



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION
ON MONITORING THE APPLICATION OF COMMUNITY LAW (2003)
OVERALL POSITION
21st ANNUAL REPORT

{SEC(2004) 1638}

Each year the European Commission draws up a report on the monitoring of application of Community law, in response to requests made by the European Parliament (Resolution 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 sectors.

1. OVERALL POSITION

In exercising its exclusive function as guardian of the Treaties, the Commission shall ensure and monitor the uniform application of Community law by the Member States as set out in Article 211 of the EC Treaty. Article 226 EC provides that the Commission can take action against a Member State for adopting or maintaining legislation or rules which are contrary to the fundamental principles of Community law as enshrined in the Treaties.

The White Paper on European Governance¹ published by the Commission in 2001 emphasises that the primary responsibility for applying Community law lies with national administrations and courts in the Member States. Cooperation between the administrative bodies in the Member States and the Commission is a crucial element in the effective monitoring of the application of Community law. This duty of cooperation is formally enshrined in Article 10 EC.

The primary objective of infringement proceedings, particularly in the pre-litigation stage, is to encourage the Member States to comply voluntarily with Community law as quickly as possible. At all stages of the pre-litigation stage the Commission seeks to promote contact between its departments and the national administrations. Furthermore, the Commission has aimed to boost cooperation with the Member States by means of complementary or alternative methods to resolve problems.

The undertaking of monitoring the application of Community law is vital in terms of the rule of law generally, but it also helps to make the principle of a Community based on the rule of law a tangible reality for Europe's citizens and economic operators. The numerous complaints received by the citizens of the Member States constitute a vital means of detecting infringements of Community law. The Commission has reinforced the instruments and facilities both for registering complaints and for dealing with them more quickly. Accordingly, a form is available on-line.² In addition to this, the Secretariat General of the Commission is developing a new Internet-based tool to facilitate the filing of a complaint.

The 21st Annual Report, including the annexed documents of the services of the Commission, gives an account on the Commission's activities in connection with monitoring the application of Community law in 2003. The objective of the report is twofold:

- to provide the Member States, the general public and economic operators with an overview of the ongoing work directed to ensuring the benefits of a Community based on the rule of law;
- to inform the European Parliament of the ways in which the Commission exercises the authority conferred upon it by the Treaties to ensure the correct application of Community law.

¹ European Governance – A White Paper, COM(2001)428

² http://europa.eu.int/comm/secretariat_general/sgb/lexcomm/form_en.pdf

1.1. Statistics for 2003

3,927 infringement cases were running on 31.12.2003. Among these were: 1,855 cases in motion for which proceedings have been commenced, 999 cases for which a reasoned opinion has been sent, 411 cases which have been referred to the Court of Justice, 69 cases for which Article 228 proceedings have been commenced. (See Annex II, table 2.3)

The **total volume of infringement cases** initiated by the Commission is up 15%, from 2,356 in 2002, to 2709 in 2003.

The statistics for 2003 reflect a decrease in the number of **complaints** registered by the Commission from 1,431 in 2002 to 1,290 in 2003, indicating a decrease of 9.85%. The 2003 figures fairly correspond to the levels registered between 1999 and 2001, thus the increase of complaints in 2002 may be seen as a deviation. Complaints still form the bulk of infringement procedures initiated by the Commission against the Member States. The principal sectors concerned are environment (493 complaints), internal market (314 complaints) and taxation and customs (119 complaints). 1,158 cases were active on 31.12.2003.

The number of cases initiated by the Commission on the basis of its own investigations decreased in 2003, dropping from 318 in 2002 to 253 in 2003, a decrease of 20.44%.

The number of **proceedings for failure to notify** has almost doubled compared to the figures of 2001 and 2002. The statistics for 2003 show an increase of 92.1% from the previous year (from 607 cases to 1,166). The figures for 2003 cover not only implementing measures for directives that have not been notified by the Member States but also cases for failure to notify the technical norms specified in Directive 98/34/CE (goods). The caseload here depends not only on the internal discipline which the Member States impose on themselves to act within the time-limits that they themselves have accepted, but also on a rising number of directives in force.

On 31 December 2003, 524 out of the 1,166 cases were still on-going. The same figure for 2002 was 71 cases.

The Commission has called for greater effectiveness in the monitoring of transposition itself and the conformity of the national transposition measures. Action has been taken to improve communication between the Commission and the Member States. In many cases Member States are required to include a “concordance table” with the communication of transposition measures.

In order to facilitate further the transposition of E.U. directives into the legal systems of the Member States, the Secretariat General has begun to develop a database designed to allow the electronic notification of national execution measures to the Commission. This project is due to enter into production in May 2004.

1,552 **letters of formal notice** were issued in 2003, a vast increase of 56%, compared to 995 letters issued in 2002. However, the number of **reasoned opinions** showed a less dramatic increase from 487 in 2002 to 533 in 2003, which represents an increase of 9.4%. Whereas 48.94% of formal notices in 2002 led to reasoned

opinions, this figure was only 34.34% under 2003 indicating an increase in the number of cases being settled at the formal notice stage.

The number of **cases referred to the Court of Justice** rose from 180 in 2002 to 215 in 2003, an increase of 19.4%. This increase must be seen against the increased volume of reasoned opinions issued under 2003.

48.36% of the cases opened in 2003 were still pending on 31 December 2003.

The number of terminations of decisions was 2,329.

1.2. Improvements in the pre-litigation procedure

As stated in previous reports, the Commission has sought to reduce the time elapsing between the adoption of its infringement decisions and their notification to the Member States. In this context, an internal verification is being planned on the outlook for the continuing control of the application of Community law in the enlarged EU.

In the field of improving prevention and strengthening cooperation between the Commission and the Member States and information to citizens a preventive approach has been put in place. The aim is to strengthen cooperation between the Commission and Member States through the regular contacts between the Permanent Representations of the Member States and the Secretariat General as well as the Administrations of the Member States and the services of the Commission.

The Commission is also ensuring that increased information is systematically provided to the public (through the EUROPA web-site). Training projects have been initiated in the field of competition law and justice and home affairs to strengthen national administrations and legal structures particularly relevant to their specific activities.

National experts have been invited to participate in bilateral meetings with Commission services in such areas as telecommunications to discuss transposition issues before directives have to be implemented. Many Directorates General use existing committees or contact networks for this purpose. Package meetings to discuss transposition difficulties with national administrations have been successfully carried out. Several seminars were organised in 2003 during which the Commission explained to the competent authorities of the Member States the views on the correct implementation of particularly complex environmental directives with a view to prevent, rather than correct, instances of bad application. Similar seminars have been organised for the acceding Member States.

Several actions have been undertaken in the field of improving internal coordination and making the examination of cases more efficient. Some reinforced rules have been introduced in certain areas, including an early warning system for complaints and cases resulting from Commission's own initiative for which 9 months have elapsed since their initial registration. The priority criteria for the treatment of

complaints as set out in the 2002 Communication³ are also being introduced into the management of cases. Efforts are being made to anticipate implementation problems when designing legislation which has to be drafted in such a way as to make it “enforcement friendly”. The use of guidelines and interpretative texts has proved helpful both for the Commission and the Member States, as for example, the guidance document on the implementation of Directive 2001/42/EC⁴ on the assessment of the effects of certain plans and programmes (“strategic environmental assessment” Directive).

Since early 2003 the Commission services have started using SOLVIT - the Internal Market problem solving network⁵ for suitable complaints. 23 cases (3 petitions and 20 complaints) in which national administrations seemed to misapply Internal Market rules were referred to SOLVIT in 2003 (about 12% of the SOLVIT case load).

With regard to future legislative initiatives, some actions are being taken to heighten awareness of aspects which are likely to present transposition difficulties by establishing rapid inter-service contacts before the adoption of new directives. Reminders are frequently sent out to the Member States before transposition deadlines and in some areas standard form reminders are sent out immediately following the adoption of a directive. In the field of the Internal Market, package meetings specifically devoted to the transposition of Directives have been organised with several Member States.

Of course, much time is spent by the Commission services in the scrutiny of legal texts of the Member States transposing directives. This procedure forms a key part of the control of implementation and the work involved will increase substantially with the arrival of ten new Member States. The Fifth Annual Survey on the implementation and enforcement of Community environmental law, the Internal Market Scoreboard and the regular implementation reports in the electronic communication sector⁶ are examples of the information published by the Commission on the implementation of directives.

Internal Commission working methods are also being improved. Lead Directorates General on particular cases can agree with the Legal Service on work allocation in the preparation of legal texts which is the most efficient in the particular context. This forms part of a wider initiative to increase the responsibilities of individual case-handlers for the development of the strategy advocated of the Commission to be as pro-active as possible in seeking to prevent problems from arising or to resolve them without recourse to legal proceedings.

³ Commission Communication ‘Better monitoring of the application of Community law’ (COM(2002)725)

⁴ OJ L 197, 21.7.2001, p. 30.

⁵ see <http://europa.eu.int/solvit> for further information)

⁶ Commission’s 2003 Report on the Implementation of the EU Electronic Communications Regulatory Package (COM(2003)715 of 19 November 2003).

1.3. Transposition of directives

By 31 December 2003, Member States had on average notified 98% of national implementing measures necessary for the implementation of directives in all sectors.. The Secretariat General publishes the available data every two months on its EUROPA-website⁷. Both the number of infringement procedures for non-conformity of national measures implementing directives and for incorrect application of national measures implementing directives remained stable in comparison with the figures for 2002.

For a graphical overview of all complaints and infringements handled by the Commission during 2003, see the tables explaining the situation in the different sectors in annex A.

1.4. Referrals to the Court of Justice according to Article 228 of the EC Treaty (developments in 2003)

In its role as “guardian of the Treaty”, the Commission is also called upon to take all necessary steps to avoid the repetition of infringements committed by Member States. Under Article 228 EC, the Commission may ask the Court of Justice to require a penalty payment or lump sum of a Member State which has failed to take necessary measures to comply with a first judgement that it has failed to fulfil its obligations. As in previous years it is interesting to note the evolution in the Article 228 referrals to the Court of Justice, as shown in annex A.

1.5. Transparency

The Commission has continued to pursue its objective to enhance transparency, primarily through the use of the internet as a source of accessible information to the general public. Since 17 January 2001, the Commission has announced recent decisions to issue letters of formal notice and reasoned opinions, to refer cases to the Court of Justice and to terminate cases (country and sector).⁸

As a new feature, a calendar for the transposition of directives can be found on the Commission website, where it is possible to view the directives addressed to the Member States classed by date for transposition (year and month).⁹

Furthermore, citizens of the Member States can monitor progress in the notification of national measures implementing directives by Member State and sector.¹⁰ These data regarding communications of NEMs (national execution measures) by the Member States are published every two months.

⁷ http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#transpositions
⁸ http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#infractions
⁹ http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#calendar
¹⁰ http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#transpositions

1.6. Modernisation of information technology tools

In order to improve the tools used to control the application of Community law, the Secretariat General has launched the development of a new web-based Electronic Notification database as well as a new web-based version of the internal monitoring tool of the Secretariat General, the Infringements/ASMODEE database. The new version of the internal monitoring tool will enter into production in April 2004.

1.7. Preparation for enlargement of the Union

As of 1 May 2004 the European Union consists of 25 Member States. Ten eastern and central European states will be welcomed into the Union, representing the biggest ever enlargement in the history of the Community.

The acceding Member States have the obligation to fully and correctly transpose and implement the 'acquis communautaire' by the date of accession so as to guarantee equivalent rights and obligations to all citizens of the enlarged European Union. In view of this extensive process, the Commission has undertaken extensive preparations in order to ensure the full respect of Community law by 1 May 2004. The Commission has equally encouraged close co-operation with the acceding countries.

The 'acquis communautaire' amounts to some 1,600 directives. Formal notification to the Commission of transposition measures had to intervene upon accession. The Commission offered to the acceding countries the Pre-Notification Database in order to enable the storage of NEMs unofficially and electronically communicated before accession. Moreover, the Commission has also worked to create synergies and explain the detailed procedures regarding infringements and control of Community law in a series of events organised during the last months of 2003. The Pre-Notification Database has been widely used by the acceding countries as from October 2003.

Ahead of accession the data stored in the Pre-Notification Database will be taken over by the new web-based Infringements database. Thus, communications to the Commission will be regarded as official notifications from 1 May 2004 onwards unless the acceding Member States refuse this possibility. Hence, as from the date of accession the acceding countries will be monitored in the same way as the current Member States.

In general terms, the Commission will not delay infringement procedures subsequent to accession. Thus, the same treatment as for the current Member States will be applied to the new members. The Commission has identified priority sectors, namely those included by the Commission in its legislative programme for 2004.¹¹

¹¹ COM(2003) 645/5