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**28th ANNUAL REPORT ON MONITORING THE APPLICATION OF EU LAW
(2010)**

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1. INTRODUCTION

The Commission's 28th Annual Report 2010 on monitoring the application of EU law focuses on strategic issues and evaluating the current state of the law, in line with the general format for annual reporting as defined by the 2007 Commission Communication on 'A Europe of results – Applying Community law' (the '2007 Communication')¹.

The Report follows a similar structure as in previous years².

2. GENERAL INFORMATION

2.1. Major new features in infringement management

In 2010 the Commission continued to implement, complete and fine-tune the reform of its infringement management as initiated by the 2007 Communication, in all the four domains identified for further improvements.

Special emphasis was laid on the efficient management of cases through consistent further development and evaluation of the functioning of EU Pilot, the tool for dialogue and problem-solving with the Member States. This built on action already undertaken in 2009 by putting in place a new registration system (CHAP 'Complaints Handling – *Accueil des Plaignants*') for complaints and enquiries on the application of EU law by a Member State (for more explanations on CHAP and EU Pilot, see 3.2).

The Commission also stepped up its preventive measures, for example, by including prospective application of EU law in its impact assessments for new initiatives and by promoting implementation plans to support the transposition process for new directives (see 3.4).

The entry into force of the Lisbon Treaty brought important changes in infringement management. One of these novelties is the possibility for the Commission to request, at an earlier stage of the procedure, financial sanctions against Member States for failure to notify measures transposing a directive adopted under a legislative procedure (Article 260 TFEU, third paragraph). In 2010 the Commission outlined its policy on the application of this new instrument in a Communication³ (see 3.1.1).

Finally, the adoption of the revised Framework Agreement on the relations between the European Parliament and the Commission⁴ resulted in more comprehensive provisions on information and cooperation in the area of infringements policy (3.6.).

¹ COM(2007)502 final.

² For previous reports, please see:
http://ec.europa.eu/eu_law/infringements/infringements_annual_report_en.htm

³ OJ C 12, 15.1.2011, p. 1.

⁴ OJ L 304, 20.11.2010, p. 47.

2.2. General statistics

In 2010, the *acquis* of the EU consisted of ca. 8400 regulations and nearly 2000 directives in addition to the primary law (the Treaties).

As in previous years, this Annual Report⁵ provides an overview of key statistical data on the management of cases related to the application of EU law by the Commission. However for correct interpretation of these data, it is important to bear in mind that the Commission has introduced two new management (pre-infringement) tools in this field: CHAP (registry of complaints and enquiries) and EU Pilot (problem-solving with Member States). For more details on the new management tools see 3.2.

Previously, a single ‘infringement database’ (NIF) contained all types of cases regardless of their origin and the stage in the procedure. In the medium term, the latter database will only contain cases where the Commission has taken formal steps starting with the letter of formal notice addressed to the Member State under Article 258 TFEU. Currently, it still contains a certain number of pre-infringement cases (in particular complaints) which under the new system would have been processed in CHAP and EU Pilot.

2.2.1. Number of cases according to their origin

At the end of 2010 the infringement database contained nearly 2100 active infringement cases. Compared with the same figure for the end of the previous year (nearly 2900 cases), the number of ongoing proceedings fell by almost 30%. This is partly due to the fact that new complaints and new own initiative cases are registered and dealt with in either the CHAP or the EU Pilot databases (see figures from these databases under 3.2). The success rate for problem-solving in EU Pilot also contributed significantly to the reduction in the number of infringement proceedings for those Member States, which participated in EU Pilot since its implementation in April 2008.

The general use of pre-infringement tools for the handling of complaints and own initiative cases has changed the composition of cases in the infringement database as regards their origin. At the end of 2009, 53% of the active cases originated from complaints; this figure has decreased (by more than 10%) to slightly more than 40% in 2010.

739 open cases (around 35% of all cases) originated from the Commission’s *own initiative* cases. This is less than the number in 2009 (925). However, the figure is affected by the fact that the Commission services now handle new own initiative-based cases in principle first via EU Pilot.

The 470 open *non-communication* cases⁶ represent 22% of the total of active cases. Compared with the same data for 2009, there is an increase in absolute terms: only 407 non-communication cases were open at the end of 2009. This may be explained partially by the fact that the transposition agenda in 2010 included more directives than in 2009 (see 3.1.1).

⁵ The present report introduces the key figures; the accompanying Commission Staff Working Document, {SEC(2011) 1094 final} contains more comprehensive data

⁶ Cases where the Member State concerned failed to fulfil its obligation to notify measures to transpose a directive.

The Commission closed 987 complaint-based and own initiative cases during 2010 (2009: 1389). Most of these closures (431 decisions) occurred before sending the letter of formal notice to the Member State and came about because the Member States took appropriate action in response to the Commission in order to comply with EU law.

A further 312 cases were closed after sending the letter of formal notice and before sending a reasoned opinion to the Member State (2009: 341) and 130 after sending the reasoned opinion but before referring the matter to the Court of Justice (2009: 151). Thus, these above figures show that in 88% of the closures, the case did not reach the Court of Justice because Member States corrected the legal issues raised by the Commission before it would have been necessary to initiate the next stage in the infringement proceedings.

2.2.2. *Number of cases across Member States and policy areas*

Italy is the Member State against which the most infringement proceedings were ongoing by the end of 2010 (176 open cases), followed by Belgium (159) and Greece (157). Malta, Lithuania and Latvia are the three Member States with the lowest number of open infringements cases (25, 27 and 32 cases, respectively). Italy and Greece were also the Member States against which the most *new* infringement proceedings were started in 2010 (90 and 89, respectively), followed by the United Kingdom (75 new cases in 2010). The fewest new proceedings (19) were opened against Lithuania in 2010; Denmark and Malta ranked second and third with 22 and 25 new cases, respectively. And even though Italy and Greece were able to close approximately 40% of their new cases in the same year, they carried over the most new cases to 2011 (49 and 50 cases, respectively). The number of cases to be carried over was also relatively high for Poland and Spain (40 new cases each). The smallest carry-over took place for Malta (8), Denmark (10) and Lithuania (11).

The three most infringement-prone policy areas (environment, internal market and taxation) account for 52% of all infringement cases. More than one fifth of all active cases (444) are associated with environmental legislation, with internal market and taxation cases (326 and 324, respectively) each amounting to 15% of all infringements.

However it was not in any of the above three policy areas that the most *new* infringement proceedings were opened in 2010. It was in the sector of health and consumer protection where most of the new opened cases (273) were non-communication cases (254). Dossiers relating to environment and internal market gave rise to the second and third highest number in 2010 (229 and 191 cases, respectively). However, the Commission closed the majority of the new non-communication cases on health and consumer protection by the end of 2010, leaving only 62 active. By contrast, around two thirds of the new proceedings were still open in the fields of environment, internal market and transport (148, 131 and 116 cases, respectively), where the carry-over of new cases to 2011 was the highest.

2.3. **Petitions**

Similarly to last year, the environmental area attracted the most petitions lodged with the European Parliament (120). Problems relating to the environmental impact assessment of projects alone were the subject of 42 petitions, followed by nature conservation (32) and waste management (20). In the area of water quality and marine resources an additional 14 petitions were lodged. A significant number of petitions were related to justice, fundamental rights and citizenship (61), half of them on the free movement of persons. Internal market and services also accounted for a substantial portion of petitions (49), where professional

qualifications (13) and freedom to provide services (11) remained the sectors with the highest inflow. Several petitions raised tax issues (44), especially in the area of indirect taxation (33). Employment-related questions also ranked very high: out of 36 petitions, 32 were about the free movement of workers and the coordination of social security systems.

For example, petitions to the European Parliament led to infringement proceedings on discriminatory rules for levying inheritance tax, on the activities and supervision of institutions for occupational retirement provisions and on discrimination against long term residents.

As incorrect environmental impact assessment is a leading cause of petitions, it is useful to mention the scope of application in time in the EU-12 Member States. The relevant EU directive (85/337/EEC⁷) applies only to projects whose authorisation was requested after the accession dates of the new Member States (i.e. 1 May 2004 and 1 January 2007).

An increasing number of petitions drew the Commission's attention to malfunctions in the application of Directive 2004/80/EC on compensation for victims of violent intentional crime⁸, especially in Italy and Greece. Importation of second-hand vehicles and the registration taxes charged by Member States also continued to fuel petitions.

***Conclusion:** In general the number of ongoing infringement proceedings decreased in 2010 compared with previous years. Although at this stage it is not possible to identify all the reasons for this tendency, one explanation is the setting up of EU Pilot, which helps to clarify and solve satisfactorily some issues regarding application of EU law raised by the Commission, thus putting an end to problems without being necessary to launch infringement proceedings. Environment, internal market and taxation legislation remain at the top of the policy fields involved in infringements, whilst issues related to environment, free movement of persons and fundamental rights attracted the most petitions to the European Parliament.*

3. KEY ISSUES

3.1. Late Transposition

3.1.1. Overall policy development

On average Member States had to transpose more directives in 2010 than in 2009 (i.e. 111 as compared to 71 directives). In parallel, the Commission had to launch a considerably higher number of non-communication cases in 2010 (855 cases) than in 2009 (531). Although more than half of these newly opened non-communication cases could be closed, 410 still remained unresolved at the end of 2010. So, together with the remaining 60 non-communication cases accumulated from previous years, a total of 470 non-communication cases were pending at the end of 2010.

This last figure represents a nearly 15% increase in the number of open non-communication cases since the beginning of 2010, when there were only 407 such cases.

⁷ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985, p. 40.

⁸ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15.

The transposition process is managed most effectively in Denmark and Malta (5 open non-communication cases each), whilst it takes more time in Italy (34 cases) and Poland (32 cases).

Very frequently, a large number of Member States miss the transposition deadline for a given directive. Once the Commission opens the infringement proceedings, notification of national measures increase sharply, which allows the proceedings to be closed. Out of the 792 non-communication cases closed by the Commission in 2010, 558 proceedings were closed after sending a letter of formal notice and before sending a reasoned opinion to Member States. Thereafter, further delayed transposition occurs only in a minority of Member States.

The Commission will be able to deal more effectively with concerns stemming from long-term delays via the application of Article 260(3) TFEU. This provision allows the Court to apply financial sanctions already at the stage of the first referral to the Court under Article 258 TFEU, against a Member State failing to transpose a legislative directive, if so requested in the application by the Commission. Previously, financial sanctions for non-communication cases could only be applied in a two-stage procedure, i.e. if a Member State failed to comply with an earlier judgment of the Court. In its Communication⁹ on the use of Article 260(3) TFEU, the Commission made clear that it will make use of this new provision. It is hoped that this will contribute significantly to enhancing the timely transposition of EU law by the Member States.

3.1.2. *Sector-specific aspects*

Judging from the number of cases, it appears that transposition delays occur mainly in the fields of environment (115 active cases), transport (104) and internal market and services (78).

As regards EU *environmental legislation*, deadlines are regularly missed by a large number of Member States, normally resolved after the launch of infringement proceedings, and protracted delays can be seen in a minority of Member States. An example of particularly slow transposition is Directive 2004/35/EC of the European Parliament and the Council on environmental liability with regard to the prevention and remedying of environmental damage¹⁰. Just four Member States transposed it on time and the European Court of Justice had to deliver judgments against seven Member States.

In 2010 transposition of directives governing the *internal market* generally showed the same characteristics that can be observed across the other policy areas. However, following periods of intense legislative activity in 2009 and 2010, particularly in the field of financial services, the Commission was faced with a sharp increase in non-communication cases in this area. Late transposition was often due to the broad scope of the legislation concerned. (Services Directive 2006/123/EC¹¹; IORP Directive 2003/41/EC¹²) or, for instance, in the banking sector, where the legislator set relatively short deadlines for transposition (between 1 and 15 months) because of the urgency of responding to the financial crisis.

⁹ OJ C 12, 15.1.2011, p. 1.

¹⁰ OJ L 143, 30. 4. 2004, p. 56.

¹¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36.

¹² Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, OJ L 235, 23.09.2003, p. 10.

Late transposition frequently affects transport directives, particularly those regulating road and maritime transport. In this respect, Member States informed the Commission services of the following reasons for late transposition: lack of sufficient expertise and resources and complex internal decision-making processes in the Member States. Member States also call for more support from the Commission in the period between entry into force and the deadline for transposition.

Timely transposition is also a key issue for *judicial cooperation, fundamental rights and citizenship*. Since part of these areas belonged earlier to the former third pillar, the Commission has to apply both directives and framework decisions in this field. In many directive-based sectors, including free movement of persons, citizenship and gender equality, complete notification has already been achieved. In 2010, consumer protection could be added to this list, by closing the last infringement procedure due to full or partial failure to transpose Directive 2005/29/EC on unfair commercial practices¹³. By contrast, former third pillar sectors that are governed by pre-Lisbon framework decisions lag behind with transposition. The Commission may not initiate infringement proceedings based on these framework decisions for a period of five years starting from the entry into force of the Lisbon Treaty¹⁴.

Problems with late transposition are rare in policy areas having a stable *acquis* of directives (e.g. agricultural policy). EU legislation in the fields of enterprise and industry, employment and social affairs, as well as indirect taxation are other areas for which no major difficulties regarding timely transposition are observed.

Conclusion: *There are still clearly identified areas where late transposition of directives is a frequent pattern, such as environment, internal market, transport and judicial cooperation, fundamental rights and citizenship. The Lisbon Treaty has given an additional instrument to the Commission that could help to change this unsatisfactory situation (Article 260(3) TFEU).*

3.2. Improved working methods for the management of cases relating to the application of EU law

CHAP: With the introduction of CHAP in September 2009, the Commission now has an IT tool which is specifically designed for the registration and management of complaints and enquiries by European citizens on the application of EU law by a Member State. CHAP ensures proper and timely assignment of complaints to the competent Commission departments as well as systematic feedback to the complainants in line with the 2002 Communication on relations with the complainant regarding infringements of Community law¹⁵.

4035 cases were created in CHAP in 2010 (83% complaints and 17% enquiries). The five Member States most concerned are: Italy (12%), Spain (11.4%), Germany (9.5%), the United Kingdom (7.5%) and France (6.9%).

¹³ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, OJ L 149, 11.6.2005, p. 22.

¹⁴ Article 10 of Protocol No 36

¹⁵ COM(2002)141 final, OJ C 244 , 10.10.2002 p. 5.

52.5% of complaints were closed directly in CHAP on the basis of a comprehensive response by the Commission and a further 14% were closed on the grounds of lack of EU competence. For 17% of the cases the examination continued via EU Pilot and 9% were transferred into infringement proceedings.

EU Pilot: The EU Pilot project has been operating since April 2008 with the aim of providing quicker and better answers to questions raised by citizens or businesses and solutions to those problems arising in the application of EU law. It is also designed to improve communication and cooperation between the Commission services and Member State authorities on the application, implementation of EU law or the conformity of the law in a Member State with EU law.

The Commission services can lodge enquiries and complaints received from citizens and businesses as well as own-initiative cases in EU Pilot. This includes issues raised with the Commission in the European Parliament Petitions' Committee or via a letter from a Member of the European Parliament.

Since its implementation, EU Pilot has proved very positive and shows how the Commission and the participating Member States are cooperating to find solutions that give full and quick effect to EU law for the benefit of citizens and businesses. The Commission examines every case and launches infringement proceedings if no solution compatible with EU law is found. On 31 December 2010, 81% of the responses provided by the Member States had been assessed as acceptable¹⁶ by the Commission while ca 160 cases were transferred to the NIF database in order to allow the Commission to launch the infringement proceeding by sending a letter of formal notice under Art.258 TFUE.

In 2008, 15 Member States volunteered to participate in EU Pilot. Following the success of the project, the Commission decided in its first EU Pilot Evaluation Report adopted in March 2010¹⁷ to invite the remaining 12 Member States to join the project. At the end of 2010, three further Member States joined the project¹⁸.

Commission databases for the management of cases relating to the application of EU law

Complaints/Enquiries are registered first in CHAP, and then transferred to EU Pilot for the participating Member States if the Commission needs to obtain further factual or legal information or to provide the Member State in question with an opportunity to submit a solution complying with EU law. If no solution complying with EU law is found, the cases are subsequently transferred into the infringement database NIF.

The Commission's *own initiative (ex-officio)* cases start in EU Pilot for participating Member States and, subsequently, if they could not be solved, they are transferred into the infringement database NIF.

¹⁶ "Acceptable" means that on the basis of the information received the Commission can envisage closing the file.

¹⁷ COM(2010)70 final.

¹⁸ The 18 Member States are: Austria, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Finland, Hungary, Ireland, Italy, Lithuania, the Netherlands, Portugal, Slovakia, Slovenia, Sweden, Spain and the United Kingdom. The process continues in 2011.

Non-communication cases are registered directly and only in the infringement database NIF, as they are clear-cut cases for which the use of EU Pilot would not provide added value.

For Member States which are not yet participating to EU Pilot, pre-infringement correspondence still happens by classical administrative means.

Conclusion: *The Commission will develop further its databases for the management of cases related to the application of EU law. The Commission will explore the extension of EU Pilot as an instrument of problem-solving and prevention to all Member States. The general approach pursued by the Commission is to ensure systematic registration of all complaints/enquiries on the application of EU law, to seek swift problem-solving by using EU Pilot and, where necessary, to launch and pursue vigorously infringement proceedings.*

3.3. Enforcement issues

According to Article 17 TEU, the Commission has a unique and essential role in overseeing the application of EU law. It is part of the Commission's core task to '*ensure the application of the Treaties and of the measures adopted by the institutions pursuant to them*'. The possibilities to launch Article 258 TFEU infringement proceedings against Member States and the Article 260 TFEU proceeding with financial sanctions where Member States are persisting to infringe Union law are indeed important instruments in this context.

Only in few areas, however, is the Commission entitled to examine compliance with EU rules directly on the ground. These areas include the collection of the Union's own resources from VAT, which is the responsibility of the budget services assisted by experts from the taxation field. Food safety, animal health and welfare and plant welfare requirements can be checked on the spot by the Food and Veterinary Office of the Commission. Specialised EU agencies in cooperation with the Commission maritime and air transport services inspect safety and security in the maritime and aviation sector. Nuclear installations are also subject to periodic inspections by the Commission services¹⁹.

The possibility for the Commission to impose financial corrections on Member States is also limited to special fields. The Commission may resort to the clearance of accounts procedure in agriculture, if EU funding is involved, by excluding from EU financing expenditure which has not been incurred in conformity with EU rules. A similar tool is in place to ensure the proper running of EU co-financed projects in the area of regional policy.

In spite of these limitations, it is important to bear in mind that EU law forms an integral part of the national legal order in the Member States, regardless of whether the EU rules are directly applicable (e.g. regulations) or require prior transposition into national law (directives). It follows that the onus for the correct application of EU law is primarily on the Member States' administration and judiciary, which have to ensure that rights and obligations for citizens and businesses are properly enforced.

National authorities often enjoy wide discretion in how to organise these enforcement mechanisms, including the sanctions for non-compliance. The European legislature and the

¹⁹ This report does not cover competition policy where the Commission has particular instruments at its disposal for compliance control.

Commission can, however, promote effective law application at Member State level in various ways.

For example, in the *passenger rights area*, as a reaction to the crisis caused by the volcanic ash cloud, which paralysed the European airspace in spring 2010, the Commission rapidly met with the national enforcement authorities to ensure, through agreed guidelines, a balanced and uniform interpretation of Regulation (EC) No 261/2004²⁰ on air passenger rights, in particular, on the assistance stranded passengers were entitled to receive from airline companies.

Furthermore, existing EU legislation and international agreements require Member States to provide for *access to redress mechanisms* in certain areas. In the environmental area, the proposal to revise the Seveso Directive²¹ contains rules on access to justice that are in line with the Aarhus Convention. Such broader access to justice provisions will continue to operate under the recast Directive on industrial emissions (2010/75/EU²²). The appeal rules in information society measures (Directive 2002/21/EC²³) and the corresponding case law define a broad group of interested persons who may contest decisions by national authorities and courts. Home affairs legislation (e.g. Employers' Sanctions Directive 2009/52/EC²⁴) obliges Member States to allow third parties (for example, trade unions) to intervene on behalf of employees involved in administrative or civil proceedings. Migration rules make it mandatory to give reasons for refusing an application for a residence permit and to inform applicants about possible redress mechanisms and time limits. Refusals of visa applications have to be justified as well.

Some recent EU directives require Member States to open up *additional or alternative channels for dispute resolution*. In the area of internal market, the Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ('UCITS IV Directive' 2009/65/EC²⁵) obliges Member States to operate efficient and effective complaints and redress procedures for out-of-court settlement of consumer disputes. Directive 2007/66/EC on the effectiveness of review procedures concerning the award of public contracts²⁶ ensures via common standards that all participants in public tenders have the necessary remedies in all Member States to protect their rights under EU law. Consumer protection rules are still a major area where remedies are rooted in EU law with the European Small Claims procedure (Regulation 861/2007²⁷) and the

²⁰ 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, OJ L 46, 17.2.2004, p. 1.

²¹ 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, OJ L 345, 31.12.2003, p. 97.

²² Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), OJ L 334, 17.12.2010, p. 17.

²³ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002 p. 33.

²⁴ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30.6.2009, p. 24.

²⁵ OJ L 302, 17.11.2009, p. 32.

²⁶ OJ L 335, 20.12.2007, p. 31.

²⁷ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1.

obligations of Member States in the main directives (2005/29/EC²⁸ and 97/7/EC²⁹) to put in place adequate and effective means of redress. Directives on the liberalisation of the EU's electricity and gas markets (2009/72/EC³⁰ and 2009/73/EC³¹) also deepen consumer protection by calling for an energy ombudsman or a consumer body for out-of-court dispute settlements. Another example of how EU law supports enforcement is the creation of equality bodies under the anti-discrimination laws: one of their tasks is to refer victims of discrimination to mediating organisations.

Promoting cooperation between the national competent authorities can often constitute a useful accompanying measure. This can be done through networks (e.g. IMPEL - the EU Network for the implementation and enforcement of environmental law), classical advisory committees (e.g. the Committee of Senior Labour Inspectors) or innovative structures such as the 'Forum' of enforcement authorities linked to the European Chemicals Agency under the REACH Regulation³².

Informal problem-solving mechanisms continued to deliver fast and pragmatic solutions to citizens. SOLVIT, a network of national authorities supported by the Commission, treats an increasing number of cases year by year, especially in the sector of regulated professions, residence and social security. In 2010, 9 out of 10 SOLVIT cases could be resolved successfully, mostly within a 10 weeks deadline. This shows an increasing success rate compared to 2009.

On *employment* matters, the Administrative Commission for the Coordination of Social Security Systems set up a Conciliation Board to mediate between Member States representing different opinions.

Conclusion: *The Commission will further reinforce and promote problem-solving instruments such as SOLVIT, networks such as IMPEL and will continue examining whether further mechanisms should be added to the current system of EU remedies in order to strengthen the enforcement of EU law. It will also take measures to enhance synergies between existing problem-solving tools, where possible, so as to ensure that problems are resolved in the most effective manner, to the benefit of European citizens and businesses.*

²⁸ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJ L 149, 11.6.2005, p. 22.

²⁹ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ L 144, 4.6.1997, p. 19.

³⁰ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.8.2009, p. 55.

³¹ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211, 14.8.2009, p. 94.

³² Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396, 30.12.2006, p. 1.

3.4. Preventive Measures

3.4.1. Overall policy development

Implementation plans: In the 2007 Communication the Commission undertook to design systematically preventive measures aimed at assisting Member States in implementing EU law. Implementation plans play a significant role in this context. In them, the Commission identifies all main risks for the timely and correct implementation of a new directive and the appropriate actions to counter those risks. Developing implementation plans is an integral part of the Commission's smart regulation approach and helps ensure that implementation is adequately taken into account throughout the policy cycle. In 2010 the Commission's Work Programme 2011 identified a set of major and complex proposals for which implementation plans would be prepared.

On 22 and 23 November 2010, the Belgian Presidency held a conference on the transposition of EU directives. The conference followed up on a similar conference organised by the Czech Presidency in March 2009 and was aimed at sharing best practices in the implementation of EU law³³.

Legal training: The Lisbon Treaty for the first time provides a legal basis for European Union action on European judicial training (Articles 81(2) and 82(1) TFEU). European judicial training should encompass the training of legal practitioners (judges, prosecutors, lawyers, solicitors, notaries, bailiffs and court staff) in all areas of EU legislation through training activities and exchange programmes. The European Commission is preparing a Communication on European judicial training to explore how to meet the considerable training needs of legal practitioners in the field. In October 2010, the Commission launched a wide consultation to collect the views of the major stakeholders in judicial training. The results of the consultation will be included in the Communication planned for the second half of 2011.

3.4.2. Main sector-specific developments

Implementation plans: In some policy areas, directives are regularly coupled with implementation plans. In the field of *environment*, where such plans have been drawn up since 2008, the Commission reviewed its approach in order to better identify risks and harmonise with other preventive tools, such as scoreboards and transposition checklists³⁴. On *internal market*, implementation plans have been applied for the Defence Procurement Directive, the 3rd Postal Directive and for directives in the Company Law sector. The Commission now generally requires an implementation plan to be prepared for each new proposal for a directive on *health and consumer protection*. In the field of *enterprise and industry*, several proposals for directives will be accompanied by implementation plans. These proposals include: the re-registration of used vehicles in another Member State, the pricing of medicinal products and modifications to the type approval of motor vehicles.

³³ See press release of 22.11.2010 at <http://www.eutrio.be/pressrelease/opening-conference-transposition-european-directives-olivier-chastel-describes-belgian->

³⁴ A transposition checklist is an informal document, which is prepared by the Commission services following their discussions with the Member State concerned in working groups/package meetings, and which is aimed at helping Member States to implement EU law.

Other tools: Almost all Commission departments issue guidelines, handbooks or interpretative notes to make the transposition process smoother. Every Commission department endeavours to clarify unresolved transposition issues with Member States through expert group meetings and bilateral contacts. Transposition issues are frequently put on the agenda of package meetings. Seminars, workshops and working papers are also tools which are regularly used for improving transposition results.

The Commission supports Member States actively to make the transposition process as operational and swift as possible with the ultimate goal that EU law is applied correctly and rights and obligations are effectively enforced. As an example, the Green Paper on the future of VAT³⁵ seeks to identify ways to simplify the EU VAT system to make its transposition easier. The Commission also plays an active role in improving the local Schengen cooperation amongst Member States' consulates, including through training events, and harmonise their practices in line with the EU *acquis*.

Preventive measures will *also* focus on citizens' involvement in the application of EU law. One possible aid is the online legal database of consumer law (especially Directive 2005/29/EC³⁶). Awareness-raising is a key priority in areas where citizens have to rely mostly on Treaty provisions to claim their rights e.g. free movement of students, recognition of academic diplomas, and sports.

***Conclusion:** To pre-empt transposition and application problems with new legislation, the Commission will continue to use a range of preventive measures, including implementation plans, to support ultimately the smooth and accurate implementation of the future directives.*

3.5. Correlation tables

Correlation tables are used to show how Member States have transposed EU law into national law by presenting how each element of EU law has been transposed.

They provide a clear overview of which national rules implement each of the articles in a directive and thus facilitate contacts with the Commission in demonstrating that a directive has been fully transposed. Later on, they can be an entry point for operators in identifying relevant legal provisions.

Since 2003 the Commission has included binding provisions on correlation tables in its proposals for directives. However, during the legislative process these provisions are very often deleted at the initiative of the Council.

In the Framework Agreement governing the relations between the European Parliament and the Commission since November 2010, both institutions have highlighted the broad range of benefits of the correlation tables and accordingly reaffirmed their commitment to this method. Under Section 44 of the Agreement, the European Parliament and the Commission stressed their commitment to preserve mandatory provisions on correlation tables throughout the legislative negotiations.

³⁵ Green paper of 1.12.2010 on the future of VAT Towards a simpler, more robust and efficient VAT system, COM(2010)695 final.

³⁶ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJ L 149, 11.6.2005, p. 22.

Conclusion: *The Commission considers that in many cases correlation tables are important instruments which help it to ensure the effective implementation of directives. The Commission will therefore include appropriate wording in its proposals. It is committed to working with Council and European Parliament to find a solution which enhances transposition and compliance.*

3.6. Transparency

In 2010 the Commission continued to publish on its website³⁷ summary information on all infringement proceedings from the stage of reasoned opinion and in selected cases, from the stage of letter of formal notice. The summary included the Member State concerned, the responsible Commission service, the registration number and the title of the proceedings as well as the date and nature of the Commission's last decision.

Transparency was also among the aspect underlined in the revised Framework Agreement on the relations between the European Parliament and the Commission. Under Section 44 the Framework Agreement stipulates:

'In addition to specific reports and the annual report on the application of Union law, the Commission shall make available to Parliament summary information concerning all infringement procedures from the letter of formal notice, included, if so requested by Parliament, on a case-by-case basis and respecting the confidentiality rules, in particular those acknowledged by the Court of Justice of the European Union, on the issues to which the infringement procedure relates'.

Conclusion: *The Commission will further promote transparency on its infringement policy within the legal and judicial limits.*

4. SMART REGULATION

In its Communication on Smart Regulation in the European Union³⁸, the Commission set out its approach for integrating the application of EU law into the policy cycle (i.e. from an early stage of preparation until its possible revision). The objective is both to improve the implementation and enforcement of existing legislation and to enhance the quality of new legislation. This approach will be further developed and should contribute to the effective monitoring and application of EU law.

5. CONCLUSIONS

The year 2010 was characterised by activities aimed at implementing and further developing the reform of the Commission's infringement management as initiated in 2007 with the Communication 'A Europe of Results – Applying Community law'.

³⁷ http://ec.europa.eu/eu_law/infringements/infringements_decisions_en.htm

³⁸ Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Smart Regulation in the European Union, COM 2010/0543/final. See the Better Regulation website for more information: http://ec.europa.eu/governance/better_regulation/key_docs_en.htm

In 2011 the Commission will continue to focus on key areas of this strategic approach, in particular on:

Effective problem-solving: e.g. broadening the use of EU Pilot with a view to including all Member States;

Efficient management: improving management of infringement-related cases in line with the Commission's benchmarks;

Preventive measures: e.g. ensuring a systematic and coherent approach to implementation plans;

Smart Regulation: integrating the monitoring of the application of EU law more fully into the wider legislative life cycle.