 and OJ C 319, 14.12.2005, p.1.

2.4.12. Cultural goods

In connection with the **return of cultural objects** unlawfully removed from the territory of a Member State (Directive 93/7/EC, amended by Directives 96/100/EC and 2001/38 EC[110]), the Commission continued proceedings against Poland for partial failure to notify national implementing measures. However, the Commission also terminated proceedings opened in 2004 against Malta and Slovakia for failure to notify national measures.

In December 2005 the Commission adopted its second report to the Council, Parliament and the Economic and Social Committee on the application of the Directive, covering the period between 1999 and 2003[111].

During the year two parliamentary questions were put to the Commission on the application of the Directive[112].

2.4.13. Preventive rules provided for by Directive 98/34/EC

Directive 98/34/EC (as amended by Directive 98/48/EC) lays down an information procedure enabling the Member States and the Commission to exercise prior checks on draft technical rules relating to products and draft rules relating to information society services. In 2005 the Commission was notified of 800 draft standards (31 of them relating to information society services), including 61 from EFTA countries. The new Member States played an active part in this process, notifying 196 draft texts (around one third of notifications received from the Member States as a whole).

The number of notifications increased significantly compared with 2004 (up by 30%), notably because of enlargement. The Commission issued 73 detailed opinions and 247 observations in response to drafts notified in 2005, whereas the Member States issued 45 detailed opinions and 219 observations. The Commission also "blocked" adoption of 4 notified texts for 12 months because the projects concerned a field covered by a proposal for harmonisation at Community level.[113]

Apart from potential infringements of the EC Treaty, and in particular Article 28 thereof, many of the detailed opinions sent by the Commission, as in previous years, warned the addressees that their drafts were liable to infringe Community directives on the free movement of goods or of information society services. In 2005 the Commission also received eight notifications from Member States relating to national coexistence measures in the field of GMOs; in four cases the Commission reacted by sending a detailed opinion.

Where it detects an infringement of Directive 98/34/EC, either through the adoption of legislation containing technical rules that have not been notified as required by the Directive or through failure to comply with the status quo periods provided for by it, the Commission engages in dialogue with the Member State in question to have the situation remedied (for example through notification of a fresh draft repealing the disputed text and its subsequent

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110 OJ L 74, 27.3.1993, p.74; OJ L 60, 1.3.1997, p.59 and OJ L 187, 10.7.2001, p.43.

111 COM (2005) 645, 21.12.2005.

112 QE E 1987/05 by Mr Karatzaferis (IND/DEM), QE E 0396/065 by Mr Meijer (GUE/NGL).

113 These figures are based on the data available at 17 March 2006.

adoption) or commences infringement proceedings. At the end of 2005, seven infringement proceedings were under scrutiny, while four proceedings were terminated after the Member States concerned remedied their failure to fulfil their obligations under Directive 98/34/EC.

The organisation of briefing sessions on the operation of the notification procedure, which had proved most valuable in previous years, was continued in 2005 in Portugal, Spain and France. These seminars are an opportunity to elucidate the application of the procedure for notifying technical rules relating to information society services. At a conference in Brussels in 2005, 200 participants, representing the Member States, the Commission and the industry, reviewed the situation regarding Directive 98/34/EC and discussed the industry's expectations for the future development of the Directive.

Finally, the Commission departments continued their work on extending Directive 98/34/EC to services other than information society services, in particular by finalising a draft impact assessment.

2.4.14. Defective products

In 2005 two infringement proceedings for non-conformity were still pending:

- 1998/2245 against France. The French authorities notified the amending legislation, which brought it partly into line with the Court's judgment in Case C-52/00. The Commission pursued the issues still outstanding, after calculating a reduced fine.
- 2003/2063 against Denmark.

2.4.15. Weapons

All the new Member States have notified texts designed to transpose Directive 91/477 (firearms). No infringement proceedings were opened against them or any other Member State.

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

Contrary to the trend noted in 2004, there was an increase in the number of complaints registered in 2005, mainly because of the accession of new Member States. This shows that EU citizens and businesses are making full use of the possibilities for action offered by European law. The Commission pursued its work on complaints and infringement proceedings in various fields ranging from the registration of second-hand vehicles to parallel imports of medicines and plant protection products. By the end of the year, 130 cases were under scrutiny, while more than 60 cases were terminated in the course of 2005. The most frequent complaint was that the Member State of destination was failing to apply the principle of the mutual recognition of products lawfully manufactured or marketed in other Member States.

Barriers to trade were eliminated on the ground thanks to the notification of cases of incorrect application of the law to the SOLVIT network, to the notification procedure provided for by

Directive 98/34/EC, which requires Member States to notify new technical rules at the draft stage, and finally to the "package meetings" which allow direct discussion with the Member States on ongoing cases.

Some problems required coordinated action against a number of Member States. For example, the Commission sent letters of formal notice to Luxembourg, Hungary, the United Kingdom, Poland and the Czech Republic concerning obstacles to the registration of imported second-hand vehicles. Letters of formal notice were also sent to Poland, Hungary, the United Kingdom and Italy concerning obstacles to parallel imports of plant protection products. Proceedings concerning parallel imports are also in motion against France.

In many cases where the Commission sent a reasoned opinion, the Member States in question brought their legislation into line. For example:

- the French authorities amended the insurance code to facilitate the use of construction products from other Member States that met safety requirements equivalent to those in force in France;
- the United Kingdom included in its legislation a mutual recognition clause allowing pre-packaged foodstuffs from other Member States and not in containers of specific volume to be marketed on its territory;
- the Netherlands repealed national provisions requiring the approval of wood-burning stoves and fire alarms in accordance with national standards.

Among the cases brought by the Commission before the Court of Justice, it is worth noting the following:

- the ban on Swedish consumers using independent intermediaries to import alcoholic beverages from other Member States for private use[114];
- a system whereby a Finnish resident who wishes to import or use temporarily in Finland a vehicle previously registered and used in another Member State must ask for a temporary transit authorisation at a border-crossing point[115];
- the classification by the German authorities of garlic-based preparations, in particular products in capsules containing dried garlic, as a medicine, even though such products are lawfully marketed as foodstuffs in other Member States[116]; and
- the ban in Greece on using and installing electric and electronic games in all public or private places, except casinos[117].

The Court of Justice gave a number judgments clarifying the scope of Articles 28 to 30 of the EC Treaty:

- In Case C-114/04, the Court stressed the similarities between parallel imports of medicines and plant protection products and the interoperability of the applicable principles[118].
- In Case C-432/03, the Court shed light on the boundary between Article 28 of the EC Treaty and the 'Construction Products Directive'.[119] Article 16 of the Directive does not prevent the principle of the free movement of goods being applied to

114 Case C-186/05 *Commission v Sweden* - in motion.
115 Case C-54/05 *Commission v Finland* – in motion.
116 Case C-319/05 *Commission v Germany* – in motion.
117 Case C-65/05 *Commission v Greece* – in motion.
118 Judgment of 14 July 2005 in Case C-114/04 *Commission v Germany*.
119 Judgment of 10 November 2005 in Case C-432/03 *Commission v Portugal*.

construction products for which no technical specifications have been harmonised or recognised at Community level[120].

- In Case C-320/03, the Court confirmed that national legislation banning certain heavy goods vehicles from travelling on an Austrian motorway was incompatible with Articles 28 and 29 of the EC Treaty, as it did not observe the principle of proportionality[121].
- In Case C-38/03, concerning the reimbursement of the cost of wheelchairs by the Belgian authorities, the Court found that, by excluding from the list of wheelchairs eligible for reimbursement those which bore EC markings but did not meet the strict criteria for admission to that list, Belgium had failed to meet its obligations under Article 28 of the EC Treaty[122].
- In Case C-212/03, the Court declared that France had infringed Article 28 of the EC Treaty by applying a prior authorisation procedure to personal imports - not effected by personal transport - of medicines lawfully prescribed in France and authorised both in France and in the Member State where they were purchased, and of homeopathic medicines lawfully prescribed in France and registered in a Member State[123].

The Commission also reminded certain Member States of their obligation to comply with judgments of the Court of Justice. For example, it sent Germany a letter of formal notice under Article 228 of the EC Treaty to ensure that it had taken the necessary steps to implement the judgment in Case C-114/04[124] concerning parallel imports of plant protection products. The Court confirmed that, by failing to grant parallel importers a reasonable period in which to liquidate their stocks following withdrawal of a marketing authorisation for a reference product, Germany had infringed the principle of the free movement of goods. In a supplementary letter of formal notice, the Commission informed the French authorities that they had failed to meet their obligations arising from Article 228 of the EC Treaty by not adopting all the necessary measures to implement the judgment in Case C-24/00 concerning certain foodstuffs fortified with nutrients[125].

Following a reasoned opinion under Article 228 of the EC Treaty, Italy abolished the authorisation procedure for products intended for use on merchant vessels flying the Italian flag. In its judgment in Case C-455/01[126], the Court had declared that Italy had failed to meet its obligations under Article 28 of the EC Treaty by keeping in force legislation requiring the issue of a certificate of conformity by a national body, without recognising the validity of tests carried out by bodies recognised in the other Member States.

In 2005 the Commission replied to various Parliamentary questions, petitions and requests for access to documents relating to non-harmonised aspects of the free movement of goods. The Commission also continued its scrutiny of national legislation in this field in countries that have applied to join the European Union.

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120 Council Directive 89/106/ECE of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products.

121 Judgment of 15 November 2005 in Case C-320/03 *Commission v Austria*.

122 Judgment of 13 January 2005 in Case C-38/03 *Commission v Belgium*.

123 Judgment of 26 May 2005 in Case C-212/03 *Commission v France*.

124 Judgment of 14 July 2005 in Case C-114/04 *Commission v Germany*.

125 Judgment of 5 February 2004 in Case C-24/00 *Commission v France*.

126 Judgment of 16 October 2003 in Case C-455/01 *Commission v Italy*.

2.5. Environment

2.5.1. Environmental impact assessment

The **EIA Directive**[127] is an important part of EU environmental legislation. This Directive requires certain types of projects to be assessed for their impact before they are approved, in order to avoid or minimise environmental damage and nuisances. The projects covered by the Directive are identified in the Annexes to the Directive. Amendments to the EIA Directive were adopted in 1997[128] and 2003[129].

During 2005, the Commission sent the United Kingdom a letter of formal notice under Article 228 EC for not complying with a 2004 Court judgment condemning the UK for incomplete transposition of the EIA Directive as regards Scotland and Northern Ireland (Case C-421/02).

Problems with the *conformity* of national measures with the EIA Directive have persisted. The Commission sent reasoned opinions to Italy and the United Kingdom and decided to refer Portugal to the Court of Justice because of shortcomings in their legislation transposing the EIA Directive. Examples of the Portuguese law's shortcomings include not fully incorporating criteria for screening whether individual projects require an assessment, and failing to require that developers provide information on alternatives to the projects they propose. In a separate case, the Commission sent a supplementary reasoned opinion to Italy because of concerns about Italy's EIA legislation on so-called "strategic works to be built in the national interest". This provides for an alternative environmental impact assessment procedure, under which a project undergoes an EIA at its preliminary stage. Subsequently, before consent is given to the final project, a check is made to verify that there are no modifications in comparison to the preliminary project in order to see whether the EIA needs to be updated. The Italian law requires the EIA to be updated only if there has been a modification that has a significant impact in its own right. This is at odds with the EIA Directive, under which an update of the EIA is considered necessary for any modification which may significantly change the overall impact of the project compared with the preliminary project. In two separate cases the Commission decided to refer Ireland to the Court of Justice due to shortcomings in the Irish legislation governing EIAs for fish farms, projects for the restructuring of rural land holdings, projects for the use of uncultivated land or semi-natural areas for intensive agriculture and water management projects for agriculture. The Commission considers that the Irish legislation does not take enough account of sensitive nature sites or of cumulative effects.

Many cases relate to alleged instances of *bad application* of the EIA Directive by Member State authorities. Reasoned opinions were sent to Belgium[130] and Ireland[131] in this respect.

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127 Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and 2003/35/EC.

128 Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

129 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment amends the EIA Directive with regard to public participation.

130 Case concerning lack of EIA for an urban development project in Brussels.

The Commission decided to refer Italy to the Court of Justice for failing to submit an open cast mine project in the "Monte Bruzeta" area (Alessandria, Piemonte) to an EIA. Italy considered that no EIA procedure was necessary, following a "screening" exercise which had not been undertaken correctly. The Commission also decided to refer Spain to the Court of Justice for failure to carry out an EIA on a project for the construction of an airport in the province of Ciudad Real within the Autonomous Community of Castilla-La Mancha. The site for the airport is also located next to a Special Protection Area classified by the Spanish Authorities under the Wild Birds Directive. Finally, the Commission decided to refer Germany to the Court of Justice because it failed to subject an installation for the incineration of hazardous waste to an EIA. In the Commission's opinion this installation is covered by Annex I to the EIA Directive and must be subject to an EIA procedure.

In June 2005 the Court of Justice condemned Italy (Case C-83/03) because the screening procedure of the project for the construction of a marina at Fossacesia (Chieti) – a project covered by Annex II – was not properly carried out.

The **Strategic Environmental Assessment Directive** ("SEA Directive")[132] complements the EIA Directive. Whereas the EIA Directive is concerned with assessing environmental effects of projects, the SEA Directive seeks to ensure that more strategic decisions on plans and programmes are also assessed in advance. The national transposing legislation was due by July 2004.

During 2005, the Commission sent a reasoned opinion to Portugal and referred Austria, Belgium, Greece, Spain, Finland (concerning the province of Åland only), Italy, Luxembourg, Malta, the Netherlands and Slovakia to the Court of Justice for not transposing this Directive in time.

Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment amends the EIA Directive with regard to public participation. This Directive had to be transposed into national law by 25 June 2005 at the latest. In 2005, the Commission sent reasoned opinions to Cyprus, Czech Republic, Germany, Spain, Finland, France, Hungary, Ireland, Italy, Luxembourg, Malta and Slovakia for not meeting this deadline.

2.5.2. Air

In 1996, the EU adopted **a Framework Directive for assessing and managing ambient air quality**[133]**,** which was followed in 1999 by the first "daughter Directive"[134] setting limit values for certain pollutants - nitrogen dioxide, nitrogen oxides, particulate matter (PM10), sulphur dioxide and lead. The limit values are to be met by certain dates and may not be exceeded thereafter.

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131 Case concerning lack of EIA for forestry projects.

132 Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

133 Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management.

134 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.

In July 2005 the Commission sent a reasoned opinion to Greece for not submitting pollution-reduction plans to the Commission for high levels of NO_2 and PM10 in Attiki, Patra and Thessaloniki. Italy was sent an additional reasoned opinion asking it to measure air pollution by PM10 and inform the public about the pollution levels in Civitavecchia (Rome). In a separate case, the Commission sent a reasoned opinion for Italy's failure to measure the content of PM10 and lead in the air in the town of Brindisi (Puglia). Also Portugal has been sent a reasoned opinion for not submitting pollution–reduction plans for the Lisbon area and Porto Litoral, areas that were affected by high levels of PM10.

Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants[135] had to be transposed into national law before 27 November 2002. In April 2005, the Court of Justice condemned the Netherlands for failure to transpose the Directive into its national law (Case C-171/04). In December 2005, a letter of formal notice under Article 228 EC was sent to Italy asking it to comply with a Court judgment of May 2005 (Case C-99/04), which condemned Italy for not having transposed this Directive on time.

The **EU's Ozone Regulation**[136] aims to prevent and limit damage to the ozone layer that shields the earth from harmful solar rays.

In July 2005, the UK was sent a reasoned opinion because it did not set out the minimum qualification requirements for personnel involved in the recovery, recycling and destruction of ozone-depleting substances. Furthermore, the necessary systems to support the recovery, recycling and destruction of substances emanating from Gibraltar are not in place. The Commission decided to refer Greece to the Court of Justice for not fixing minimum qualification requirements for the personnel involved with fire protection systems, fire extinguishers and equipment containing solvents. In addition, Greece did not provide sufficient information on measures to recover used ozone-depleting substances and did not show that it has put in place annual checks for leakages of controlled substances from larger refrigerating equipment and the minimum qualification requirements for the personnel involved with those checks. Finally, the Commission sent Ireland a reasoned opinion for non-compliance with a judgment delivered by the Court of Justice in October 2004 (Case C-406/03). The Court of Justice ruled that Ireland had failed to report to the Commission on how it is implementing provisions of the Regulation concerning systems for promoting the recovery of used ozone-depleting substances and the establishment of minimum qualification requirements for technical personnel. In a separate case, Ireland was referred to the Court of Justice for failing to respect other reporting requirements of this Regulation, including reporting on the quarantine and pre-shipment (QPS) use of methyl bromide, a highly ozone-depleting pesticide that is being phased out.

In July 2005, the Court of Justice condemned Italy in two separate cases (C-79/05 and C-214/04) for failure to fulfil some obligations under the Ozone Regulation. The first case concerned the failure to take all precautionary measures to prevent and minimise leakages of controlled substances and the second case concerned legislation allowing the use of HCFCs in fire-fighting installations beyond the limits provided for by the Regulation.

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135 Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.

136 Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer.

In 2004, the European Parliament and Council adopted a Decision on a revised EU mechanism for monitoring **EU greenhouse gas emissions and implementing the Kyoto Protocol**[137]. To enable the Commission to assess EU and Member States' progress towards meeting their targets for reducing or limiting greenhouse gas emissions under the Protocol, the Decision requires Member States to provide certain information. This concerns the policies and measures they are taking to tackle climate change as well as their projections of future national greenhouse gas emissions. This information should have been reported to the Commission by 15 March 2005 and is required every two years thereafter. In October 2005, the Commission initiated infringement proceedings against Austria, Cyprus, Estonia, France, Hungary, Luxembourg, Malta, Poland and Spain because they had either provided none of the information required or only partial information that is inadequate. The Commission has also sent a reasoned opinion to Luxembourg for not submitting a report by 15 January 2005 containing elements that are essential in order to assess the progress towards meeting the commitments under the Kyoto Protocol.

As part of its strategy to reduce **CO_2 emissions of new cars**, the EU adopted in 1999 a Directive requiring carmakers to make available to consumers information about the fuel economy and CO_2 emissions of new cars sold in the EU[138]. In December 2005, the Commission decided to refer Luxembourg to the Court of Justice because it failed to submit a report on the effectiveness of this Directive. This report fell due on 31 December 2003.

In 2003, an amendment to this Directive was passed to update it in the light of progress in communication technologies[139]. This Directive had to be transposed into national law by 25 July 2004. In December 2005, the Commission referred Austria, Greece and Malta to the Court of Justice because of failure to meet this deadline.

2.5.3. Water

Since the 1970s, a significant body of Community legislation has been developed with the aim of protecting water quality across the EU.

The **Water Framework Directive**[140] represents the single most important piece of water legislation. It establishes a framework for the protection of all water bodies – i.e. rivers, lakes, coastal waters and groundwater - in the European Union. Its central objective is to achieve good quality for water resources by 2015. This objective is to be reached through integrated management based on river basins, since water systems do not stop at administrative borders. The Water Framework Directive operates with clear deadlines for the various steps required to move towards sustainable and integrated water management in Europe.

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137 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.

138 Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars.

139 Directive 2003/73/EC of 24 July 2003 amending Annex III to Directive 1999/94/EC of the European Parliament and of the Council relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars.

140 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.

The national legislation necessary to implement the Directive became due on 22 December 2003. In December 2005, the European Court of Justice condemned Belgium and Germany for not adopting the necessary legislation on time (Cases C-33/05 and C-67/05 respectively). At the end of 2005, cases were still pending in the Court against Luxembourg, Italy and Portugal. In a separate case the Commission decided to refer the United Kingdom to the Court for failure to designate sufficient sensitive areas under the Directive.

During 2005, the Commission sent reasoned opinions to Greece, Italy and Spain for failing to meet the deadline of 22 June 2004 for providing information on river basin districts and the authorities that will be responsible for managing them. It also sent warning letters to the same Member States for failing to provide the first analyses on individual river basins. These became due on 22 March 2005.

Other developments during 2005 included the sending of a reasoned opinion to Greece for incomplete transposition of this Directive.

The **Dangerous Substances Directive**[141] was one of the first pieces of EU environmental legislation to be introduced. It creates a framework for dealing with water pollution caused by discharges of an extensive list of dangerous substances, such as heavy metals, phosphorus, pesticides and PCBs. Under this Directive, Member States must adopt pollution-reduction programmes with binding water-quality objectives and establish a monitoring network as well as a system for the authorisation of discharges. The provisions of the Dangerous Substances Directive will ultimately be replaced by those of the Water Framework Directive. In June 2005, the European Court of Justice condemned Ireland for breaching the Dangerous Substances Directive, in particular by failing to have a proper system for authorising discharges from farm installations, marine fish-farms and waste-water treatment plants and other infrastructure (Case C-282/02).

The **Groundwater Directive**[142] is closely related to the Dangerous Substances Directive. It creates a framework for controlling discharges of a similar list of dangerous substances to groundwater. Member States are required to set up an authorisation system based on prior investigation. Like the Dangerous Substances Directive, the Groundwater Directive is ultimately intended to be replaced by Directive 2000/60/EC and subsidiary legislation. In this context, 2005 saw negotiations proceed on a new Groundwater Directive to be integrated into the system of river basin management under Directive 2000/60/EC. Meanwhile, in April 2005, Greece was condemned by the European Court of Justice, *inter alia*, for breaching the existing Directive (Case C-163/03).

The **Bathing Water Directive**[143] is another early piece of Community environmental legislation. It aims at providing bathers with clean bathing water. It sets "imperative" water quality standards that must be complied with, as well as higher "guide values" that Member States are encouraged to meet. The Directive also details the requirements for monitoring and reporting bathing water quality. The Commission Bathing Water Report for the 2004 bathing

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141 Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community.

142 Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances.

143 Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water.

season[144] (which is based on sampling returns provided by the individual Member States) shows that a slight decline was observed in average bathing water quality. The addition of data for six of the new Member States in the report is part of the explanation for this trend[145]. In 2004, 96.7% (96.8% in 2003) of EU coastal bathing waters and 89.4% (92.3% in 2003) of all inland waters complied with the mandatory values laid down in the Directive.

The extent of improvement led to the elimination at the end of 2005 of the infringement that had led to Spain's condemnation in Case C-278/01. However, this positive picture is called into question by the extent to which many Member States are either excluding from the scope of the Directive bathing waters that they had previously recognised or are failing to provide monitoring results for bathing waters which are the subject of temporary prohibitions. Since the early 1990s, thousands of previously recognised bathing waters have ceased to be monitored and reported without any justification being provided to the Commission.

The Surface Drinking Water Directive[146] aims to protect and improve the quality of surface waters used in the abstraction of drinking water. In 2005 a complementary reasoned opinion on the basis of Article 228 of the EC Treaty was sent to France asking it to comply with a judgment of March 2001 (Case C-266/99). In that judgment, the Court ruled against France for its failure to comply with the 50mg/l limit for nitrates in surface waters in Brittany, as required by the Directive.

The current **Drinking Water Directive** is Directive 98/83/EC on the quality of water intended for human consumption, which was due to be transposed into national law by 25 December 2000. This replaces an earlier Directive on the same subject[147]. The old Directive continues to give rise to case-law, with the European Court of Justice condemning Portugal in September 2005 for not complying with the quality parameters laid down in the Directive (Case C-251/03).

The **Shellfish Waters Directive**[148] requires Member States to designate waters in which shellfish are in need of protection and to achieve mandatory quality standards through the implementation of pollution-reduction programmes. In December 2005, the European Court of Justice condemned Spain for not respecting the Directive in Galicia and in particular for failing to adopt a pollution reduction programme for the shellfish waters of the Ría de Vigo (Case C-26/04). At the same time, the Commission sent Ireland a reasoned opinion under Article 228 EC for not complying with a 2003 judgment of the Court of Justice requiring it to establish pollution-reduction programmes for the 14 areas along the Irish coast designated as shellfish waters (Case C-67/02). The Commission also sent a reasoned opinion to the United Kingdom for not meeting the guideline values set in the Directive relating to faecal coliforms.

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144 The Bathing Water Reports are available under http://www.europa.eu.int/water/water-bathing/report.html.

145 It must be remembered that the Member States which have been monitoring their bathing water quality for years did not achieve the good results reported now until several years after the entry into force of the Directive. Generally, average bathing water quality remained relatively high, even if there is still significant room for improvement, especially in compliance with the guide values.

146 Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States.

147 Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption.

148 Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters.

The Community has two legislative instruments aimed specifically at combating pollution from phosphates and nitrates and the eutrophication they cause.

The first, the **Urban Waste-Water Treatment Directive**[149], requires towns and cities to meet minimum waste-water collection and treatment standards within deadlines fixed by the Directive. The deadlines are fixed according to the sensitivity of the receiving waters and to the size of the urban population responsible for discharges. The Directive required Member States to have identified sensitive areas by 31 December 1993. Strict standards for the discharging of waste water directly from towns and cities with a population above 10,000 into sensitive areas, or their catchment areas, should have been achieved by 31 December 1998. The same deadline applies to the extraction of the nutrients that contribute to eutrophication. Proper treatment for waste-water discharges from cities and towns with more than 15,000 inhabitants should have been installed by December 2000.

In July 2005, reasoned opinions were sent to Greece and Portugal for not meeting the December 2000 deadline. The Commission also referred Luxembourg and the United Kingdom to the Court of Justice for not meeting the December 1998 and the December 2000 deadline respectively. In a separate case the Commission referred the United Kingdom to the Court for failure to designate sufficient sensitive areas under the Directive.

In June 2005, France was condemned by the European Court of Justice for not communicating to the Commission the information collected by competent authorities or appropriate bodies regarding the monitoring of discharges from urban waste-water treatment plants and amounts and composition of sludges (Case C-191/04). The Commission also sent France a letter of formal notice under Article 228 EC for not complying with a 2004 judgment of the Court of Justice condemning it for not having identified sufficient sensitive areas by 31 December 1993 and for failing to subject to more stringent treatment discharges of waste-water directly from some agglomerations with a population above 10,000 into sensitive areas, or their catchment areas, by 31 December 1998 (Case C-280/02).

The second anti-eutrophication measure is **the Nitrates Directive**[150]**,** which was adopted in the same period as the Urban Waste Water Treatment Directive. Whereas the latter addresses nutrient pollution coming from towns and cities, the former addresses nutrient pollution coming from agriculture. They are thus complementary. More specifically, the Nitrates Directive aims to prevent pollution of surface waters and groundwater caused by nitrates from agricultural sources (chemical fertilisers and livestock manure). Member States were required to carry out monitoring of surface waters and groundwater, to identify nitrate-polluted waters (surface and groundwater with nitrate concentrations above 50mg/L and eutrophic waters, or waters which might contain more than 50mg/L nitrate or become eutrophic if no action is taken) and to designate as nitrate-vulnerable zones those areas of their territory draining to polluted water by December 1993.

In September 2005, the European Court of Justice condemned Belgium for not complying with the Directive, in particular for failing to identify all the waters that suffer from or are at risk of pollution by nitrates and to correctly designate nitrate-vulnerable zones where action to reduce nitrate pollution is to be taken and for lack of establishing action programmes in full

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149 Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.

150 Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources.

compliance with the Directive (Case C-221/03)**.** This was the latest in a series of important Court rulings on the Directive which address both the issue of the extent of areas identified for action by the Member States and the content of the action taken. During 2005, the Court also gave rulings against Spain for non-compliance with the Directive in relation to a number of areas of intensive pig-farming (Cases C-416/02 and C-121/03). During 2005, intensive discussions took place between the Commission and the Netherlands and Ireland with a view to ensuring correct implementation of previous Court judgments.

Finally, the Commission sent a letter of formal notice under Article 228 EC to France in December 2005, asking it to comply with a Court ruling of October 2004 (Case C-239/03) condemning France for failing to respect an international agreement in relation to the Etang de Berre, an important saline lake in the Bouches du Rhône department near Marseille. The agreement in question is the **Protocol for the protection of the Mediterranean Sea against pollution from land-based sources**[151], which was ratified by the European Community in 1983. This protocol, adopted under the Barcelona Convention for the protection of the Mediterranean Sea against pollution, commits parties to preventing or reducing pollution of the Mediterranean from rivers, coastal installations and waste discharge pipes.

2.5.4. Nature

The EU's two key pieces of nature conservation law are the Wild Birds Directive[152] and the Habitats Directive[153].

The **Wild Birds Directive** is the EU's oldest piece of nature conservation legislation. It creates a comprehensive scheme of protection for the EU's wild bird species. Under the Wild Birds Directive, Member States must designate special protection areas (SPAs) for migratory and other vulnerable wild bird species. In interpreting this provision the Court of Justice has stated that Member States should also give the designated SPAs an appropriate legal protection regime that is capable of achieving the conservation objectives of species and habitats concerned.

In October 2005 the Court condemned Greece (Case C-166/04) for not establishing a coherent and specific legal protection regime that is capable of achieving the conservation objectives of the species and habitats of the "Messolongi lagoon" SPA. In addition, since Greece's legislation for the establishment of a legal protection regime for its 151 SPAs has not been implemented in practice for the large majority of SPAs, the Commission issued a reasoned opinion to Greece in December 2005.

The Wild Birds Directive also establishes rules that limit the number of species that can be hunted and the periods during which they can be hunted. Rules also define certain permitted methods of hunting. Derogations (i.e. exemptions) can be granted provided that strict requirements are met and provided that no other satisfactory solution is possible.

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151 See Council Decision 83/101/EEC concluding the protocol for the protection of the Mediterranean Sea against pollution from land-based sources.

152 Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

153 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

In 2005, the Court of Justice gave two judgments concerning hunting requirements. In a judgment of June 2005 (Case C-135/04) the Court condemned Spain for allowing hunting of woodpigeons in Guipúzcoa during their return to their rearing grounds, in breach of the Wild Birds Directive. In a December 2005 judgment (Case C-344/03) against Finland, the Court found that in the context of the spring hunting of different species of ducks the conditions for the derogation were not met. The ruling of the Court makes clear that the conditions of "no alternative solutions" and "small quantities" need to be rigorously applied by the Member States concerned. It also emphasises the importance of scientific evidence in this regard.

The **Habitats Directive** provides a comprehensive protection scheme for a range of animals and plants, as well as for a selection of habitat types. In order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, the Habitats Directive sets up the Natura 2000 ecological network of protected areas, which has become the centrepiece of EU nature and biodiversity policy.

Natura 2000 embraces SPAs designated under the Wild Birds Directive and sites proposed by Member States under the Habitats Directive (proposed Sites of Community Importance or "pSCIs"). For each bio-geographical region, a Commission decision then fixes the EU list of sites of Community Importance (SCIs). These sites are subsequently to be designated by Member States as Special Areas of Conservation (SACs), which, together with SPAs, constitute the Natura 2000 network. The sites proposed by Member States must be based on scientific criteria and scientific information. The Habitats Directive states that as soon as a site is placed on the Community lists of SCIs, it must be subject to the protection regime of Article 6(2), (3) and (4). This includes the prior assessment of potentially damaging plans and projects, the requirement that these plans and projects - if causing significant damage - be approved only if they represent an overriding interest and only if no alternative solution exists, and measures for providing compensatory habitats.

In a preliminary ruling of 13 January 2005 (Case C-117/03 *Società Italiana Dragaggi SpA and others*) the Court ruled that the protective measures described in Article 6(2), (3) and (4) of the Habitats Directive are required only as regards sites which are placed on Community list of sites selected as SCIs[154]. However, the Court made clear that Member States should also protect pSCIs, as these sites are eligible for identification as SCIs; if pSCIs were not appropriately protected, the achievement of the Directive's objectives could be jeopardised. Thus, in the case of pSCIs and, in particular, sites hosting priority natural habitat types or priority species the Court ruled that "*the Member States are, by virtue of Directive 92/43, required to take protective measures that are appropriate, from the point of view of the Directive's conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level"*.

Regarding the transposition of the Wild Birds and Habitats Directives, a small number of *conformity* problems remain unresolved. In October 2005 the Court of Justice ruled that parts of the United Kingdom and Gibraltar legislation are still not in conformity with the Habitats Directive (Case C-6/04). In December 2005 the Commission sent a letter of formal notice under Article 228 EC to the Netherlands for not complying with a judgment of the Court of

[154] At the end of 2005 the Community lists for five bio-geographical regions (Macaronesian, Alpine, Atlantic, Continental and Boreal) had been adopted. All sites placed on Community lists of SCIs are subject to the protective measures prescribed in Article 6(2), (3) and (4) of the Habitats Directive.

Justice finding that the Netherlands had not transposed correctly parts of the Wild Birds and Habitats Directives (Case C-441/03).

In some countries the classification of special protection areas (SPAs) and the selection of proposed sites of Community importance (pSCIs) for inclusion in the Natura 2000 network still remain problematic.

In July 2005, France was sent a reasoned opinion for insufficient designation and protection of sites hosting a rare wild bird species, the bearded vulture (*Gypaetus Barbatus*). The bearded vulture is one of the rarest raptors in Europe, with some 250 couples remaining.

In July 2005 the Commission decided to refer Spain to the Court of Justice because it failed to classify the habitats of certain steppe bird species as SPAs in the province of Lleida, Catalonia, one of the Autonomous Communities in Spain. The Commission had already referred Spain before the Court of Justice for the lack of sufficient designation of SPAs at national level (Case C-235/04).

The Commission sent a reasoned opinion to Germany for failing to implement a 2001 judgment (Case C-71/99) in which the Court found that Germany had not submitted an exhaustive list of pSCIs. Since the Court judgment the Commission and the German authorities have worked together to identify which further habitats and species should be designated and as a result many of the gaps have been filled. However, the Commission is concerned that Germany has not proposed sufficiently large areas in some important river estuaries and considers that several fish species should be designated as species requiring special conservation areas to be designated for them.

Problems remain concerning the special protection regime under Article 4(4) of the Wild Birds Directive and Article 6(2) to (4) of the Habitats Directive, e.g. wrongly applying or setting aside the special protection regime in relation to various activities significantly affecting conservation objectives, habitats or species. In this respect the Commission sent reasoned opinions to Italy[155] and Portugal[156] and decided to refer Italy and Ireland[157] to the Court in 2005.

Problems with the implementation of the Habitats Directive may also arise with regard to the protection of species. Article 12 of the Directive establishes a strict protection scheme for the species listed in Annex IV(a). Strict protection involves prohibiting all forms of deliberate capture or killing of specimens of these species and the deterioration or destruction of breeding sites and resting places. The Directive allows for exceptions - "derogations"- on a number of grounds. However, these derogations are subject to strict conditions. In particular, there must be no satisfactory alternative and a derogation must not be detrimental to the maintenance of populations of the species at a favourable conservation status.

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155 Concerning a project for skiing infrastructures to be located in Selva di Progno (Verona) and falling within a SCI and SPA and a case concerning authorisation of motor rally events in the Province of Pordenone within the "Magredi del Cellina" SCI.

156 Case concerning the construction of a golf course likely to affect the "Guadiana" pSCI.

157 Italy: cases concerning a change to a plan concerning the development of about 100 industrial locations located within the Murgia Alta SPAs and concerning the development of an industrial zone in the area of Manfredonia (Foggia, Puglia); Ireland: case concerning a pig-rearing installation in County Kilkenny, in the catchment area of the River Nore which is a proposed SAC.

In December 2005, the Commission sent letters of formal notice to Belgium, France, Greece, Italy, the Netherlands, Portugal, Spain and the UK for not adequately monitoring how effectively their population of cetaceans – whales, dolphins and porpoises – are being protected. All cetaceans require strict protection under the Habitats Directive and Member States' surveillance of their conservation status is an important element in this.

In July 2005, Belgium was sent a reasoned opinion because of inadequate measures to protect the European hamster, *Cricetus cricetus*, that is threatened by extinction as a result of intensive agricultural practices.

In its judgment of November 2005 (Case C-131/05), the Court condemned the United Kingdom because of legislation not complying with the strict protection regime laid down in the Birds and Habitats Directives. The UK legislation was restricting the scope of the ban on trade in protected species to those whose natural range includes Great Britain.

On 13 January 2005[158] the Commission adopted the EU lists of sites of Community importance for the Boreal bio-geographical region[159], which is another major step forward in establishing Natura 2000.

2.5.5. Waste

The **Waste Framework Directive**[160] lays down basic requirements for Member States regarding the handling of waste and sets out a definition of the term "waste". Member States still have problems in fully and correctly implementing the provisions of this Directive in national law.

In 2005, infringement proceedings were continued against some Member States whose legislation is not in line with the Waste Framework Directive. In April 2005 the Court of Justice condemned Ireland (Case C-494/01) for general and persistent failure to comply with several provisions of the Waste Framework Directive concerning, amongst others, safe disposal of waste, an adequate network of disposal installations and permits for waste disposal operations.

In December 2005 the Commission sent a letter of formal notice under Article 228 to the United Kingdom asking it to comply with a 2004 judgment (Case C-62/03), condemning the UK for several shortcomings in its national legislation transposing the Waste Framework Directive. The Commission sent Italy a letter of formal notice under Article 228 for failing to comply with a June 2005 judgment (Case C-270/03) ruling that Italy's legislation wrongly exempted companies or organisations that collect or transport their own waste from the registration requirements laid down in the Waste Framework Directive. In another case, the Commission sent Italy a reasoned opinion under Article 228 asking it to comply with a 2004 Court ruling that Italy had breached the Waste Framework Directive. The Court found that Italian law fails to determine the maximum quantities of waste which can be treated by waste

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158 Commission Decision o 13 January 2005 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Boreal biogeographical region (OJ L 40, 11.2.2005, p. 1).

159 The lists previously adopted are the Macaronesian list (Azores, Madeira, Canary Islands) adopted on 28 December 2001 and the Alpine list adopted on 22 December 2003.

160 Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Directive 91/156/EEC.

installations under the so-called "simplified permit procedures". In the EU, all waste installations must fulfil certain criteria and have a permit to operate. As a consequence of the failure in Italian law, Italian waste installations have been subject to the simplified procedure in breach of the minimum requirements set out in the Directive.

In December 2005, the Commission sent Italy a reasoned opinion because of restrictions on the definition of waste. The case concerns a law passed in December 2004 excluding certain types of waste, such as scrap metal and refused derived fuel, from the scope of Italian waste legislation, even though these are covered by the definition of waste under the Waste Framework Directive. In recent years Italy has established a pattern of restricting the definition of waste and the application of the Waste Framework Directive and four infringement cases on these issues are already pending before the Court of Justice.

The case-law on the definition of waste under the Waste Framework Directive was further developed by a preliminary ruling given by the Court of Justice on 11 November 2004 (Case C-457/02 *Niselli*). The Court clarified that the definition of 'waste' in the first subparagraph of Article 1(a) of the Waste Framework Directive cannot be construed as covering exclusively substances or objects intended for, or subjected to, the disposal or recovery operations mentioned in Annexes II A and II B to that Directive or in the equivalent lists, or to which their holder intends or is required to subject them. Furthermore, the Court stated that the meaning of 'waste' for the purposes of the first subparagraph of Article 1(a) of the Waste Framework Directive is not to be interpreted as excluding all production or consumption residues which can be or are reused in a cycle of production or consumption, either without prior treatment and without harm to the environment, or after undergoing prior treatment without, however, requiring a recovery operation within the meaning of Annex II B to that Directive.

In 2005, the Commission continued a number of infringement actions concerning local waste dumping problems (illegal landfills and/or uncontrolled treatment of waste, non-existent or insufficient environmental impact assessments, uncontrolled dumps, etc).

The Commission sent Belgium a reasoned opinion because of some problems related to a landfill situated in the Walloon Region at Flobecq.

In addition, Greece was referred to the Court of Justice over its failure to clean up two old and non-operational illegal waste dumps in Crete (at the Kouroupitos and Messomouri sites). In 2000 the Court fined Greece a daily penalty of €20,000 on account of the operation of an illegal rubbish dump at Kouroupitos. In October 2005 (Case C-502/03) the Court of Justice condemned Greece because of the existence of numerous illegal waste dumps. During the written procedures the Greek authorities recognized that at least 1 125 illegal or uncontrolled waste dumps were still operational.

The Commission pursued four separate infringement cases under Article 228 against Italy concerning illegal landfills (cases C-383/02: Rodano (Miliano); C-516/03: Campolungo (Ascoli Piceno); C-375/02: Granciara di Castelliri (Frosinone); C-447/03: Manfredonia (Foggia))[161]. In each case the Court of Justice ruled that Italy had failed to comply with Articles 4 and 8 of the Waste Framework Directive. Article 4 requires Member States to

[161] In 2004, the Commission already decided to refer Italy to the Court of Justice over the existence of numerous illegal landfills.

ensure that waste is recovered or disposed of without endangering human health, and without using processes or methods which could harm the environment. They must also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste. Article 8 requires Member States to ensure that waste is handled by a private or public waste collector or an authorised undertaking.

In April 2005 the Court of Justice condemned Spain for the existence of an illegal landfill on the island of La Gomera (Canary Islands) (Case C-157/04). In another case the Commission sent Spain a reasoned opinion under Article 228 asking it to comply with a Court judgment from 2003 (Case C-446/01) ruling that five waste disposal sites in Spain were illegal. Two sites have been closed down since the Court ruling, but problems persist with the other three sites (Torreblanca-Fuengirola (Málaga), Santalla del Bierzo (León), Ca na Putxa-Sa Roca (Ibiza)).

Finally, the Commission opened infringement proceedings under Article 228 against France for non-compliance with a judgment from March 2005 concerning an illegal landfill in Saint-Laurent du Maroni in French Guyana[162].

Another category of *bad application* of waste legislation comprises inadequate waste planning. In December 2005 the Commission decided to refer Italy to the Court of Justice for failing to adopt and notify waste management plans for several regions and provinces. These are required under the 1975 Framework Directive on Waste and by Directive 91/689/EEC on hazardous waste.

Regarding the **Directive on the disposal of waste oils**[163], the Court condemned Austria (Case C-15/03) and Portugal (Case C-92/03) for failing to give priority to the processing of waste oils by regeneration. However, on 21 December 2005 the Commission adopted a proposal (COM(2005) 667 final) for a revised Directive on waste, amending Directive 75/442/EEC on waste and repealing Directive 75/439/EEC on waste oils.

Directive **91/689/EEC on hazardous waste**[164] sets the framework for EU standards for the management of hazardous waste. It complements the Waste Framework Directive, which provides a legislative framework for all types of waste, whether hazardous or not. Some Member States still have problems in transposing the national legislation correctly. In December 2005, the Commission decided to send a reasoned opinion to Greece over systematic structural shortcomings in its planning and disposal of hazardous waste. This follows an analysis of reports provided by the Greek authorities on their implementation of the Hazardous Waste Directive. In July 2005, the Commission sent a letter of formal notice under Article 228 to the United Kingdom asking it to comply with a 2004 judgment (Case C-431/02) which condemned the UK for incomplete transposition of the Directive.

The new **Packaging Waste Directive**[165] updates and strengthens the 1994 Directive[166]. The Directive roughly doubles packaging recycling targets and strengthens the target for recovery.

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162 The Commission already decided in 2004 to refer France to the Court of Justice over the existence and functioning of numerous illegal landfills.

163 Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils.

164 Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.

165 Directive 2004/12/EC of the European Parliament and of the Council of 11 February 2004 amending Directive 94/62/EC on packaging and packaging waste.

The Directive had to be transposed by 18 August 2005. In 2005, the Commission opened infringement proceedings against a substantial number of Member States for failure to communicate their transposition measures to the Commission.

The PCB/PCT Directive[167] covers hazardous chemicals whose toxicity and tendency to bioaccumulate represent a particular threat to the environment and to human health. The aim of the Directive is to ensure the controlled disposal of PCBs in the Member States. During 2005, the Commission sent letters of formal notice to Lithuania, Slovakia, Poland, Latvia, Hungary, Estonia and Cyprus and reasoned opinions to Czech Republic and Malta for failure to draw up plans for the safe decontamination and disposal of equipment containing PCBs and outlines for the collection and disposal of equipment not subject to an inventory.

The **Landfill Directive**[168] establishes a set of detailed standards and other requirements that waste dumps, or "landfills", must meet. In December 2005, the Commission sent Italy a reasoned opinion over the *non-conformity* of its national legislation with some provisions of the Directive. The case focuses on the fact that, whereas the Directive defines existing landfills as those that were operating on or before 16 July 2001, Italy's legislation extends this deadline to 27 March 2003. This means that Italian landfills authorised between 16 July 2001 and 27 July 2003 have not been required to meet the Directive's standards for new landfills as they should have been. Instead they will have until July 2009 to comply with the provisions for existing landfills. The Commission also sent France a reasoned opinion under Article 228 for non-compliance with a judgment delivered by the Court of Justice in December 2004 (Case C-172/04) concerning France's failure to adopt and communicate national legislation to give effect to the Landfill Directive.

In a preliminary ruling of 14 April 2005 (Case C-6/03 *Deponiezweckverband Eiterköpfe v Land Rheinland-Pfalz*) the Court clarified the requirements of Article 5 of the Landfill Directive concerning the setting up a national strategy for the implementation of the reduction of biodegradable waste going to landfills. The Court stated in this respect that, pursuant to Article 176 of the EC Treaty, Member States may take measures of domestic law which are stricter than the requirements set in Article 5 of the Landfill Directive.

The **End-of-Life Vehicles Directive**[169] has a dual aim: to control the environmental impact of the treatment of end-of-life vehicles and their components and to promote car re-use, recycling and other forms of recovery. Some Member States have not yet transposed the End-of-Life Vehicles Directive. The Commission sent Ireland a letter of formal notice under Article 228 of the EC Treaty asking it to comply with a 2004 Court ruling condemning Ireland for failure to transpose the Directive into its national law (Case C-460/03). During 2005 the Commission also continued infringement proceedings, including some referrals to the Court of Justice, against Spain, Germany, Greece, Italy and Portugal for *non-conformity* of their national legislation transposing the End-of-life Vehicles Directive.

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166 European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste.

167 Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT).

168 Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste.

169 Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles.

The **Directive on the incineration of waste**[170] aims to prevent or limit as far as practicable the negative effects on the environment and the resulting risks to human health, from the incineration and co-incineration of waste. In January 2005 the Court of Justice condemned Greece for failure to adopt measures transposing this Directive. In December 2005, the Commission decided to refer Portugal to the Court of Justice because of the continued operation of an incineration plant for hospital waste in the centre of Lisbon without a permit. This violates both the Waste Framework Directive and the Directive on the incineration of waste, which require such operations to be permitted by the authorities.

In 2002 the **Directive on Waste Electrical and Electronic Equipment (WEEE Directive)**[171] was adopted. This Directive requires Member States to ensure the establishment of systems for the collection of e-waste by August 2005 (August 2007 for the new Member States). The deadline for transposing this Directive into national law was 13 August 2004. In 2005, the Commission sent a reasoned opinion to France and decided to refer the United Kingdom, Malta and Finland (as regards the province of Åland) to the Court of Justice for failure to communicate transposition measures for this Directive.

A 2003 amendment to the WEEE Directive[172] further clarifies certain obligations with regard to the financing of professional (i.e. non-household) equipment. In 2005, the Commission sent a reasoned opinion to France and decided to refer Greece, Finland (as regards the province of Åland), Malta and the United Kingdom to the Court of Justice for failure to communicate transposition measures for this Directive.

The **Directive on the restriction of the use of hazardous substances (RoHS Directive)**[173] bans certain hazardous substances from electronic equipment from 1 July 2006 onward to facilitate recycling, and to reduce emissions when the remaining e-waste is landfilled or incinerated. The transposition of this Directive was due before 13 August 2004. The Commission decided to refer the United Kingdom and Finland (as regards the province of Åland) to the Court of Justice for failure to communicate transposition measures for this Directive.

2.5.6. Other sectors

Adopted in 2003, the new **Directive on public access to environmental information**[174] replaces an earlier Directive dating from 1990[175] with effect from 14 February 2005. The new Directive gives citizens a right to environmental information held or produced by public authorities, e.g. data on emissions into the environment, their impact on public health and the results of environmental impact assessments. The Directive is in line with the requirements of

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170 Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.

171 Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), as amended by Directive 2003/108/EC.

172 Directive 2003/108/EC of the European Parliament and of the Council of 8 December 2003 amending Directive 2002/96/EC on waste electrical and electronic equipment (WEEE).

173 Council 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.

174 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

175 Council Directive 90/313/EEC on the freedom of access to information on the environment.

the 1998 Aarhus Convention, to which the European Community has been party since May 2005.

The Directive had to be transposed into national law by 14 February 2005. The Commission sent reasoned opinions to Austria, France, Hungary, Ireland and Portugal and decided to refer Belgium, Greece, Spain and Luxembourg to the Court of Justice for failure to meet this deadline.

The **Biocides Directive**[176] was due to be transposed by the Member States no later than 14 May 2000. The Directive sets environmental and safety standards for biocides and requires Member States to set up an authorisation system for marketing biocidal products. In October 2005, the Commission sent a reasoned opinion to the UK because of *non-conformity* of some aspects of its national legislation with this Directive.

The amending Directive on the contained use of GMMs[177] substantially amends the 1990 parent Directive, Council Directive 90/219/EEC, and adapts it to take account of technological advances since its adoption in 1990. National transposing legislation had to be adopted and communicated to the Commission by 5 June 2000 at the latest. The Commission sent a reasoned opinion under Article 228 EC to France for non-compliance with a judgment delivered by the Court in November 2003 over the failure to correctly transpose into national law this Directive in relation to emergency plans and information to the public about emergency measures (Case C-429/01). Furthermore the Commission decided in December 2005 to refer this case to the Court.

The Directive on deliberate release of GMOs into the environment[178] is one of the cornerstones of the EU's new legislative framework on GMOs. The Directive covers both experimental and commercial releases of GMOs for cultivation, import and transformation into industrial products. It lays down authorisation procedures for the release of GMOs and for placing them on the market. The Directive had to be transposed into national law by 17 October 2002. In December 2005, reasoned opinions under Article 228 EC were sent to France and Germany asking them to comply with 2004 judgments condemning these countries for failure to transpose the requirements of the Directive into their national legislation (France: Case C-419/03; Germany: Case C-420/03). In October 2005 a letter of formal notice was sent to Italy over shortcomings in its national legislation.

Directive 96/61/EC concerning integrated pollution prevention and control (IPPC)[179] is one of the key pieces of EU environmental legislation on industrial emissions. It regulates the operations of large industrial and agricultural installations with a high pollution potential. These installations must have operating permits that set limits on their emissions to the air, water and land in an "integrated" way, taking account of all three media. During 2005, the Commission continued infringement proceedings against several Member States because of

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176 Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing on the market of biocidal products.

177 Council Directive 98/81/EC of 26 October 1998 amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms.

178 Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC.

179 Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control.

non-conformity of their national legislation with the IPPC Directive. The Commission sent reasoned opinions to Luxembourg and Czech Republic and decided to refer France to the Court of Justice.

The **Seveso II Directive**[180] aims to prevent major industrial accidents involving dangerous substances and to limit their consequences through emergency preparedness. It strengthens an earlier directive passed in response to the 1976 explosion at a chemical plant in the Italian town of Seveso, which contaminated a wide area with dioxin, one of the most toxic substances known.

The Seveso II Directive is amended by Directive 2003/105/EC[181]. This Directive extends the scope of the Seveso II Directive, a step deemed necessary in the light of recent major industrial accidents, such as the incident at a firework plant in Enschede (the Netherlands) in May 2000 and the explosion of a fertiliser plant in Toulouse (France) in September 2001. The amending Directive had to be transposed into national law by 1 July 2005. The Commission sent reasoned opinions to Austria, Belgium, the Czech Republic, Cyprus, Denmark, Greece, Hungary, Ireland, Luxembourg, Portugal, Poland and Slovenia for failure to communicate transposition measures by the set deadline.

Directive 2002/49/EC on the assessment and management of environmental noise creates a common approach to avoiding, preventing or reducing the harmful effects of exposure to environmental noise. By 18 July 2004 the Directive had to be transposed into national law. In 2005 the Commission sent a reasoned opinion to Germany and France and decided to refer Austria, the Czech Republic, Greece, Ireland, Luxembourg, Portugal and UK to the Court of Justice, as they had not yet implemented the Directive.

2.6. Information society and media

2.6.1. Electronic communications

The **EU regulatory framework for electronic communications** came into force in 2002 and has three broad objectives in the context of the Lisbon strategy - to create a stable and predictable regulatory environment, to encourage innovation and to stimulate new investment in communications networks and services. It consists of five Directives[182]. 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,

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180 Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances.

181 Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances.

182 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).

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.

There are a number of key principles underlying the EU regulatory framework for electronic communications: a general authorisation procedure for operators to enter new markets replaces individual licences. This drastically cuts red tape for enterprises, which no longer face frustrating delays as national regulators check compliance with licence conditions. Moreover, the framework builds upon general concepts of competition law, as applied to normally functioning markets. Regulation is seen as essentially a *temporary phenomenon*, required to make the transition from the formerly monopolistic telecommunications industry to a fully functioning market system. As normal market conditions develop, regulation can be rolled back, and competition law, as applied to industry in general, will replace sector-specific intervention. Regulation now relates to "electronic communications" in general, including broadcasting transmission, not to "telecommunications". The same principles therefore apply regardless of which kind of existing or potentially new technology is involved. This "technological neutrality" is essential to provide the necessary flexibility to deal with emerging technologies and their convergence in fields such as media, internet and mobile communications. Finally, operators need to be assured that their investments can be planned in a stable regulatory environment, consistent and predictable throughout the EU. Such a regime allows companies to operate on a scale which only a European-wide market can provide. The regulatory framework establishes new processes permitting collaboration among the national regulatory authorities of the Member States and between national authorities and the Commission. This extensive collaboration plays a key role in achieving the necessary coherence within the regulatory process at European level. In key areas, each national regulatory authority submits its draft national measures to the Commission and to other national authorities for consideration, and discusses common approaches in the European Regulator's Group, established by the Commission in 2002. In this way, a consistent approach is developed throughout the EU while permitting maximum flexibility to deal with national markets and conditions.

In line with the Commission Communication on better monitoring of the application of Community law, DG INFSO has put great efforts from the very beginning into preventing the need for formal infringement proceedings. This work continued with Member States in the Communications Committee (COCOM) and with national regulatory authorities in the European Regulators Group (ERG). Following discussion in COCOM, several Recommendations on the harmonised application of the regulatory framework for electronic communications were adopted[183], namely two Recommendations concerning the provision of leased lines[184], one Recommendation on broadband electronic communications through powerlines[185], and one Recommendation on accounting separation and cost accounting systems[186]. The latter was based on input from the ERG. Other issues addressed in the ERG included the treatment of voice-over broadband services, international roaming and follow-up to the 2004 ERG common position on regulatory remedies.

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183 Such recommendations are based on Article 17 of the Framework Directive; they are subject to comitology procedures.

184 Recommendation 2005/58/EC, OJ L 24, 27.1.2005, p. 39; Recommendation 2005/268/EC, OJ L 83, 1.4.2005, p. 52.

185 Recommendation 2005/292/EC, OJ L 93, 6.4.2005, p. 42.

186 Recommendation 2005/698/EC, OJ L 266, 11.10.2005, p. 64.

In the field of mobile communications, the Commission set up a website containing information on international roaming tariffs across the EU[187]. This measure, which was aimed at increasing consumer awareness, was successful, with over 120,000 visitors to the site within the first week of its launch. Emphasis was also placed on implementation of the single European emergency number 112, in close cooperation with the Civil Protection Unit of DG Environment. This issue was discussed extensively in the Communications Committee, and, in October 2005, a conference was organised with public and private stakeholders[188]. In addition, the deployment of the '112' emergency number is essential to achieve the objectives of the eSafety initiative and in particular of the eCall as described in the communication "Bringing eCall to Citizens"[189].

In 2005 the Commission also continued to scrutinise draft measures submitted by national regulators under the so called "Article 7" mechanism, which grants the Commission certain oversight powers for internal market matters. Over 200 notifications were assessed. Three cases reached the second stage of the procedure[190]; for one of them the Commission issued a veto decision[191]. The Commission also sent 61 letters with comments. In November 2005, a seminar was organised to raise awareness among national judges of the issues related to national appeals for Article 7 proceedings. This was a first step towards improved cooperation with judiciaries in this field.

In addition, DG INFSO continued to monitor the general state of implementation of the regulatory framework, in close contact with the national authorities and other stakeholders, when preparing for the Commission's sector-specific annual implementation report[192].

Nonetheless, ensuring full and effective implementation of the regulatory framework by formal infringement proceedings remained a priority in 2005. As all but one Member State (Greece) had completed transposition within two years after the date of its application[193], the focus was on monitoring correct implementation. The Commission services undertook to scrutinise systematically compliance of the notified national legislation with the framework, and in particular examined the major concerns expressed in the annex to the 2004 Implementation Report[194].

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187 http://europa.eu.int/information_society/activities/roaming/index_en.htm.

188 http://europa.eu.int/information_society/policy/ecomm/implementation_enforcement/112/index_en.htm

189 COM (2005)431.

190 Under the Article 7 mechanism, the Commission may express concerns if it has serious doubts as to the compatibility of the proposed national measure with Community law or if it believes that the proposed measure would create a barrier to the internal market. The Commission then has two months to take a final decision and can require the national authority to withdraw the proposed measure.

191 For more details see the Commission's Communication on Market Reviews under the EU Regulatory Framework - Consolidating the internal market for electronic communications" COM(2006) 28 of 6.2.2006.

192 "European Electronic Communications Regulation and Markets 2005 (11th Report)", COM(2006) 68 of 20.2.2006.

193 Previous enforcement action led to judgments of the ECJ against four Member States in 2005 (see Cases C-240/04 and C-376/04 for Belgium, C-250/04, C-252/04, C253/04 and C-254/04 for Greece, C-31/05 for France, and C-236/04 and C-375/04 for Luxembourg. One proceeding against Greece remained pending (C-475/04 concerning the ePrivacy Directive). Moreover, the Commission sent a reasoned opinion to the United Kingdom in 2005 since no transposition measures for the territory of Gibraltar, to which the framework also applies under the UK Accession Treaty, were communicated to the Commission.

194 SEC(2004) 1535 of 2.12.2004.

As a result, some 50 new infringement proceedings were opened and the Commission continued a total of 80 infringement cases concerning all but two Member States (Denmark and Ireland). These proceedings concentrated, as a priority, on the transitional regime, the independence and the full range of powers of the NRA, delays in reviewing the relevant markets, the designation of a universal service provider, as well as consumer issues such as number portability, directory services, the single European emergency number (112) and protection against spam. Other issues addressed were the absence of a reference unbundling offer (RUO) in some new Member States, the national consultation procedure and cooperation with the national competition authority (NCA) in the event of a market review, and the suspensory effect of appeals against decisions of the NRA. Finally, the Commission acted where the scope of SMP obligations was extended to non-SMP operators. In total 41 proceedings were closed, while in 18 cases a reasoned opinion was sent.

In order to stress the importance of full compliance with the framework, as well as for the sake of transparency for all stakeholders, each stage of the proceedings was communicated to the public via press releases and press briefings, organised in close cooperation with the Spokesman's Service[195]. These and a complete overview of the state of non-conformity and incorrect application cases are made available on DG INFSO's implementation and enforcement website[196].

The enforcement action undertaken has already produced positive results. A RUO now exists in all 25 Member States and the 112 emergency number is accessible throughout Europe. In some cases national legislation has been amended relatively quickly in order to resolve transposition concerns, as was the case for spam regulation in Malta and Austria.

The European Parliament, in its resolution of 1 December 2005 on the Commission's 10th Implementation Report[197], fully supports the Commission in its role as a driving force for regulation, both as regards the correct interpretation of the new rules and the need to ensure their uniform application in a manner consistent with the objectives of electronic communications regulation, by means of timely and constant monitoring. It also stresses that the Commission should play a central role as the guardian of Community legislation and fully supports the Commission's activities in bringing proceedings against Member States failing to comply and calls on the Commission to remain vigilant so as to ensure that measures relating to national markets do not jeopardise the completion of the single market in electronic communications.

In addition to the proceedings launched on the Commission's own initiative, there were some 34 complaints pending at the end of 2005, mainly related to the Single European Emergency Number 112 and must-carry obligations in various Member States. The implementation of 112 was also the subject of a complaint to the European Ombudsman[198] and of a petition to European Parliament (688/2005), both launched on behalf of the "European Emergency Number Association (EENA)".

Finally, the European Court of Justice issued several important judgments on substance in the field of electronic communications in 2005, both on the basis of infringement proceedings launched by the Commission under Article 226 of the Treaty and in response to requests for a

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195 See IP/05/430, IP/05/875, MEMO/05/242, IP/05/1269, MEMO/05/372, IP/05/1585 and MEMO/05/478.

196 http://europa.eu.int/information_society/policy/ecomm/implementation_enforcement/index_en.htm

197 P6_TA-PROV(2005)0467.

198 See Decision of 23 March 2005 on complaint 1096/2004/(AJ)TN.

preliminary ruling by a national court under Article 234 of the Treaty. These covered licensing conditions (C-104/04), cost accounting obligations (C-33/04), municipal taxes on transmission pylons, masts and antennae for GSM (C-544/03, C-545/03 – *Mobistar and Belgacom*), veto decisions under Article 7 of the Framework Directive (C-256/05 – *Telekom Austria*) and fees for numbers (C-327/03, C-328/03 – *ISIS Multimedia Net and O2 Germany*).

2.6.2. Audiovisual policy and media

The main objective of the "Television without Frontiers" Directive [**Directives 97/6/EC of 30 June 1997 and 89/552/EEC of 3 October 1989**] is to create the conditions for the free movement of television programmes within the Union. It constitutes the basic regulatory framework in which broadcasting services are performed in Europe. Up to now, the Directive has provided a satisfactory legal framework, as confirmed in the 2003 report. As part of its monitoring of the transposal and proper application of the Directive, the Commission pursues infringement proceedings where necessary, either in response to complaints or after detecting cases on its own initiative. The Commission has hired an independent adviser, by a public tender procedure, to monitor implementation by the Member States of the rules laid down by this directive on television advertising.

In line with the 2002 Communication on improving application of the monitoring of Community law, the questions of interpretation that can arise in the application of certain rules are discussed with the Member States in the Contact Committee set up under Article 23a of the Television without Frontiers Directive. Where necessary, the existing rules are clarified in public: for example in 2004 the Commission adopted an interpretative communication relating to the rules on televised advertising[199]. The Contact Committee met on 6 April and 23 October 2005 to facilitate the effective implementation of the Directive. Matters relating to practical application are also discussed at these meetings, in particular possible conflicts of jurisdiction between several Member States as regards broadcasting bodies. Although not provided for by the Television without Frontiers Directive, an *ad hoc* group of representatives of the Member States' regulatory authorities meets on average twice a year, also with a view to ensuring consistent application of the regulatory framework in the European Union. In March 2005, the Member of the Commission, Ms Reding, decided for the first time to hold a meeting of the chairmen of these authorities in Brussels to deal with the specific problem of how to apply the ban on broadcasts inciting hatred when the programmes concerned are broadcast by channels established in third countries, such as Al Manar or Sahar 1. It was agreed at that meeting that the regulators need to step up their cooperation.

Chapter IV of the Directive lays down rules on advertising. All the infringement proceedings pending are concerned with that Chapter. In 2005 a letter of formal notice was sent concerning the application of the rules on television advertising during sporting events. Six proceedings were terminated following fruitful discussions with the Member States concerned.

Article 3a(1) of the Directive is the legal base that enables the Member States to take *national measures* guaranteeing the free-to-air transmission of certain events deemed to be of major

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[199] Commission interpretative communication of 23 April 2004 on certain aspects of the provisions on televised advertising in the "Television without frontiers" Directive (COM(2004) 1450 – OJ C 102, 28.04.2004).

importance for society. At the end of 2005, measures under Article 3a(1) of Directive had entered into force in Italy, Germany, Austria, Ireland and Belgium. The French list was also approved by the Commission, after the Contact Committee had delivered its opinion, and is awaiting publication. On 15 December 2005 the Court of First Instance annulled an act by the Commission consisting of a letter addressed to the UK authorities informing them that the Commission had no objection to measures concerning the broadcasting of events of major importance having to be broadcast on free-access channels in that country, including in particular the list of such events pursuant to Article 3a of the Directive. Following notification of the measures to the Commission in 2000, the Director-General for Education and Culture informed the UK authorities that the Commission did not intend to object to the measures they were proposing, and the measures were duly published in the Official Journal on 18 November 2000. In its judgment, the Court of First Instance, acting on a complaint brought by Kirch Media (now Infront), held that the Commission's letter to the United Kingdom had binding legal force and therefore constituted a decision having adverse effect. Noting that the *Collège* of Commissioners had not been consulted and that the Director-General who signed the letter had not been empowered to do so by the *Collège*, the Court found that the decision was unlawful and annulled it.

In a judgment concerning the concept of broadcasting services[200], the Court confirmed that near-video on-demand services fall under the concept of "television broadcasting", as is specifically stated in point 3(A) of Annex V to Directive 98/34/EC (the electronic commerce Directive), which provides that television broadcasting services, including "near-video on-demand", are not covered by the definition of information society services. The Court held that the following did not constitute decisive criteria in this analysis: the system of remuneration used, the question of whether or not the broadcast is encoded, the question of whether near-video on demand is or is not a service that can be substituted for video-on-demand or whether or not the legislation (in particular measures on the promotion of European audiovisual works) is appropriate for near-video on-demand. The Commission has decided to launch a review of the present regulatory framework for television broadcasting in order to ensure that all the applicable rules depend no longer on the form of delivery but on the nature of the service, with a distinction being drawn between linear services, including television broadcasting via Internet, on the one hand, and non-linear services, such as video-on-demand services, on the other.

By way of exception from the general rule of freedom to receive and transmit broadcasts, Article 2a(2) of the Directive allows the Member States, subject to a specific procedure, to take measures against broadcasters under the jurisdiction of another Member State who "manifestly, seriously and gravely" infringe Article 22. The aim is to protect minors from programmes that might "seriously impair [their] physical, mental or moral development" and to ensure that "broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality." On 20 December 2004 the United Kingdom informed the Commission of its intention to ban "Extasi TV" and initiated the procedure under Article 2a(2) of the Directive. On 11 July 2005 the Commission decided that the measures taken by the United Kingdom against Extasi TV, as notified in the letters dated 20 December 2004 and 14 January and 9 February 2005, were compatible with Community law.

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200 Judgment of 2 June 2005 in Case C-89/04.

In view of technological and market developments, on 13 December 2005 the Commission adopted a proposal for a Directive amending the Television without Frontiers Directive in order to extend some of the fundamental principles currently laid down for traditional television programmes and accompanying advertising to all audiovisual media services, irrespective of the platform used (Internet, video-on-demand, etc.)[201].

2.6.3. Re-use of public sector information

Directive 2003/98/EC on the re-use of public sector information was adopted in November 2003. The Directive pursues three main objectives: first, to facilitate the creation of Community-wide services based on public sector information, second, to enhance effective cross-border re-use of the information for added-value information 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 for example on the procedures to deal with requests, on upper limits for charging, on the transparency of conditions and non-discrimination, on prohibition of cross-subsidies and exclusive arrangements and on practical means to facilitate finding and using the material available for re-use. Ultimately, the Directive aims at a change of culture in the public sector, creating a favourable environment for the re-use of its information resources.

The deadline for implementation of the Directive by the Member States was 1 July 2005. The Commission has been closely monitoring the transposition process both before and after this date. It organises the Public Sector Information (PSI) Group in order to provide assistance regarding transposition issues and to facilitate the exchange of good practices between Member States and has also provided technical assistance through bilateral contacts and by assisting workshops run in the Member States. It has ordered a benchmarking study on Measuring European Public Sector Information Resources (MEPSIR). Finally, the Commission seeks to promote the re-use of PSI through various incentive measures and communication campaigns.

In 2005 all the infringement proceedings concerned non-communication of national transposition measures. In October letters of formal notice were sent in this regard to 15 Member States, two of which notified complete transposition before the end of the year. This means that 12 Member States had notified complete transposition of the Directive by the end of 2005. Following the transposition deadline, evaluation of the conformity of the notified national transposition measures started in autumn 2005.

2.6.4. Electronic signature

The main objective of the **e-signature Directive** is to create a Community framework for the use of electronic signatures, allowing the free flow of electronic signature products and services across borders and ensuring basic legal recognition of electronic signatures. The

[201] COM(2005) 0646 final.

deadline for Member States to implement the Directive was 19 July 2001. All 25 EU Member States have now implemented its general principles[202].

2.7. Justice, freedom and security

2.7.1. Transposition of directives on asylum and immigration

Following a case brought by the Commission, Luxembourg was condemned by the Court of Justice on 8 September 2005[203] for failure to notify measures transposing Council Directive 2001/40[204].

In relation to the implementation of Council Directive 2001/51[205], reasoned opinions were sent to Slovenia and Malta for non-communication of national measures. Following a case brought by the Commission, Luxembourg was condemned by the Court of Justice on 21 July 2005 for failure to notify measures transposing the Directive[206].

Regarding Council Directive 2001/55[207], Estonia was sent a reasoned opinion for failing to communicate national implementing measures, while a case brought by the Commission against the UK for non-communication of implementing measures was still pending before the Court of Justice[208]. Following cases initiated by the Commission, Luxembourg and Greece were condemned by the Court of Justice for failing to notify measures transposing the Directive[209]. A letter of formal notice under Article 228 of the EC Treaty was sent to Luxembourg on 19 December 2005.

As regards Council Directive 2002/90[210], reasoned opinions were sent to four Member States (Belgium, Germany, Luxembourg and Slovenia) for non-communication of implementing measures. On 13 December 2005 the Commission decided to bring an action before the Court of Justice against Luxembourg.

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

203 Case C-448/04 *Commission v Luxembourg*.

204 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, 2.6.2001, p. 34.

205 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, 10.7.2001, p. 45.

206 Case C-449/04 *Commission v Luxembourg*.

207 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, 7.8.2001, p. 12.

208 Case C-455/04 *Commission v UK*.

209 Judgments of the Court of Justice of 2 June 2005 in Case C-454/04 *Commission v Luxembourg* and of 17 November 2005 in Case C-476/04 *Commission v Greece*.

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

In relation to Council Directive 2003/9[211], reasoned opinions were sent to ten Member States (Belgium, Germany, Greece, France, Italy, Luxembourg, Austria, Portugal, Estonia and Malta) for non-communication of national implementing measures. On 13 December 2005 the Commission decided to bring actions before the Court of Justice against Greece, Luxembourg (for partial communication), Austria and Portugal.

As far as Council Directive 2003/86[212] is concerned, letters of formal notice were sent to 17 Member States (Belgium, Germany, Greece, France, Italy, Luxembourg, Netherlands, Portugal, Finland, Sweden, Cyprus, Estonia, Hungary, Malta, Czech Republic, Slovakia and Slovenia) on 5 December 2005 for non-communication of national measures implementing the Directive.

2.7.2. Free movement of persons

On 14 March 2005 the Court handed down an important judgment in Case C-157/03 *Commission v Spain.* It recalled that the conditions which may be required for the issue of a residence permit are laid down in the respective Directives and are exhaustive in nature. Member States must issue an entry visa to family members who are nationals of certain third countries without delay and, as far as possible, at the place of entry. The Court found that the Spanish rules requiring that a residence visa for family reunification be obtained by such nationals for the issue of a residence permit constituted incorrect transposition of and a measure contrary to *inter alia* Directive 90/365[213].

The Court also stressed that Directive 64/221[214] provides that the Member State must take a decision on whether to grant a residence permit as soon as possible and in any event not later than six months from the date on which the application was submitted. It found that, by failing to issue a residence permit within that time, Spain had failed to fulfil its obligations under Directive 64/221.

Following the judgment, the Commission decided to send Spain a letter of formal notice on the basis of Article 228 EC on 13 December 2005. Although the requirement of a residence visa from family members who are third country nationals has been discontinued by way of administrative instructions, the judgment of the Court cannot be considered to be correctly implemented as long as the contested provision of national legislation has not been formally amended.

On 13 December 2005 the Commission decided to send a reasoned opinion to Italy with regard to the Decree of the President of the Republic of 18 January 2002 No 54 on the

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211 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.

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

213 Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, OJ L 180, 13.7.1990, p. 28.

214 Council Directive 64/221/EEC 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 L 56, 4.4.1964, p. 850.

grounds that this text is contrary to Directive 93/96[215], in that it provides that students must provide proof that they dispose of sufficient resources, and contrary to Directives 90/364[216] and 90/365, in that it requires family members to present proof of sufficient resources separate to that presented by the EU citizen.

The Advocate General presented his opinion on Case C-408/03 *Commission v Belgium* on 25 October 2005 and upheld the Commission's position. The Commission had brought an action before the Court against Belgium on 30 September 2003 for failure to fulfil its obligations under Article 18 EC and Directive 90/364 by making the right of residence of Union citizens subject to the condition that they have sufficient **personal** resources. In its second plea the Commission asked the Court to declare that Belgium had failed to fulfil its obligations *inter alia* under Directive 90/364, by providing for the possibility to give automatic notification of an order to leave the country to Union citizens who have not produced the documents necessary to obtain a residence permit within a prescribed period.

On 5 July 2005 the Commission decided to bring an action before the Court against the Netherlands concerning the decision to expel from its territory two EU citizens. The Commission considers that, by not applying to these Union citizens Directive 64/221/EC of 25 February 1964, but applying instead the general legislation on foreigners which allows for a systematic and automatic link to be made between a criminal conviction and an expulsion measure, the Netherlands has failed to fulfil its obligations under that Directive.

2.7.3. Visas

On 17 May 2005 the Commission brought before the Court of Justice a case against Austria[217], as its legislation did not provide for the clear mention of the reasons for refusing a visa to a family member of an EU citizen and the possibility to bring the matter before a jurisdiction.

2.7.4. Judicial cooperation in civil matters

A letter of formal notice was sent to Belgium on 4 February 2005 for failure to notify national measures implementing Directive 2003/8 on legal aid[218]. All other Member States notified their national legislation implementing this Directive.

The Commission verified also that all Member States notify all legal information (i.e. authorities, languages, forms, contact point, etc.) imposed by Community instruments on

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215 Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students, OJ L 317, 18.12.1993, p. 59.

216 Council Directive 90/364/EEC of 28 June 1990 on the right of residence, OJ L 180, 13.7.1990, p. 26.

217 C-209/05 *Commission v Austria*.

218 Council Directive 2003/8/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, 31.1.2003, p. 41; corrigendum, OJ L 32, 7.2.2003, p. 15.

judicial co-operation in civil matters[219]. This information is translated into all official languages and published on the European Judicial Atlas in Civil Matters website. Furthermore, an expert group meeting on Regulation 44/2001 ("Brussels I")[220] was organised with a view to preparing amendments to the information already published regarding courts and redress procedures.

2.7.5. Data protection

Pursuant to the Work Programme outlined in the Commission's First report on the implementation of the Data Protection Directive[221], the Commission continued with the Member States its "structured dialogue" consisting of detailed comparative analysis of national legislation and of discussions with national authorities. The Commission also worked closely with the authorities of candidate countries on the process of adoption of national legislation on the protection of national data and provided guidance for alignment with the Community acquis in order to keep formal infringement proceedings to a minimum after accession.

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219 For example, 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, 23.12.2003, p. 1 ("Brussels II bis").

220 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1; corrigendum, OJ L 307, 24.11.2001, p. 28.

221 COM(2003)265 final, 15.5.2003.

2.8. Internal market and services

2.8.1. Regulated professions (qualifications)

The volume of complaints and infringements relating to qualifications and regulated professions remained broadly stable, following the closure in 2005 of the vast majority of proceedings that had been opened in 2004 against new Member States for failure to notify transposition procedures. The Commission received around 30 complaints concerning restrictions in breach of Articles 43 and 49 of the EC Treaty and the directives on the mutual recognition of professional qualifications.

Among the ongoing proceedings, the Commission decided to terminate the infringement proceedings against Italy after it repealed the nationality requirement for admission to the occupation of notary. Italy is the third Member State to abandon this condition, after Spain and Portugal. Particular emphasis was placed on the freedom to provide services. The Commission decided, for instance, to refer the Czech Republic to the Court of Justice for its failure to notify transposition of Directives 78/686/EEC[222] and 93/16/EEC[223] on the mutual recognition of diplomas for practitioners of dentistry and doctors respectively, as regards the simplified procedure for the provision of services by professionals from other Member States. The Commission also sent France a reasoned opinion regarding 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.

In its judgment of 21 April 2005 on Case C-140/03[224], the Court ruled that Greece had failed to meet obligations arising from Articles 43 and 48 of the EC Treaty, as its legislation did not allow an optician who was a natural person to run more than one optician's shop, and because the law made it too difficult for a legal person to open an optician's.

2.8.2. Freedom to provide services and freedom of establishment

Regarding the **freedom to provide services and freedom of establishment**, and in parallel to the negotiations on the Directive on services in the internal market[225], the Commission continued dealing with complaints from various areas (private security, posting of workers, patient mobility, establishment of pharmacies, hydroelectric concessions, vehicle testing centres, media, etc.).

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222 OJ L 233, 24.8.1978, p. 1.
223 OJ L 165, 7.7.1993, p. 1.
224 Commission vs. Hellenic Republic, Case C-140/03, ECR 2005.
225 COM (2004) 2 final of 13 January 2004.

In the area of private security, the Commission decided to refer Italy to the Court of Justice because of barriers to the establishment and provision of private security services. The Italian act, which dates back to 1931, contains requirements that the Commission considers superfluous or disproportionate, such as a need to obtain prior authorisation for each province in which services are provided, an obligation to have a head office in all the provinces in which services are authorised, minimum staff numbers, and administrative approval for minimum and maximum charges. In two other infringement proceedings, the Commission sent letters of formal notice to Portugal and the Netherlands, which have not yet fully complied with 2004 judgments by the European Court of Justice in similar cases related to security services[226].

Regarding the posting of workers, the Commission decided to send a reasoned opinion to the Netherlands on the rules obliging Community businesses to obtain a work permit for workers from certain new Member States before they are temporarily posted to the Netherlands to supply services there.[227] A reasoned opinion was also sent to Greece asking for an amendment to legislation requiring a work permit for non-Community workers legally employed by Community businesses which intend to post them to Greece to carry out services on a temporary basis.[228] A change in the legislation abolishing the requirement enabled the Commission to close the case. The Commission sent Luxembourg a letter of formal notice for its failure to comply with an October 2004 judgment by the Court of Justice which found that a law restricting the freedom to provide services for businesses established in a different Member State and wishing to employ workers from third countries to execute a contract in Luxembourg was in breach of Article 49 of the EC Treaty[229]

In the area of health services, the Commission sent a reasoned opinion to Finland regarding a violation of patients' right to mobility. Under Article 49 of the EC Treaty as interpreted by the Court of Justice, patients have the right to be reimbursed by their own social security system for the cost of healthcare abroad if such care is reimbursed when provided in the patient's Member State. The new Finnish health insurance act restricts patients' rights by introducing different registration and authorisation requirements that healthcare providers must satisfy if their patients are to be reimbursed[230].

Regarding pharmacies, the Commission sent Italy a reasoned opinion as its legislation on the one hand allows pharmacists to own pharmacies, and on the other prohibits active enterprises or businesses having links to enterprises active in pharmaceutical distribution from having holdings in companies managing municipal pharmacies, under the ongoing process of privatisation of municipal pharmacies in Italy.

The Commission also sent a reasoned opinion to Germany regarding its legislation on authorisation conditions for motor vehicle roadworthiness testing centres, as the internal structure and legal form of such bodies contravenes the freedom of establishment.[231]

Regarding hydroelectric concessions, the Commission decided to bring Italy before the Court of Justice for legislation that gives priority to the incumbent when hydroelectric production

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226 IP/05/923.
227 IP/05/014.
228 IP/05/337.
229 IP/05/923.
230 IP/05/923.
231 IP/05/1665.

concessions are renewed, while suspending the applicability of its decision as the legislation is currently being amended. Spain also received a reasoned opinion demanding an amendment to a law that has no provision for a competitive procedure for awarding such concessions[232].

The Commission also decided to send the Greek authorities a letter of formal notice requesting information about the requirement for all media companies to have registered shares owned by natural persons.[233] Infringement proceedings were closed when the legislation was amended.

The Commission has also been able to terminate a number of infringement proceedings after the removal of previously noted obstacles to freedom of establishment and freedom to provide services, notably regarding the trade fair and exhibition sector in Italy, preferential access to information for certain broadcasting companies in Belgium, aerial photography in France[234] and broadcasting licences in Germany[235].

Regarding **financial services**, in the *transferable securities sector*, the Commission decided to open infringement proceedings in 13 cases in 2005 for failure to notify transposition procedures for Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading,[236] which was to be transposed by 1 July 2005. The Commission also sent 57 reasoned opinions for failure to notify Directive 2003/6/EC on insider dealing and market manipulation[237] and the detailed directives required to implement its principles[238]. Luxembourg was also referred to the Court of Justice for failure to notify in respect of the same Directive. At the same time, the Commission was able to terminate a number of infringement proceedings, after notifications from several Member States.

Most infringement proceedings in the *insurance sector* concern third party motor liability insurance (car insurance). The Court of Justice ruling in Case C-537/03 should also be mentioned here. This was a preliminary ruling that followed a request from the Finnish Supreme Court[239] regarding the interpretation of certain Articles in the second (84/5/EEC) and third (90/618/EEC) Directives on motor vehicle insurance[240]. The court confirmed that these Directives preclude any national laws that refuse or disproportionately limit, on the basis of the passenger's contribution to the injury or loss he or she has suffered, the compensation borne by the compulsory motor vehicle insurance. The Court also ruled that

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232 IP/05/920.

233 IP/05/987.

234 IP/05/166.5.

235 IP/05/923.

236 OJ L 345, 31.12.2003, p. 64.

237 OJ L 96, 12.4.2003, p. 16.

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

239 Judgment given on 30 June 2005 in Case C-537/03: *Candolin and others.*

240 OJ L 8, 11.1.1984; OJ L 129, 19.5.1990.

the fact that the passenger concerned was the owner of the vehicle the driver of which caused the accident is irrelevant.

Regarding the transposition of insurance directives, the 55 cases of failure to notify which had been opened against the new Member States after 1 May 2004 were all closed during 2005. New infringement proceedings for failure to notify were, however, initiated in respect of Directive 2002/92/EC on insurance mediation[241] and Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision[242] . These Directives were to have been transposed by 15 January 2005 and 23 September 2005 respectively, but more than half of the Member States failed to transpose them on time. The asymmetric state of implementation of the two Directives which are part of the Financial Services Action Plan (FSAP)[243] distorts the market and prevents intermediaries and institutions for occupational retirement from benefiting from the internal market.

In the *banking sector*, all but one of the nine cases which had been opened against new Member States after 1 May 2004 for failure to notify measures concerning the Community *acquis* were closed in 2005. However, 43 new infringement proceedings for failure to notify were started at the close of 2004 against several (EU 25) Member States for failure to transpose Directive 2001/24/EC on the reorganisation and winding up of credit institutions[244], Directive 2002/87/EC on the supplementary supervision of financial conglomerates[245], and Directive 2004/69/EC amending the banking directive[246].

These Directives, which are also part of the FSAP, were to be transposed by 5 May 2004, 11 August 2004 and 30 June 2004 respectively. In 2005, 32 proceedings were terminated, but for six of them the Commission decided to refer the case to the Court of Justice.

In the area of **postal services**, the Commission adopted a "*Commission report to the Council and the European Parliament on the application of the Postal Directive (Directive 97/67/EC amended by Directive 2002/39/EC)*"[247] on 23 March 2005. The report concludes that transposition of the Community framework is now almost complete, although some problems remain, particularly concerning some new Member States, above all in the areas of tariff controls, transparency of accounts, authorisations and licences.

The proceedings initiated against France for failure to notify Directive 2002/39/EC[248] were closed in 2005 after the adoption of the required transposition measures; similar proceedings against Estonia are ongoing.

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241 OJ L 9, 15.1.2003.
242 OJ L 235, 23.9.2005.
243 Implementing the framework for financial markets: ACTION PLAN. Commission Communication of 11.5.1999, COM(1999)232.
244 OJ L 125, 5.5.2001, p. 15.
245 OJ L 35, 11.2.2003, p. 1.
246 OJ L 125, 28.4.2004, p. 44.
247 SEC(2005)388.
248 OJ L 124, 20.5.2003, p. 30.

2.8.3. The business environment

In the area of **industrial property**, the Court of Justice gave judgment in the proceedings for failure to transpose Directive 98/44/EC[249] on the legal protection of biotechnological inventions against Italy[250]. The Commission decided to close the infringement proceedings for the same Directive against Austria, Belgium, France, Germany, and Lithuania after they notified their national transposition laws.

Regarding **copyright and related rights**, seven Member States (Belgium, Finland, Latvia, Poland, the Czech Republic, Sweden, and the UK for Gibraltar) notified national implementation measures for Directive 2001/29/EC[251] on the harmonisation of copyright and related rights in the information society. In January and April, the Court of Justice gave judgment against France and Spain for failure to notify national implementation measures for the Directive. In July and October, the Commission initiated proceedings under Article 228 of the Treaty against these two Member States for failing to comply with the Court's judgment. The Commission also decided, under Article 226 of the Treaty, to send a formal request for information to the Czech Republic regarding a possibly incorrect transposition of the right of communication to the public.

The Commission decided to refer Italy and Luxembourg to the Court under Article 226 of the Treaty for incorrect transposition of the public lending measures in Directive 92/100/EEC[252]. In other cases involving the same Directive, the Commission decided to make formal requests for information to the United Kingdom, regarding possible incorrect transposition of measures in the Directive on the right of communication to the public and its possible limitations, and to France regarding a discrimination provided for in the transposition of the right to make private copies and remuneration.

In the field of **public procurement**, the Commission continued monitoring the application of Community law through package meetings with the Member States and through infringement proceedings. The Commission sought to resolve as many individual cases as possible with the national authorities, without having to call on the Court.

However, in cases where a fundamental difference of opinion between the Commission and the Member State in question remained, the Commission turned to the Court of Justice to clarify the dispute. The following cases illustrate the importance of Commission interventions in this area for the development of public procurement policy and law.

The Court of Justice ruled against France for breach of Directive 92/50/EEC[253] and Article 49 of the EC Treaty by using national legislation to reserve a certain type of services – delegated project contracting – to an exhaustive list of legal persons created under French law[254]. The Court considered that delegated project contracting constituted public services procurement within the meaning of Directive 92/50/EEC and came under the scope of that Directive. It therefore dismissed the French authorities' claim that the contract entrusted the representative with public authority functions. The Court also made clear in its judgment that public

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249 OJ L 213, 30.7.1998, p. 13.
250 Judgment of 16 June 2005 in Case C-456/03.
251 OJ L 167, 22.6.2001, p. 10.
252 OJ L 346, 27.11.1992, p. 61.
253 OJ L 209, 24.7.1992, p. 1.
254 Judgment of 20.10.2005, Commission v France, Case C-264/03.

procurement procedures for contracts for amounts below the thresholds set by Directive 92/50/EEC – and which therefore fall outside the scope of the Directive – still need to abide by the fundamental rules of the Treaty; the Court referred to case law on transparency requirements in this area.

The Court also ruled against Spain for infringing Article 49 of the EC Treaty in a case involving the award of a public service contract for home respiratory treatments in several Spanish provinces, as the specifications included a disproportionate tendering condition and discriminatory award criteria. The Court considered that the eligibility condition requiring tenderers to have, at the time the tender was submitted, an office open to the public in the province where the service was to be supplied was not an essential element for the service in question, and that the condition was clearly disproportionate. The Court also confirmed the discriminatory nature of tender evaluation criteria which rewarded, by awarding extra points, the existence, at the time the tender was submitted, of production, conditioning and bottling plants situated, as the case may be, in Spain or less than 1 000 kilometres from the province in question or of offices open to the public in other specified towns in that province, and favoured the undertaking which had previously provided the service concerned, in the case of a tie between a number of tenders[255]. This judgment was particularly interesting because it confirmed that public procurement contracts under Annex IB of Directive 92/50/EEC, which are only partially covered by that Directive, must be awarded in line with the principle of non-discrimination, and therefore in line with the principle of transparency, which is an obligation under the Treaty.

The Court also ruled against Italy for infringing Directive 93/37/EEC[256] in two cases where concessions for the construction and management of two new motorway sections had been awarded directly, without publication of a notice in the Official Journal. In particular, the Court confirmed the Commission interpretation whereby "motorway links" are works within the meaning of Article 1(c) of Directive 93/37/EEC, and liable to constitute an autonomous public works concession to be attributed by means of a tendering procedure as set out in the Directive[257].

The Court confirmed that a national law that excludes relations between public authorities, their public bodies and, in a general manner, non-commercial public entities as set out in Directives 93/36/EEC[258] and 93/37/EEC is an incorrect transposition of those Directives[259] .

In its role as guardian of the Treaty, the Commission also took account of the important modifications resulting from the Court's case law on the scope of application of measures under Community law on public procurement.

In its *Stadt Halle* judgment of 11 January 2005[260], the Court considered that the decision by a contracting authority not to engage in a formal call for tenders could be appealed under Directive 89/665/EEC[261]. In this case, the decision to be reviewed had been taken by the contracting authority before any formal competitive tender notice, in the mistaken belief that

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255 Judgment of 27.10.2005, Commission v Spain, Case C-158/03.
256 OJ L 199, 9.8.1993, p. 54.
257 Judgment of 27 October 2005 in joined Cases C-187/04 and C-188/04.
258 OJ L 209, 24.7.1992, p. 1.
259 Judgment of 13 January 2005, Commission v Spain, Case C-84/03.
260 Judgment of 26 March 2005 in Case C-26/03.
261 OJ L 395, 30.12.1989, p. 33.

contract in question did not fall under the scope of Directive 92/50/EEC by reason of the "in-house" criteria. Regarding the decision to open contract negotiations as part of a direct agreement procedure, the Court also underlined in its judgment the transparency obligation incumbent upon the contracting authority, which enables the judge to check that Community rules have been respected. The Court also recalled that recourse to a decision of this nature must be made at a stage during which infringements can still be corrected.

The Court also clarified some of the conditions regarding "in-house" relations between contracting authorities and third party entities, as such relations are not subject to public procurement law. In its *Stadt Halle* judgment, the Court ruled that a contracting authority cannot draw up a direct agreement using an in-house procedure with a company in whose capital one or more private undertakings have a holding. Inversely, in its *Parking Brixen* judgment[262], the Court noted that even if a contracting authority holds 100% of the capital of a third entity, the in-house quality of this body in relation to the contracting authority may be called into question provided that the control the public authority holds over that entity is not identical to the control it holds over its own services. The Court also found that Austria was in breach of Directive 92/50/EEC by directly awarding a public service contract via an artificial construct involving several distinct phases, i.e. the creation of a company that was entirely public, the drawing up of a waste disposal contract with that company and the sale of 49% of the shares in that company to a private company[263]. The Court ruled that the award of such contracts must be examined in the light of all the phases and their purpose, and not simply in terms of chronological order.

Finally, the Court clarified certain limits to the obligation of transparency which is derived from certain Treaty provisions and applies to contracts not covered by the detailed measures in Directives covering public procurement procedures: in particular, in its *Coname* judgment[264], the Court recognised that in some isolated cases involving special circumstances, such as a very modest economic interest at stake, a contract award would be of no interest to economic operators located in other Member States, and that in such cases, the effects on the fundamental freedoms involved may be considered too uncertain and indirect for it to be concluded that they had been infringed.

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

Despite the accession of ten new Member States, the correct incorporation of the European *acquis* into the legislation of these new Member States has prevented a significant rise in the number of infringement cases.

In 2005 the Court of Justice made only one important ruling on the application of Article 56 after a referral from the Commission. The ruling, in June 2005[265], found that Italian legislation was incompatible with the free movement of capital in providing for the automatic suspension of voting rights attaching to holdings in excess of 2% of the capital of undertakings operating in the electricity and gas sectors, where such holdings are acquired by public undertakings not

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262 Judgment of 13 October 2005 in Case C-458/03.

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

264 Judgment of 21 July 2005 in Case C-231/03.

265 Judgment of 2 June 2005, Commission v Italy, Case C-174/04: automatic suspension of voting rights in privatised undertakings.

quoted on regulated financial markets and enjoying a dominant position in their own domestic markets. After the ruling, the Commission took steps to ensure its effective implementation by the Italian authorities, sending them a letter of formal notice on the matter in October 2005.

A letter of formal notice calling on a Member State to implement an earlier judicial decision was also sent to Spain in July 2005, requiring it to comply with a Court judgment from May 2003[266] which concluded that the prior administrative authorisation scheme put in place under the Spanish legislation regulating privatisations was incompatible with the Treaty.

Still in the area of special rights, the Commission opened or continued infringement proceedings against Spain (companies in the energy sector), Hungary (privatisation law), Luxembourg (Société européenne de Satellites) and Portugal (Portugal Telecom), thereby continuing the Commission's systematic efforts to remove barriers to the free operation of direct investment, which also entails the possibility of exerting a degree of control over the undertaking proportionate to the holding that has been acquired. The Commission has noted a gradual disappearance of these special rights, and welcomed this development in the report published in July summarising the situation ten years on from the entry into force of the Maastricht Treaty[267].

Regarding other forms of restrictions on the free movement of capital, the Commission has continued or opened proceedings against France, regarding traded professional sports clubs and joint ownership obligations, and Italy, regarding the supervision of acquisitions and mergers in the banking sector. The Commission has also published a "Communication on Intra-EU investment in the financial services sector"[268] which is intended to reduce the risk of divergent legal interpretations and ensure that financial institutions are fully aware of their rights.

Finally, the Commission also continued proceedings aligning pre-accession bilateral investment treaties with the EC Treaty, and decided in October 2005 to institute proceedings against Austria, Sweden and Finland in the European Court of Justice. The resulting case law should facilitate analysis of the numerous treaties which were drawn up by new Member States before accession and are still in force.

2.9. Health and Consumer Protection

In the area of Health and Consumer Protection, the Commission made considerable efforts to prepare for the accession of the ten new Member States in 2004. This seems to have borne fruit, as the number of complaints relating to the new Member States is low.

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266 Judgment of 13 May 2003, Commission v Spain, Case C-463/00: system of administrative authorisation relating to privatised undertakings.

267 Commission staff working document: Special rights in privatised companies in the enlarged Union – a decade full of developments, 22 July 2005.

268 Commission Communication on intra-EU investment in the financial services sector, C/2005/4080, OJ C 293, 25.11.2005, p. 2.

The Commission has been actively engaged in a policy of dialogue with the Member States in this area, which explains why, in instances of incorrect transposition or implementation, few infringement procedures result in a letter of formal notice or referral to the Court.

There is no escaping the fact that most of the infringements for incorrect transposition of directives or implementation of Community provisions in this area relate to the *food security and zootechnics* sector.

In Case C-111/03, the Court ruled on 20 October 2005 that, by maintaining a system of compulsory prior notification for imports of certain food products of animal origin from other Member States, Sweden had failed to fulfil its obligations under Directive 89/662/EEC concerning veterinary checks in intra-Community trade with a view to the completion of the internal market. In the opinion of the Court Sweden, by placing an obligation on the importer or first consignee for the product on its territory, was maintaining a system of checks at its frontiers. Sweden has adopted new legislation and checks are now organised in a different manner. The Commission has not yet expressed its views on whether the new legislation conforms to the judgment.

The Commission also referred Sweden to the Court for a separate infringement, considering that Swedish legislation on the registration of equidae in studbooks and the breeding of horses registered discriminates against horses from other Member States.

In December 2004, the Commission sent Greece a letter of formal notice for failing to meet its obligations regarding official veterinary checks due to staff shortages. In 2005, the Commission monitored developments closely as more veterinarians were recruited to put an end to the infringement.

In the field of human health, the Commission referred Finland to the Court (Case C-343/05) for the Åland Islands' failure to transpose Article 8 of Directive 2001/37/EC prohibiting the placing on the market of snuff. It should be noted that the validity of this Article was called into question in the preliminary rulings in C-434/02 (Arnold) and C-210/03 (Swedish Match). In its judgment of 14 December 2004, however, the Court ruled that consideration of the question had not disclosed any factor of such a kind as to affect the validity of the measure.

In the area of consumer protection, the Commission followed Spain's actions closely after the Court ruled against it in Case C-70/03 for incorrectly transposing Directive 1993/13/EC on unfair clauses in contracts with consumers. After consulting the Commission on draft legislation to put an end to the infringement, the Spanish authorities informed the Commission that they would initiate the parliamentary procedure.

The Commission is also looking closely at petitions relating to possible infringements in the area of health and consumer protection. In 2005, however, this did not lead to any infringement proceedings.

An overview of proceedings under way regarding *failure to notify transposition measures for Directives* is presented in Annex IV, part 2. It should be noted that the Commission is looking particularly closely at the transposition of the following Directives:

– 2002/98/EC and 2004/33/EC establishing new Community rules on the quality and safety of human blood and blood components – such as plasma – used in medical treatment, which were to be transposed in February 2005.

These Directives are an excellent example of how the Union can make an effective contribution to protecting and improving the health of European citizens. European citizens will be assured that an extremely strict common quality and safety standard will be applied for blood across the Union, and that it will be updated regularly in the light of the best available knowledge.

The Directives set strict common standards applicable to blood for human transfusions, the suitability of blood and plasma donors, and the screening of donated blood in the European Union. They set out the rules for the labelling and traceability of whole blood and blood components for human transfusion across the Union. The Directives also set up a mandatory system for surveillance and information exchange to facilitate the rapid identification and communication of emerging risks in the blood sector, and the withdrawal of any contaminated blood.

– 2003/33/EC on the advertising and sponsorship of tobacco products, for which the implementation deadline expired on 31 July 2005. The Directive bans tobacco advertising in the print media, on radio and over the internet. It also prohibits tobacco sponsorship of cross-border cultural and sporting events.

The Tobacco Advertising Directive applies to any advertising and sponsorship with a cross-border dimension. The prohibition of tobacco advertising and sponsorship is recognised by health experts to be an essential element of an effective anti-smoking policy, with studies showing that a comprehensive ban on advertising can reduce smoking prevalence by up to 7%.

Despite the impact of anti-smoking policies, tobacco is still Europe's largest avoidable cause of death. This is why reducing the number of Europeans who smoke continues to be one of the top priorities of the EU's public health policy. Young people are a key target for smoking prevention efforts, as 80% of smokers start the habit in their teenage years.

2.10. Energy and transport

In 2005, DG TREN (Energy and Transport) scrutinised **622** infringement cases, **247** of which were for failure to notify measures transposing directives, and **375** were for the incorrect transposition of directives or the incorrect application of Community law. There was an increase in the number of infringement cases (314 new infringement cases were opened, 113 for failure to notify, and 47 complaints registered) despite the significant number of cases closed during the same period (294, of which 174 for failure to notify). The reason was the faster transposition of transport Directives, although Member States often fail to comply with the transposition deadlines. Finally, the Court ruled on 12 DG TREN cases of failure to fulfil obligations.

The **ratio** of cases of failure to notify to other types of infringement (non-conformity, incorrect application) was **reversed**. In December 2005, failure to notify accounted for only 29% of cases. This trend can be explained by the efforts made by Commission departments in **checking the compliance** of measures transposing Directives. This is confirmed by the

number of **letters of formal notice** and **reasoned opinions** sent out by the Commission in **non-conformity** cases, which has more than doubled.

In 2005, there was an improvement in the percentage of **Energy** Directives transposed, which stood at **97.6%**; delays in the transposition of Transport Directives are being made up more slowly: the percentage of **Transport Directives** transposed is only **96%**, still some way short of the 98.5% target set by the Barcelona Council (15 and 16 March 2002).

2.10.1. Energy

2.10.1.1. Internal market for electricity and natural gas

The European Commission has decided to refer Estonia, Ireland, Greece, Spain, Portugal and Luxembourg to the Court of Justice for failure to transpose one or both of the European Directives concerning the internal market in electricity and gas (Directive 2003/54/EC[269] of 26 June 2003) and/or the internal market in gas (Directive 2003/55/EC[270] of 26 June 2003).

The situation has improved considerably, especially in the countries of northern Europe (Belgium, Germany and Sweden), but the situation in the Iberian Peninsula still gives cause for concern. This legislation is an essential step towards the completion of a genuinely competitive EU energy market, and is essential for the success of the Lisbon strategy. These Directives are fundamental to the opening up of the EU's electricity and gas markets. In practice, they have provided freedom of choice of supplier for industrial customers since 1 July 2004 and will provide this for domestic customers from 1 July 2007. The Directives combine opening up to competition with maintaining service quality, universal service, the protection of vulnerable customers and the objectives of security of supply. The Directives will determine the shape of the EU energy market in the years to come and will serve as a basis for the development of energy partnerships with the EU's neighbours, in particular in the Western Balkans. However, transposition of the Directives is not the only criterion for assessing actual opening up to competition; this will also be reflected by economic indicators (changes of supplier and price in particular). These combined approaches (monitoring of legislation, benchmarking report and sectoral inquiry) are a strong and coordinated response to consumer worries, guaranteeing freedom of choice of supplier and access to energy at a fair price.

Commission departments continue to monitor the effective implementation of these two Directives, with special emphasis on certain Member States.

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269 Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ L 176, 15.7.2003, pp. 37-56).

270 Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176, 15.7.2003, pp. 57-78).

2.10.1.2. Energy efficiency

The Commission has decided to initiate infringement proceedings against Portugal and the Grand-Duchy of Luxembourg for failure to comply with European legislation on the energy labelling of household refrigerators and freezers[271]. The Luxembourg infringement also involves European legislation on the energy labelling of electric ovens[272] and household airconditioning units[273]. This legislation is part of a range of measures to curb energy demand in the European Union.

The Directives, which were adopted in 2002 and 2003, are intended to encourage consumers to buy domestic appliances which consume less energy, thereby enabling them to save money and to help protect the environment. They also require manufacturers to indicate the energy consumption of their appliances and traders to label them at the point of sale with their energy efficiency class (A for the best to G for the worst).

The refrigerators Directive was to have been transposed into national law by 30 June 2004. Portugal and Luxembourg have still not notified their transposition measures, despite letters from the Commission to the authorities of both countries. The electric ovens Directive was to have been transposed into national law by 31 December 2002. Despite a first ruling against it by the Court of Justice on 18 November 2004, the Grand-Duchy of Luxembourg has still not notified its transposition measures.

2.10.1.3. Hydrocarbons

Proceedings were opened against several Member States for failure to respect at least one obligation in the Directive requiring them to maintain minimum stocks of crude oil and/or petroleum products[274], incorrect application of the Directive or failure to submit their monthly statistical summary inside the timeframe set out in the Directive.

Proceedings were also opened under the Directive on the conditions for granting and using authorisations for the prospecting, exploration and production of hydrocarbons[275], particularly against certain new Member States which had failed to transpose the Directive in its entirety or had failed to notify national implementation measures in their entirety. All the infringements that were detected in 2004 or 2005 have been put right. Commission departments are still watching closely to ensure that the notification and publication obligations set out in the Directive are being respected.

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271 Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJ L 170, 9.7.2003).

272 Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJ L 128, 15.5.2002)

273 Commission Directive 2002/31/EC of 22 March 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household air-conditioners (OJ L 86, 3.4.2002)

274 Council Directive 98/93/EC of 14 December 1998 amending Directive 68/414/EEC imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (OJ L 358, 31.12.1998, pp. 100-104).

275 Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons (OJ L 164, 30.6.1994, pp. 3-8).

2.10.1.4. Biofuels

The deadline for transposing the Directive[276] on the promotion of biofuels was 31 December 2004. Nineteen letters of formal notice were sent to Member States that had failed to transpose the Directive in time. Ten Member States notified transposition measures, and nine reasoned opinions were drawn up. In 2005, Luxembourg, Portugal and Slovakia had still failed to notify any measures at all. The Commission has decided to bring Luxembourg and Portugal before the Court of Justice, and sent Slovakia a reasoned opinion in December 2005.

Before 1 July every year, the Member States must report to the Commission on measures taken to promote the use of biofuels. Infringement proceedings were begun against all the Member States who had failed to report by 1 July 2004; ultimately only Italy and Luxembourg failed to submit reports for 2004, and the Commission decided to take them to Court. Sixteen Member States failed to report in 2005, or sent incomplete reports, and letters of formal notice were therefore sent out in December 2005.

In 2004, Member States were required to set national indicative targets for the biofuel market share in 2005. If their target differed from the 2% reference value, they had to justify the difference between their national targets and the reference value set in Article 3 of the Directive. Letters of formal notice have been sent to the 8 Member States that set targets below 2%. The letters indicate that the Member States have not provided sufficient justification for their failure to match the reference value.

2.10.1.5. Euratom Treaty

Monitoring the application of the Euratom Treaty and secondary legislation has traditionally revolved around the *radiation protection acquis* (Title II, Chapter III of the Euratom Treaty).

Since 2004 the aim has been to ensure the respect of all Euratom Treaty obligations. As a result, particular emphasis has also been placed on other chapters of the Treaty, notably nuclear safeguards and the application of the measures that regulate external relations and the role of the Euratom Supply Agency. Eleven new infringement cases were opened in 2005, compared to a mere 3 in 2004. Ten other cases are under scrutiny (and in some cases the procedure has progressed as far as requests for information).

In 2004 the Commission had referred two cases to the Court. One case involved UK legislation that transposes the intervention provisions of the Directive[277], but omits rules to remedy pre-existing radioactive contamination. In a separate case, the Commission decided to bring a Court action against the UK for its failure to provide general data before authorising the disposal of radioactive waste from a military installation. The case is one of a series regarding the applicability of Euratom Treaty, and on whether measures designed to protect

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276 Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport (OJ L 123, 17.5.2003, pp. 42-46).

277 Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ L 159, 29.6.1996, pp. 1-15).

the public from the risk of radioactive contamination can be applied to military installations. The Court ruled on the first case on 14 April 2005, dismissing the Commission's application (Case C-61/03). The second is still under way (Case C-65/04).

The 2003/122/Euratom Directive, on the control of high-activity sealed sources and orphan sources, was to be transposed by 31 December 2005. To date, only 5 Member States have notified final transposition measures. Nineteen have, however, notified the Commission of draft legislation, on the basis of Article 33 in the Euratom Treaty. The Commission has responded to these notifications with comments and recommendations.

Regarding nuclear safeguards, the Commission sent a decision based on Article 83 of the Euratom Treaty to one UK operator direct, for failing to abide by the rules of the Treaty and its secondary legislation on nuclear material accountancy.

2.10.2. Transport

In 2005, eight new transport directives fell due for transposition. The percentage of transport Directives transposed rose slightly (96%) but still falls some way short of the target (98.5%).

2.10.2.1. Road transport

- Registration certificate: In 2005, the Commission decided to send reasoned opinions to Denmark, Luxembourg, Portugal, Cyprus and the Czech Republic for failing to transpose the Directive on harmonised vehicle certificates[278] before the 1 June 2004 deadline. This legislation helps improve road safety by making it possible to check that drivers are only driving categories of vehicle they are authorised to drive. The harmonisation of registration certificates will also improve the working of the internal market in road transport. Finally, four of the Member States in question have notified the Commission of measures transposing this Directive. Only Luxembourg has yet to comply, and the Commission has referred it to the Court of Justice.

- Working time in road transport: The Commission has decided to send reasoned opinions to Germany, Austria, Spain, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the Czech Republic, as they have still not notified national implementation measures for working time in road transport[279]. The rules on working time include time for driving, loading and unloading, vehicle maintenance and administrative tasks. The aim of this legislation is to improve and harmonize social conditions for road transport workers in the European transport market thus contributing to better health and safety for workers, fair competition and enhanced road safety.

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278 Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles (OJ L 138, 1.6.1999, pp. 57-65).

279 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 80, 23.3.2002, p. 35).

Directive 2002/15/EC on working time is an important component of the social dimension of EU legislation on road transport, which has evolved together with the economic component aimed at liberalisation of services across the internal market. It is intended to ensure that professional drivers do not work excessively long hours and thus become a danger to themselves and other road users. It also seeks to counter unfair competition, where Member States might be tempted to give their national fleet an advantage by permitting longer working hours. Member States had until 23 March 2005 to transpose the Directive into their national legislation.

- Road charging: In 2005, the Commission continued its examination of the transposition and correct application by the Member States of the Eurovignette Directive on road charging[280]. Infringement proceedings are under way against 12 countries; in 2005, six were sent letters of formal notice, and one received a reasoned opinion. This scrutiny will continue in 2006, not forgetting that the amendment to the Directive enters into force in the first quarter of 2006.

2.10.2.2. Rail Transport

The 2001 rail infrastructure package requires Member States to guarantee access rights to the Trans-European Rail Freight Network for international rail freight services, sets charges for the use of infrastructure according to common principles, and defines transparent and fair rules and procedures for the allocation of train paths. The rail infrastructure package[281] was to have been implemented in national legislation by 15 March 2003. In 2004, the Court of Justice ruled against Luxembourg[282], Germany[283], Greece[284] and the UK[285], with proceedings against Germany and Greece being closed after notification. The Commission has also started proceedings against the UK and Luxembourg for failing to comply with the ruling.

In 2004 the Commission decided to refer all Member States that had not yet notified national implementation measures for Directive 2001/16/EC[286] on the interoperability of the trans-European conventional rail system (Germany, Italy, the UK and Greece) to the Court of Justice, as Member States were to have taken all the necessary legislative, regulatory and administrative measures to comply with the Directive by 20 April 2003 at the latest. The proceedings against Germany, Italy and Greece were closed after they notified the

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

281 The package comprises Directives 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L 75, 15.3.2001, pp. 1-25), 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L 75, 15.3.2001, pp. 26-28), and 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L 75, 15.3.2001, pp. 29-46).

282 Case C-2003/481 Commission v Luxembourg [2004] ECR I-0000 (judgment given on 30 September 2004).

283 Case C-2003/477 Commission v Germany [2004] ECR I-0000 (judgment given on 21 October 2004).

284 Case C-2003/550 Commission v Greece [2004] ECR I-0000 (judgment given on 7 October 2004).

285 Case C-2003/483 Commission v United Kingdom [2004] ECR I-0000 (judgment given on 7 October 2004).

286 Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability on the trans-European conventional rail system (OJ L 110, 20.4.2001, pp. 1-27).

Commission of their national measures. The Court of Justice ruled against the UK on 10 November 2005.

2.10.2.3. Intermodal transport

On 12 October 2005 the Commission decided to refer Greece to the Court of Justice for failure to comply with the Directive on combined transport.[287] An Austrian enterprise carrying out combined transport operations from Austria to Greece complained to the Commission that the Greek authorities had prevented its lorries from performing the final haulage, accusing it of illegal transport. The Directive concerned allows any road haulier, established in the European Union and fulfilling the conditions of access to the market, to perform the final haulage by road of a combined transport operation in Member States where it is not established. Moreover, the Directive requests Member States not to restrict the initial and final road section of a combined transport operation between Member States through any quota or authorisation. The Commission considers that Greece failed to comply with the Directive on combined transport because it did not ensure that the transport undertakings of other Member States could perform the initial and final haulage of combined transport operations.

2.10.2.4. Air transport

- Aircraft noise: in 2005 the Commission decided to institute infringement proceedings before the Court of Justice against Austria, Finland, Italy, Germany and Luxembourg for failure to notify measures transposing 2002 legislation which aims at a harmonised approach by Member States to phasing out of the noisiest aircraft in EU airports. The Directive on aircraft noise[288] requires the application of specific procedures prior to introducing noise restrictions in sensitive EU airports. Failure to implement a harmonised approach to noise would result in a patchwork of different solutions, provoking distortions between airports with similar noise problems as well as creating obstacles for an effective, EU-wide improvement. Proceedings against Austria, Finland, Italy and Germany were closed following their communication of national measures to the Commission. Latvia was referred to the Court of Justice because it still has not transposed the Directive, joining Belgium and Luxembourg, whose referral to the Court was decided in 2004.

- Discriminatory bilateral agreements: following the "open skies" judgments of 19 November 2002,[289] the Commission asked the Member States to take two measures to remedy the situation: grant the Commission a mandate to open negotiations with the United States, and remove the legal problem identified by the Court by terminating existing bilateral agreements between them and the US. Infringement proceedings have now been initiated against all the Member States that have bilateral agreements with the United States (20 countries out of 25).[290] 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. At the same time the Commission is preparing to relaunch negotiations with the United States to conclude an overall agreement. For the international air service

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287 Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p.38).

288 Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (OJ L 085, 28.03.2002, p. 40-46).

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

290 No agreements: Lithuania, Latvia, Estonia, Cyprus and Slovenia.

agreements between the Member States and the United States, the Commission decided to send reasoned opinions to four Member States: France, Greece, Italy and Portugal. It also decided to send letters of formal notice to seven Member States: Spain, Ireland, Hungary, Poland, the Czech Republic, the Slovak Republic and Malta.

The Commission also decided to open infringement proceedings against the Member States that have concluded with third countries (other than the United States) agreements that do not comply with Community law owing to nationality clauses and which are contrary to the provisions of the Treaty concerning freedom of establishment.

- Access to the groundhandling market: on 9 December 2004 the Court declared the Italian law incompatible with Community rules on groundhandling services in airports.[291] The obligation to guarantee the transfer of staff from the previous supplier to the subsequent supplier makes it difficult for new suppliers to enter the market or to reduce the costs of services for users. The infringement procedure against Italy for its failure to comply with the ruling against it continued with the delivery of a letter of formal notice.
On 14 July 2005 the Court ruled against Germany for having adopted measures counter to Articles 16 and 18 of the Directive on access to the groundhandling market in the airports of the Community. As in Italy's case, the matter concerns the obligation to transfer staff from one service provider who loses its licence, to its successor. This obligation in German law is considered incompatible with the Directive on groundhandling services.

- Single sky: the Commission launched infringement proceedings against three Member States for their failure to communicate the national monitoring authorities to it.[292] The proceedings against Cyprus and Spain were closed after the delivery of letters of formal notice, while the proceedings against Greece are at the reasoned opinion stage.

- Air passengers' rights: proceedings were opened against Member States who had not met all their obligations under the Regulation[293] offering air passengers increased protection in the event of denied boarding and of cancellation or long delay of flights. The Regulation took effect on 17 February 2005. On 13 December 2005, the Commission decided to refer Austria, Belgium, Luxembourg and Sweden to the European Court of Justice and to deliver a reasoned opinion to Slovakia for failure to comply with European legislation on air passenger rights. These Member States still have not established a system of effective, proportionate and dissuasive penalties applicable to airlines that infringe the legislation or ensured that such penalties are correctly applied.

- Civil aviation security: proceedings were also initiated for failure to comply with European legislation on civil aviation security[294] intended to improve the security of civil aviation by strengthening the measures in force, in particular national quality control programmes. The infringement situations identified in 2004 and 2005 were all put right.

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

292 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) (OJ L 96, 31.03.2004, p. 1-9).

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

294 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 (OJ L 355, 30.12.2002, p. 1-22).

- On 12 May 2005 the Court of Justice delivered a judgment in case C-415/03, finding that "by failing to take within the prescribed period all the measures necessary for repayment of the aid found to be unlawful and incompatible with the common market - except that relating to the contributions to the national social security institution (the IKA) -, in accordance with Article 3 of Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways (OJ 2003 L 132, p. 1), or, in any event, by failing to inform it of the measures taken pursuant to Article 4 of that decision, the Hellenic Republic has failed to fulfil its obligations under Articles 3 and 4 of that decision and the EC Treaty." The Commission launched against Greece the procedure provided for in Article 228(1) of the Treaty establishing the European Community for failure to take the necessary measures to comply with this judgment of the Court.

2.10.2.5. Maritime transport

- Maritime cabotage: the Commission decided to refer Portugal to the Court of Justice and to send a reasoned opinion to Greece for failing to comply with European maritime cabotage rules. The Regulation that was infringed[295] applies the principle of freedom to provide services to maritime transport within Member States. Under this Regulation, the Member States must in principle allow the operators concerned to operate freely in this type of market. Exceptions to this principle may be allowed only if market forces would not result in a satisfactory level of service, owing to special circumstances. The Portuguese legislation makes all shipping services to the islands subject to public service regimes by reserving these services for those operators which meet requirements specified in decisions taken by the public authority or in public service contracts concluded with it. There is nothing to justify such an exemption from the principle laid down in the European regulation. In the case of Greece, almost all its intra-island network of shipping services has been made subject to public service obligations, without evidence that there is a real public service need. The Commission also considers that Greek legislation on crews and the internal organisation of ships disproportionately restricts the freedom operators should have over the way they provide their service to users.

- Port State control: the Commission sent reasoned opinions to Italy and Malta for non-compliance with EU legislation on port State control. The two Member States did not adequately transpose a Directive[296] adopted in 1995 whose provisions were strengthened in the wake of the Erika accident. The Directive aims at reducing sub-standard shipping in the waters under the jurisdiction of Member States through increased compliance with international and Community legislation on maritime safety, protection of the marine environment and living and working conditions on board ships of all flags. For this purpose, the Directive establishes common criteria for control of ships by the port State and harmonises procedures on inspection and detention of sub-standard ships. Italy notified the Commission of national transposition measures which contain a series of legal/technical inconsistencies. Malta accepts as port State inspectors persons without proper qualification. In fact, Maltese law allows non-qualified "inspectors" employed before 1 May 2004 to continue

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295 Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992).

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

to work as port State control inspectors, whereas the Directive only allows inspection tasks to be performed by persons without the required qualifications if they were employed as such by their administrations before June 1995.

- Traffic monitoring: in 2004 the Commission decided to take Belgium, Greece, France, Italy, the Netherlands, Austria, Finland and the United Kingdom to the Court of Justice. The eight Member States concerned had failed to communicate all national measures transposing a 2002 Directive,[297] although they were required to adopt the necessary legislation before 5 February 2004. The Directive contains provisions on establishing ship monitoring and information systems and constitutes an essential part of the legal instruments adopted by the EU in the wake of the Erika accident in December 1999. The aim is to enhance the safety of maritime traffic by improving the response of authorities to incidents, accidents and potentially dangerous situations at sea, therefore contributing to better prevention and detection of pollution by ships. It sets out the obligation to notify the maritime authorities, in particular where a ship is carrying dangerous or polluting goods. The Directive also provides for the monitoring of hazardous ships and for intervention in the event of accidents at sea. In this context it establishes the obligation for Member States to draw up plans to accommodate ships in distress in the waters under their jurisdiction. In 2005, six of the Member States in question finally adopted and communicated national measures transposing the Directive. The Court of Justice ruled against the other two (Belgium and Finland) on 15 December 2005 (Cases C-2005/0144 and 0088, respectively).

- Port reception facilities for ship-generated waste and cargo residues: the Commission sent reasoned opinions to several Member States (Greece, Slovenia, Belgium, Finland, France, Ireland, Italy and Portugal) and decided to refer Poland to the Court of Justice for failure to respect EU legislation on the improvement of the availability and use of port reception facilities for ship-generated waste and cargo residues. The Directive adopted in 2000[298] aims at reducing the discharges of ship-generated waste and cargo residues into the sea from ships using ports in the European Union by improving the availability and use of the facilities designed to receive and treat such waste and residues, thereby enhancing the protection of the maritime environment. In the case of Poland, Belgium and Slovenia, proceedings are linked to failure to comply with several aspects of the Directive, while Greece, Finland, France, Ireland, Italy, Portugal and again Belgium and Slovenia have not developed, approved or implemented waste reception and handling plans in all their 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. The Member States were required to have transposed the Directive adequately in their national law and have established, approved and implemented waste reception and handling plans in all their ports by 27 December 2002.

- Ship and port facility security: the Commission had not received all the information that should have been communicated by the national authorities in accordance with the regulation on enhancing ship and port facility security,[299] which provides for communication to the Commission of a number of documents and information. The Commission reminded the

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297 Commission Directive 2002/59/EC of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EC (OJ L 208, 5.8.2002, p. 10).

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

299 Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L 129 of 29.4.2004).

Member States of their obligations and will initiate the appropriate procedures where necessary. However, the Commission decided to send a reasoned opinion to Greece for disregarding its exclusive external competence with regard to implementation of the common transport policy. Greece failed to fulfil its obligations[300] by presenting a submission to the International Maritime Organisation regarding the implementation of two international legal instruments on enhancing ship and port facility security which have been incorporated into Community law by Regulation (EC) No 725/2004.

2.10.3. Transposition of energy and transport directives

In point 16 of the conclusions of the Brussels European Council on 16 and 17 October 2003, "Member States are invited to step up efforts to transpose internal market legislation into national law within the time limits laid down. Timely transposition and effective application of Community rules in all Member States will provide the basis for the mutual trust and confidence on which an enlarged internal market must be based."

The objectives of the full transposition of the directives have not yet been achieved despite the undertakings made by Member States. The Stockholm European Council of 23 and 24 March 2001 had aimed to achieve a transposition rate of 98.5% by the spring 2002 European Council. The Barcelona European Council of 15 and 16 March 2002 gave the Member States an additional year to achieve the 98.5% objective (1.5% transposition deficit) and set a new objective of 0% deficit for directives whose transposition deadline had expired over two years previously.

For the energy and transport fields, the finding of previous years remains the same: the national transposition measures for directives are in general not adopted until after the directive's transposition deadline. The number of proceedings for non-communication of transition measures opened in 2005 is 113 (163 in 2004). However, an even higher number of non-communication proceedings were closed in the same period (183), which shows a systematic delay in the notification of transposition measures by Member States.

- For the energy sector: In 2005 the transposition situation improved significantly, with the transposition of energy directives increasing from 88.3% at 1 January to 97.6% at 31 December.

- For the transport sector: The directive transposition rate at the end of 2005 is only 96% (against 94.7% at the end of 2004).

The transposition of directives always poses a problem in certain Member States: Luxembourg lags furthest behind, with a transposition rate of 88%: a transposition deficit of 10 transport directives and 6 energy directives. Among the new Member States, the Slovak

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300 Article 71 of the Treaty establishing the European Community (TEC) confers internal and external competence on the Community in respect of deciding and implementing common transport policy. Moreover, Article 10 of the Treaty requires Member States to cooperate with the institutions of the Community and to refrain from taking any measure which could jeopardise the attainment of the objectives of the Treaty.

Republic must continue its efforts to reduce the deficit in the transposition of acquis directives, including 14 in the transport field (against 24 at the end of 2004).

2.11. Fisheries and maritime affairs

Under proceedings concerning the use of large drift nets, the Committee sent a reasoned opinion to Italy on 21 March and France on 5 July.

Under proceedings for failure to notify information on fishing activity, the Court found that Ireland had failed to fulfil its obligations under Community legislation on fisheries inspection obligations.[301]

Under these proceedings, the Commission brought actions before the Court on 6 and 19 April and 26 May against, respectively, Italy, France and the UK,[302] and sent reasoned opinions on 21 March and 13 July to Portugal and the Netherlands respectively.

Owing to deficiencies identified in the monitoring and inspection of fishing activities and in the pursuit of those responsible for practices contrary to the respective laws, the Commission sent reasoned opinions to Spain on 13 December and the UK on 19 December.

Under proceedings initiated owing to the unsatisfactory control of technical conservation measures, the Court delivered a judgment on 12 July requiring France to pay, on the basis of Article 228 EC, a flat-rate amount of EUR 20 million and a penalty of EUR 57 761 250 per period of six months from the date of the judgment for failure to fully implement the Community rules.[303]

Under proceedings relating to non-compliance with Community rules on the minimum size of certain species, the Commission sent a reasoned opinion to Spain on 18 October.

The Commission sent a reasoned opinion to the Netherlands on 5 July because it had exceeded certain fishing quotas.

The Commission decided to close proceedings against a number of Member States (Belgium, Denmark, Spain, France, Ireland, Portugal, UK) in which fishing quotas were exceeded between 1998 and 2001. The Court delivered judgments in 2004 and 2005, having identified deficiencies in the national quota monitoring systems of these Member States. Following these rulings, information was provided by the Member States concerned on the measures taken to ensure compliance with the quotas and the mechanisms put in place to ensure closer monitoring of fishing activities. An analysis of the measures, which have helped improve the management of fishing quotas, and an investigation of the cases of overfishing in 2004 and 2005 (the years in which the Court judgments were delivered), which did not find that significant overfishing had taken place, led the Commission to close the proceedings.

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301 Judgment of 8 December 2005, Case C-38/05, Commission v Ireland, ECR ...

302 Case C-161/05, Commission v Italy; Case C-179/05, Commission v France; Case C-236/05, Commission v UK.

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

Under Regulation (EC) No 2847/93, each Member State is required to set up a satellite vessel monitoring system. The Court found that Greece had failed to fulfil its obligations under the rules on this system.[304]

Under proceedings relating to non-compliance with the rules on fishing activities in the Northwest Atlantic Fisheries Organisation, the Commission delivered a reasoned opinion to Portugal on 19 December.

2.12. Taxation and Customs Union

The main activities of the Commission concerning **customs** law and its application by the Member States targeted a few alleged cases of lack of uniform administration of EC customs law. Most of them were immediately and promptly solved by the Members States after the Commission's intervention via administrative letters. It should also be clearly underlined that, in the field of tariff classification matters, the Commission solved most of the cases for which it received formal or informal complaints with the above administrative approach as well as by issuing classification regulations that Member States immediately and promptly followed once published in the OJ. Despite these proactive solutions, within this domain the Court of Justice delivered 21 judgments in 2005.

Within the area of **indirect taxation**, both the enlargement and the strategic objectives adopted by the Commission for the period 2005-2009 were reflected in an increasing number of infringement cases.

In addition to these specifications, the Directorate-General delivered considerable input related to new Court cases. In 2005 the Court of Justice delivered 31 judgments relating to indirect taxation. These included:

Commission versus United Kingdom:[305] The United Kingdom allows its traders who are subject to VAT to deduct VAT in respect of the cost of fuel that they have reimbursed to their employees. The taxable person then uses the receipts made out to his employees to obtain the refund of VAT. In accordance with Articles 17 and 18 of the Sixth VAT Directive, VAT is only deductible in respect of goods and services intended for and billed to the taxable person. In this case the fuel is neither provided to nor billed to the taxable employer. So he cannot deduct the VAT and his non-taxable employee must be considered as the final consumer.

Concerning the *Arthur Andersen* case,[306] the Court clarifies the scope of the VAT exemption established for the insurance sector. The EC Court makes clear that so-called "back office" activities, undertaken on behalf of an insurance company, are not exempted from VAT. According to the Court, these are neither insurance transactions nor "services related to insurance transactions performed by insurance brokers and insurance agents", but only services subcontracted by an insurance company which are not covered by the exemption from VAT.

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304 Judgment of 14 April 2005, Case C-22/04, Commission v Greece, ECR...

305 Judgment of 10 March 2005, Case C-33/03.

306 Judgment of 3 March 2005, Case C-472/03.

Commission versus Spain[307] *and Commission versus France:*[308] the Sixth VAT Directive states precisely what limitations of the right to deduct are permissible. The provisions of both the Spanish and French legislation limiting the right to deduct VAT of taxable persons receiving subsidies for the purpose of financing their activities, are not authorised by the Sixth Directive and are thus contrary to Community law.

For **direct taxation** in 2005, three important developments took place by the intermediary of Court cases, pending on the basis of requests for preliminary rulings. These cases required considerable corollary work and triggered follow-up initiatives.

The first is the *Fournier* judgment,[309] by which tax incentives for R&D limiting them to domestic research institutions were considered to be contrary to the EC Treaty. In the Lisbon agenda R&D measures have a prominent place; however, respective incentives may not be given in a discriminatory way; the tax incentives in a number of other Member States are therefore under scrutiny.

The second very important issue discussed before the Court of Justice was the problem of the application of Court rulings ratione temporis, meaning as from what point in time the interpretation given in a judgment must be respected with the consequence that taxes paid can be claimed back.

For the hearing in the *Meilicke* case[310] concerning tax credit for foreign dividends and in the re-opened hearing in the *Banca popolare di Cremona* case[311] concerning *IRAP*, in both of which a great number of Member States intervened, particularly broad preparation was required.

Finally, with the judgment in the *Marks & Spencer* case[312] an interpretation of the Treaty was rendered which considerably affects the national tax systems and budgets, as it opens new ways for enterprises to make use of the Internal Market. However, the legal consequences of this judgment are not sufficient, so that it will be complemented by political initiatives by the Commission in order to broaden the availability of cross-border loss compensation.

In total, within the area of direct taxation, the Court of Justice delivered 11 judgments.

2.13. Financial programming and budget

In 2005 the Court decided three cases in the field of own resources. In case C-460/01 concerning the application of the external Community transit procedure by the Netherlands, the Court clarified the time limits for starting the recovery procedure and establishing the customs debts in cases of irregular transit operations. By failing to establish promptly the customs debt, the Kingdom of the Netherlands had also failed to make available to the

307 Judgment of 6 October 2005, Case C-204/03.
308 Judgment of 6 October 2005, Case C-243/03.
309 Judgment of 10 March 2005, Case C-39/04.
310 Case C-292/04.
311 Case C-475/03.
312 Judgment of 13 December 2005, Case C-446/03.

Commission the related own resources in due time. A parallel decision was obtained for the similar case C-104/02 against Germany. Finally, the Court found in case C-392/02 that Denmark was responsible for a loss of own resources due to an error made by its customs administration which impeded the collection of the customs debt from the importer. This jurisprudence has extensive importance as it can be applied to numerous similar cases in the Member States.

In 2005 the Commission referred to the Court seven files where Member States had imported military goods without collecting customs duties (Italy and Sweden as to dual use goods, Finland, Sweden, Germany, Denmark and Greece concerning specific military equipment). Belgium, Spain and Luxemburg, on the contrary, accepted in 2005 the position of the Commission and the corresponding files were settled.

Furthermore, the Commission decided to refer to the Court a case where the Italian authorities refuse to pay default interest for transit operations that had not been correctly accounted and thus not made available own resources in due time. Finally, it was decided to refer to the Court Portugal's systematic delay of payment concerning customs duties in cases where temporary imports of goods are covered by a Carnet A.T.A. security.

2.14. EU statistics

In statistical terms, the application of Community legislation can be considered satisfactory, most of the ongoing cases having been closed during the year.

Of the 13 infringement proceedings still open in 2004, 10 (9 for non-communication of transposition measures and 1 for failure to apply Community law properly) were closed.

The infringement proceedings initiated against Greece for failure to submit **statistics on excessive deficits** to the Commission under Regulations (EC) No 3605/93[313] and 2223/96[314] and for infringement of Article 10 of the EC Treaty and Article 3 of the Protocol on the excessive deficit procedure are continuing. The Commission is verifying that the Greek authorities have taken the necessary measures to avoid repeating the same offence. An official exchange of letters between the Greek authorities and the Commission and several meetings were organised to this end.

The proceedings opened against Greece for non-compliance with Regulation (EC) No 1165/98[315] concerning **short-term statistics** are also still ongoing. Thanks to close cooperation between the Greek statistical authorities and the Commission, most of the information identified in the letter of formal notice as missing was subsequently submitted. The Commission therefore considers that Greece is complying with the Regulation in question.

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313 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.

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

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

With regard to **social statistics**, infringement proceedings had been opened against Belgium which had failed to submit data on the level and composition of labour costs under Regulation (EC) No 530/1999.[316] It subsequently submitted the statistics and the case was closed.

Turning to **agricultural statistics**, a reasoned opinion was sent to Greece, which had failed to communicate to the Commission the national measures transposing Directive 2001/107/EC.[317] Following the Greek authorities' notification of the presidential decree transposing the Directive, the Commission considered that Greece had complied with the Community legislation and therefore closed the case. Following enlargement, the Commission had initiated in December 2004 eight infringement proceedings against five new Member States for non-communication of national measures transposing directives in various sectors of Community statistical legislation.

They concerned:

- Estonia for Directive 80/1119/EEC;[318]
- Hungary for Directive 95/64/EEC;[319]
- Malta for Directive 97/77/EEC;[320]
- Slovenia and Slovakia for Directive 2001/107/EC;
- Hungary, Malta and Slovenia for Directive 2001/109/EC.[321]

All Member States concerned replied to the letter of formal notice and communicated their national measures, thereby enabling the cases to be closed.

As regards **statistics on transport of goods by road**, the Court of Justice in a judgment on 21 July 2005[322] recognised Greece's failure to correctly apply Council Regulation (EC) No 1172/98.[323]

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316 Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs.

317 Directive 2003/107/EC of the European Parliament and of the Council of 5 December 2003 amending Council Directive 96/16/EC on statistical surveys of milk and milk products.

318 Council Directive 80/1119/EC of 17 November 1980 on statistical returns in respect of carriage of goods and passengers by sea.

319 Council Directive 95/64/EC of 8 December 1995 on statistical returns in respect of carriage of goods and passengers by sea.

320 Council Directive 97/77/EC of 16 December 1997 amending Directives 93/23/EEC, 93/24/EEC and 93/25/EEC on the statistical surveys to be carried out on pig, bovine animal and sheep and goat production.

321 Directive 2001/109/EC of the European Parliament and of the Council of 19 December 2001 concerning the statistical surveys to be carried out by the Member States in order to determine the production potential of plantations of certain species of fruit trees.

322 Judgment of 21 July 2004, Case C-130/04, Commission v Greece.

323 Council Regulation (EC) No 1172/98 of 25 May 1998 on statistical returns in respect of the carriage of goods by road (OJ L 1, 06.06.1998, p. 1).

2.15. Regional policy

DG REGIO has no infringement proceedings under way at present. 27 complaints are currently being dealt with.

The complaints concern in particular the conditions for awarding public procurement contracts co-financed by Community funds, the selection of localities or other project implementation conditions.

Other complaints concern a change in the project destination. An investigation of this type of complaint often shows that the conditions for granting assistance were not complied with. If the complaint proves well-founded, it may lead to the opening of a financial correction procedure.

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

2.16. Enlargement

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

The Commission sent a letter of formal notice to the Netherlands in a case concerning workers' rights on access to the labour market of Member States under Decision 1/80 relating to the EU/Turkey Association Agreement. The charging of substantially higher fees for prolongation of residence permits for Turkish workers under the Dutch Alien Act of 2000, compared to the fees charged to other EU citizens for the same purpose, is considered a discriminatory practice which also infringes the standstill clauses under the above-mentioned agreement.

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

2.17. Trade

In 2005, DG Trade focused on the implementation of two directives: Council Directive 84/568/EEC of 27 November 1984 concerning the reciprocal obligations of export credit insurance organisations of the Member States acting on behalf of the State or with its support, or of public departments acting in place of such organisations, in the case of joint guarantees for a contract involving one or more subcontracts in one or more Member States of the European Communities; and 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.

Several new Member States had not adopted national implementing measures when they joined the European Union. Infringement proceedings were therefore opened with a view to remedying this situation. At the end of 2005 only two Member States still have to notify their transposition measures to the Commission.

2.18. External relations and European neighbourhood policy

An infringement for non-compliance with Community legislation was identified in respect of the application of Articles 33 of the TEC and 27 of Council Regulation No 2368/2002 (measures concerning international trade in rough diamonds). It concerned six Member States.

The international trade instrument aiming to eliminate conflicts in the diamond trade provides that all Member States participating in this process must amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions.

The 25 Member States were required to supply information on the measures taken to implement Article 27 before 30 June 2004. As the six Member States in question did not communicate the information to the Commission by that date, they were sent a letter of formal notice via their Permanent Representation.

Four of them quickly introduced measures. The fifth adopted a law in July 2005. As the sixth did not react to the formal letter of notice, it was sent a reasoned opinion in December 2005, to which it replied swiftly with national measures complying with the Community rules.

2.19. Competition

2.19.1. Electronic communications

The Directives relating to competition policy are based on Article 86(3) EC. In the field of electronic communications, the Competition Directive[324] of 2002 lays down the fundamental obligations arising from the Treaty which Member States must comply with as regards sectoral law. Under its obligation to ensure compliance with Community law, in 2005 the Commission pursued the proceedings opened against Member States that had not yet transposed or inadequately transposed the Directive.

On 14 April and 16 June 2005 the Court of Justice delivered judgments against Greece and Luxembourg for failing to transpose the Competition Directive,[325] and on 20 October 2005 ruled that Portugal had not fully transposed Directive 90/388/EEC[326] relating to competition on the telecommunication services market,[327] which has since been repealed and replaced by the Competition Directive.

Following the judgment handed down by the Court of Justice on 14 April 2005, the Commission sent a formal letter of notice to Greece with a view to referring it to the Court of Justice for the second time (under Article 228 EC).[328]

2.19.2. Directive on transparency and other State aid cases

On 16 March 2005 the Commission decided to send reasoned opinions to Portugal[329] and Spain[330] under Article 226 EC, considering that these Member States had failed to fulfil their obligations under Directive 2000/52/EC, amending Directive 80/723/EC.

On 5 July 2005 the Commission issued two reasoned opinions against Austria and the Czech Republic[331] with a view to achieving full transposition of Directive 20/723/EEC as amended at national level. A letter of formal notice was sent on the same day to Sweden[332] under Article 228 EC.

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324 Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249, 17.9.2002, p. 21).

325 Cases C-299/04, Commission v Greece, and C-349/04, Commission v Luxembourg, not yet published.

326 Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, as amended by Commission Directive 96/19/EC. This Directive was amended by Council Directive 2002/77/EEC.

327 Case C-334/04, Commission v Portugal, not yet published.

328 Infringement case 2003/0911, see IP/06/63.

329 Case 2003/2170.

330 Case 2004/2128.

331 Case 2004/2130.

332 Case 2001/0581.

2.20. Administration

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

Ongoing contact and collaboration by the Commission with the national authorities have led to the proper application of these provisions.

No European Parliament petition has highlighted any infringement in this field.

No new infringement proceedings were opened against Member States in 2005.