



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION**

**A EUROPE OF RESULTS – APPLYING COMMUNITY LAW**

## COMMUNICATION FROM THE COMMISSION

### A EUROPE OF RESULTS – APPLYING COMMUNITY LAW <sup>1</sup>

#### I. INTRODUCTION

The European Union is founded in law, pursues many of its policies through legislation and is sustained by respect for the rule of law. Its success in achieving its many goals as set out in the Treaties and in legislation depends on the effective application of Community law in the Member States. Laws do not serve their full purpose unless they are properly applied and enforced. The body of legislation is significant – over 9000 legislative measures of which nearly 2000 are directives each requiring between 40 and over 300 measures for transposition into national and regional legislation. The EU encompasses 27 national administrations and over 70 autonomous regions. Over 500 million Europeans enjoy the possibility to query their rights under these laws. Citizens' expectations of the benefits that the EU brings should be met. That is why, in pursuing the objective of Better Regulation it is necessary to attach high priority to the application of law, to identify why difficulties in implementation and enforcement may have arisen and to assess whether the present approach to handling issues of application and enforcement can be improved. Keeping pace with this changing reality, while meeting citizen expectations and responding to the imperatives of Better Regulation is a challenge.

Failure to rise to the challenge will weaken the foundations of the European Union. If laws are not being properly applied, European policy objectives risk not being attained and the freedoms guaranteed by the Treaties may only be partially realised. If the legal process is not strategically managed, priority infringements may not get the attention that they deserve and citizen complaints may take increasingly longer to resolve. It is imperative to minimise these risks.

The European Institutions and the Member States should continue to develop their work to ensure that Community law is correctly applied and implemented and that citizens' enquiries and complaints are handled well. This will involve more co-operation in preventing problems from arising, dealing more effectively with problems that arise and resolving identified infringements more quickly, while enhancing transparency and information exchange. It will also involve better integration of implementation and enforcement considerations throughout the policy cycle – from design of laws through the adoption process to evaluation of results. Clarification of implementation challenges is essential to improving laws and to achieving

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<sup>1</sup> Covering European Community- and Euratom Treaty-based law and other international instruments. An important body of legislation has been built up, especially through Framework Decisions under Article 34(2)(b), under Title VI of the EU Treaty. Member States have a binding obligation to transpose this legislation into national law although infringement proceedings are not available to enforce the law. This area of EU law is not covered by this communication.

Better Regulation goals such as simplification and reduction of administrative burden, in the interest of citizens and businesses.

This communication suggests ways to improve the application of Community law. It builds on the 2002 Communication on Better Monitoring of the Application of Community law and follows the broad lines set out in the 2006 Strategic Review of Better Regulation in the European Union<sup>2</sup>. It also responds to the main policy issues raised in the resolution of Parliament of May 2006.<sup>3</sup>

## II. THE APPLICATION OF COMMUNITY LAW IN AN INCREASINGLY DIVERSE EUROPEAN UNION

The application and enforcement of Community law involves many actors – the European institutions, the Member States, including local and regional authorities and courts. The volume and kind of issues encountered vary according to the subject matter and the nature of rights created.

Member States have primary responsibility for the correct and timely application of EU Treaties and legislation<sup>4</sup>. They are responsible for the direct application of Community law, for the application of their laws implementing Community law and for the many administrative decisions taken under those laws. National courts also play an essential role in ensuring respect for the law including by referring issues to the Court of Justice for a preliminary ruling, where necessary.

The Commission has different roles. First, with its right of initiative, the Commission is responsible for proposing both new and amending acts. It bears a particular responsibility to apply Better Regulation by designing new laws that take implementation and enforcement into account and adjustments to existing laws to facilitate improved application. Parliament and Council then play a fundamental role in adopting the final measure.

Second, the Commission works in close partnership with Member States managing the application of the law through contacts, networks in the various sectors and regular meetings of national experts. This work ensures efficiency in the application of the law, technical updating and ideas for further development of the law.

Third, as guardian of the Treaties, the Commission has been given the authority and responsibility to ensure respect for Community law<sup>5</sup>, verifying that Member States respect Treaty rules and Community legislation. It reviews the implementation by Member States of Community legislation using contacts, correspondence and meetings with Member States. The Commission can institute infringement proceedings, asking Member States to correct an absent or wrong transposition or incorrect application of the law. The Commission can bring the matter before the Court of Justice<sup>6</sup>, seeking a declaration of an infringement of

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<sup>2</sup> COM(2002)725 and COM(2006)689

<sup>3</sup> EP No :2005/2150(INI) (FINAL A6-9999/2006)

<sup>4</sup> Article 10 EC Treaty

<sup>5</sup> Article 211 EC Treaty

<sup>6</sup> After taking the first step of sending a letter of formal notice and the second step of adopting a reasoned opinion (Article 226 EC Treaty). In some areas, such as agricultural policy and other funding programmes, where there are directly applicable provisions, audit and accounts clearance mechanisms can reduce recourse to infringement proceedings.

Community law by the Member State.<sup>7</sup> It can apply to the Court a second time seeking the application of financial sanctions until the first ruling of the Court is respected.<sup>8</sup>

The Commission reports annually on the application and enforcement of law to Council and Parliament. It provides information, on request to both Parliament and the Ombudsman.

The questions and problems arising in the application of the law are inevitably many and varied. At the end of 2006, the Commission was handling over 3200 files, including complaints and own-initiative cases<sup>9</sup>, plus a large volume of questions and enquiries seeking explanations or guidance on legal matters.<sup>10</sup>

There are many reasons why these issues arise. Member States may pay insufficient attention to the correct interpretation and application of the law, or be late with implementation work and the communication of national transposition measures. Member States may encounter difficulties of interpretation and choice of procedural options. They may transpose a directive or interpret a regulation in a way that does not comply with the Community measure in question. These differences and difficulties of interpretation can be replicated at regional and local level. In some instances, provisions of the law may be vague or difficult to implement. A high intensity of correspondence or infringements of specific laws across a number of Member States can reflect the far-reaching content or scope of the instrument or high stakeholder interest, but it could also be an indicator of provisions which may require a particular effort by Member States to implement or apply or understand.

Relatively few of the issues arising require a ruling from the Court of Justice. Around 70% of complaints can be closed before a letter of formal notice is sent; around 85% are closed before the reasoned opinion; and around 93% are closed before a ruling from the Court. These figures confirm a high rate of agreed conformity, strengthening understanding and support for the law, increasing potential for future good application of the law and fulfilling the intentions of the EU legislator.

However, the process can be lengthy. It takes an average of 19 months to close a complaint before a letter of formal notice is sent; 38 months when a case is closed between the letter of formal notice and reasoned opinion; and 50 months when the case is closed after the reasoned opinion and before the case is sent to the Court, producing an average time for all cases of 26 months<sup>11</sup>.

Delay or error in the application of Community law weakens the system itself, reduces the possibilities for its objectives to be achieved, depriving citizens and businesses of the benefits. The EU institutions generally, and the Commission and Member States particularly, have a

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7 Judgement of 10 April 2003, *Commission v. Germany* (C-20/01 and C-28/01, Rec. p. I-3609) (cf. points 29-30) and Case C-471/98 *Commission v Belgium* [2002] ECR I-9861, paragraph 39).

8 Article 228 ECT and document SEC(2005)1658: Communication on the application of Article 228 EC Treaty.

9 Approaching 1000 own-initiative cases (30%), nearly 1700 complaint-related cases (51%) and approaching 600 non-communication cases (19%).

10 Recent EU enlargements and the volume of Community legislation adopted in recent years creates a potential for an increase in the number of issues arising.

11 Latest processed statistics for 2005 which largely correspond with those for earlier years.

common interest to keep this to a minimum. The following outlines how the current system can be improved.

### **III. AREAS FOR IMPROVEMENT**

There are four main areas in which the Commission sees scope for improvement :

- (1) prevention: increased attention to implementation throughout the policy cycle
- (2) efficient and effective response: improved information exchange and problem-solving;
- (3) improving working methods: prioritisation and acceleration in infringements management;
- (4) enhancing dialogue and transparency: between the European institutions and improving information for the public.

#### **1. PREVENTION**

##### **1.1. Increased Attention to Implementation throughout the Policy Cycle**

Maximum effort should be made to ensure the clarity, simplicity, operability and enforceability of legislation. Increased attention should be paid to aspects of implementation, management and enforcement in the development of proposals, in particular at the impact assessment stage, and throughout the policy cycle. The impact assessment should examine implementation options and their implications, as well as the choice of legal instrument with a view to best facilitating the effectiveness of the measure. Regulations should be used wherever appropriate and to the greatest extent possible for implementing measures.<sup>12</sup>

Commission proposals tabled in Council and Parliament will normally be accompanied by risk-based suggestions to facilitate timely implementation. The scale of the preparations for the implementation of new legislation depends on the nature of the obligations involved, the context and past experience. These can be limited if the new measure is technical, in a well established framework. But in other cases, the Commission could suggest, for example, developing guidelines, organising expert group meetings on transposition, launching administrative co-operation and so on to prepare the good application of the law. The Commission will systematically request the nomination of a contact point and provide details of the network(s) established to exchange information following the adoption of each new measure. The Commission will also indicate how it intends later on to follow-up on correct application of the law (e.g. programmed recourse to conformity assessments, reports or studies, inspections).

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12 Directives are converted into national law by the Member States, to be incorporated into the national legal context. Regulations are directly applicable in each Member State. Replacing directives with regulations can, when legally possible and politically acceptable, offer simplification, as they enable: immediate application and can be directly invoked before courts by interested parties.

The Commission will continue to include evaluation provisions in new legislation providing a common framework to assess whether laws are having their intended effects and enforcement measures are sufficient. As part of its ongoing evaluation activities, the Commission will also examine existing legislation, particularly in the light of identified implementation difficulties, to see where additional efforts or changes may be necessary. It will also remain active in monitoring Treaty principles and regulations, when Community rules are directly applicable, particularly where specific means to administer the law have not been developed and respect of the rules and relevant case law of the Court of Justice is at stake. Actions for problem detection will be risk-based and range from market monitoring to dialogue with stakeholders and national regulators and follow-up to preliminary rulings of the European Court of Justice. In all these activities, an improved flow of information between EU and national authorities on how EU legislation is being implemented will help to better anticipate and resolve problems.

## **1.2. Correlation tables**

Correlation tables constitute an important source of information, setting out how Community directives are being applied in Member State regulations. These tables form part of existing legislative processes within many Member States. They provide valuable information at minimal cost and burden. They contribute to transparency and accessibility, as well as to better understanding and application of the law, including interpretation by courts.

The Commission will continue systematically to include an obligation for a correlation table to be communicated in each new proposal for a directive. It will insist on this during the legislative process. It will send a model correlation table to Member States following the adoption of each directive asking for them to be completed and returned to the Commission with the transposition measures. The Commission will also seek a general commitment from Council and Member States that correlation tables will be provided comprehensively.

## **1.3. Training in Community law**

The good application of Community law depends on national authorities taking correct decisions. The Commission will ask Member States to confirm the availability of initial and life-long training in Community law for civil servants and judges, with a view to identifying supplementary training that the EU could support<sup>13</sup>. It will continue to support improved availability of databases on national court rulings concerning Community law. It will publish an explanatory document on the Court case law on claims to damages for breach of rights under Community law.

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13 Beyond existing actions in criminal, civil, commercial, competition and environmental law.

## **2. INFORMATION EXCHANGE AND PROBLEM SOLVING**

### **2.1. Current Situation**

Many of citizens' and business' enquiries and complaints concerning Community law should be effectively treated through initial information exchange or cooperative problem-solving. At present, the Commission has different mechanisms in place to respond to citizens. General enquiries are handled through Europe Direct, Citizen's Signpost, European Business Centres and so on. Member States work together to find solutions for cross-border problems in the internal market through the SOLVIT system.<sup>14</sup>

Some inquiries and complaints about the application of Community law cannot be resolved through these mechanisms. When these types of enquiries or complaints are made to the Commission, the relevant service provides explanations on the law and, where necessary, asks Member States to confirm the facts and explain their position. There is insufficient focus on the need for quick, constructive solutions. Although progress has been made, in particular through the generalisation of "package meetings", where the Commission reviews with a Member State all ongoing files in a given sector, some issues remain under discussion between the Commission and the Member State for a long time. A significant number of cases are resolved only after infringement proceedings have been launched.

### **2.2. Improving working methods**

To resolve issues in a more timely fashion and to reinforce the handling and management of existing procedures, the Commission considers that current working methods can be improved.<sup>15</sup> As is the case now, enquiries and complaints raising a question of the correct application of Community law sent to the Commission would continue to be registered and acknowledged and the Commission would provide explanations of Community law. Where an issue requires clarification of the factual or legal position in the Member State, it would be transmitted to the Member State concerned. Unless urgency requires immediate action and when the Commission considers that the contact with the Member State can contribute to an efficient solution, the Member States would be given a short deadline to provide the necessary clarifications, information and solutions directly to the citizens or business concerned and inform the Commission. When the issue amounts to a breach of Community law, Member States would be expected to remedy, or offer a remedy, within set deadlines. When no solution is proposed, the Commission would follow-up, taking any further action, including through infringement proceedings, in accordance with existing practice.

In this way, Member States would have the opportunity to resolve issues arising within this agreed framework, operating at the point closest to the citizen within its national legal and institutional context, in conformity with the requirements of Community law. With the necessary commitment, there would be a greater possibility for enquiries and complaints to be seen through to an early conclusion.

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14 <http://ec.europa.eu/solvit/site/index-en.html>

15 Without prejudice to existing rapid alert systems, the SOLVIT mechanism or areas of directly applicable law, where specific provision is made for the division of competence between the Commission and Member States for the application of the law, such as financial disbursements in the fields of agriculture and the main Community funds.

Transmission mechanisms would be established between the Commission and Member States. A central contact point within the Member State would have to process incoming enquiries and outgoing responses. This contact point would encourage the appropriate authority in the Member State to respond constructively, providing information, solving the problem or at least explaining its position.

The outcome of cases would be recorded to enable reporting on performance and any follow-up, including the registration and initiation of infringement proceedings. This reporting would identify the volume, nature and seriousness of problems remaining unresolved, indicating if additional specific problem-solving mechanisms or more tailored sector initiatives are needed<sup>16</sup>.

All of these measures should contribute to a reduction in the number of infringement procedures and improved efficiency in managing them. The Commission suggests a pilot exercise involving some Member States in 2008, which could, after evaluation of the first year of operation, be extended to all Member States. In testing these measures, the Commission will take care to avoid repetitive consultations of Member States and will continue to fully exercise its right to independently follow-up on outstanding issues.

The change in working method aims to provide more rapid answers to citizens and businesses and solutions to problems, including correction of infringements. All Member States need to make a maximum effort, first, to search for solutions to complaints in compliance with Community law and, second, to respect short deadlines in dealing with all issues arising. This will require strong political support and the dedication of sufficient resources by Commission and Member States. These suggestions, which would require adaptation of the 2002 communication on the management of complaints,<sup>17</sup> will be developed in discussion with Member States in the light of continuing inter-institutional dialogue.

The Commission is also working on complementary activities to improve handling of inquiries. It is working on improving access to existing instruments for information-provision to citizens, through the creation of a "single front office" operating on-line. The Commission will also examine the feasibility of involving its Representation Offices in the problem-solving process.

It should be noted that complainants could in some cases enforce their rights directly at national level in a more efficient way. Only a national tribunal can apply remedies like injunctions to the administrations, cancellation of national decisions, damages etc.

### **3. SEEKING A MORE EFFICIENT MANAGEMENT OF INFRINGEMENTS**

The infringement process plays an essential role in guaranteeing the correct application of Community law. The need for recourse to infringement proceedings should be reduced by the problem solving and preventive measures described above. This in turn will lead to the more efficient management and resolution of infringement cases.

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16 E.g. EU network of national investigative and enforcement authorities under Regulation 2006/2004.

17 COM(2002)141.

The correct application of the law can also be improved by prioritising in the management of cases.<sup>18</sup>

All complaints and infringements will be dealt with. Prioritisation means that some cases will be dealt with by the Commission more immediately and more intensively than others.

Priority should be attached to those infringements which present the greatest risks, widespread impact for citizens and businesses and the most persistent infringements confirmed by the Court. These categories cover:

- non-communication of national measures transposing directives or other notification obligations;
- breaches of Community law, including non-conformity cases, raising issues of principle or having particularly far-reaching negative impact for citizens, such as those concerning the application of Treaty principles and main elements of framework regulations and directives;
- respect for Court judgments declaring the existence of infringements (Article 228 EC Treaty).

These categories are included in the more comprehensive set of priorities decided in 2002<sup>19</sup>. The coverage of the first and the third categories is clear. The definition of relevant principles and the evaluation of the scope of the impact of specific issues in the second category can only be done by sector, depending on the availability of resources, as, for example, is planned in a forthcoming communication in the field of environment. The Commission will describe and explain its action on these priorities in its annual reports, from 2008.

Special benchmarks should be applied to monitor the progress of these cases:

- For cases concerning the non-communication of transposition measures, the target should be that no more than 12 months elapses from the sending of the letter of formal notice to the resolution of the case or seizure of the Court of Justice.
- Subject to the specific circumstances of exceptional cases, the equivalent period in proceedings to ensure respect for an earlier judgment of the Court should be on average between 12 and 24 months.

It is difficult to set a meaningful general benchmark for other priority cases as they vary considerably in content and context. These cases will be subject to specific management to ensure rapid progress.

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18 Judgment of 10 April 2003, *Commission v. Germany* (C-20/01 and C-28/01, Rec. p. I-3609) (cf. points 29-30) Community and Case C-471/98 *Commission v Belgium* [2002] ECR I-9861, paragraph 39).

19 Ibid. 2002 Communication, section 3.1 and Commission Communication on the application of Article 228 of the EC Treaty (SEC (2005) 1658), para 16.4 giving some elements for the identification of the effects of infringements on general or particular interests in the context of the coefficient for seriousness.

The Commission confirms its commitment to work more intensively according to the priority of the case. The Commission will introduce more frequent decision-taking for most procedural steps to allow for quicker progress.

#### **4. STRENGTHENING DIALOGUE AND TRANSPARENCY**

##### **4.1. Inter-institutional dialogue**

All EU institutions have an interest in the application of Community law. Assessing how laws are being applied is an important input into the policy-making cycle. Discussions between the institutions on the impact of Community law, its implementation, management and enforcement, and analysis of the root causes of problems, can enrich policy assessment and development.

The Commission will develop the focus of its Annual Report on strategic issues, evaluation of the current state of the law in different sectors, priorities and programming of future work, including examination of areas of law subject to frequent infringement. This will assist strategic inter-institutional dialogue on the extent to which Community law achieves its objectives, the problems encountered and possible solutions to be applied. This type of in-depth analysis could feed discussions in Parliament and Council.

The Annex to the Communication suggests some areas of law or specific measures for the inter-institutional dialogue on their application.

##### **4.2. Increased transparency**

Transparency and improved communication are key to relations with the European institutions and the broader public. Citizens, businesses, civil society, national and regional administrations, the European Parliament and national parliaments are all interested in the application of law. The Commission already publishes much information in its annual report. It provides summary information to complainants on all main steps taken on their complaints, assists the Committee on Petitions, informs other committees in Parliament on-demand and responds to Questions and Ombudsman inquiries.

The Commission will continue to increase transparency, making general information available on the performance of the new approach to dealing with correspondence, enquiries and complaints. It will ensure that summary information is published on all stages of infringement proceedings from the letter of formal notice as they progress. An existing database will be adapted for this purpose. In accordance with rules on access to documents and the need to ensure the effectiveness of the infringement procedure, the Commission will continue to maintain confidentiality on the content and timing of contacts with Member States while the relevant issues are under investigation.

The Commission will also publish more information on: approaching deadlines for implementation and performance of Member States in implementation and communicating correlation tables. It will initiate action to provide open access to its electronic data base containing transposition notification and correlation tables pending the completion of

arrangements for access to national databases. The Commission will continue to develop the EU law portal on the Europa website.

#### **IV. CONCLUSION**

The timely and correct application of Community law is essential to maintain a strong foundation for the European Union and ensure that European policies have intended impacts, bringing benefits to citizens. The European institutions and Member States share an interest in keeping this foundation strong and need to make an even stronger commitment to assign high priority to the correct application of law.

This communication describes the actions which the Commission will take to improve the application of Community law as well as the contributions sought from Member States, Parliament and Council in this regard.

Annex Areas of Community law proposed for evaluation