
From: Geoffrey Kealty [geoffkealty@hotmail.com]
Sent: 28 April 2009 01:05
To: Jose Barroso
Cc: antonio.tajani@ec.europa.eu
Subject: Plenary Session, Friday April 24th 2009

Dear Mr. Barroso,

Re: Directive 91/271/EEC

I have today listened with interest to last Friday's debate on the application of Community Law and would like to make some comments on what Mr. Tajani said, when speaking on behalf of the Commission in your absence.

He referred to the importance of National Courts in the enforcement of Community Law, which is all well and good providing the Community Law is correctly transposed in all the Member States and if the legal systems work reasonably well.

I think it is common sense that if National Courts are to play an important role in the enforcement of EU legislation, the first priority of the Commission must be to ensure that Community Law is transposed on time and correctly. If for whatever reason a Member State does not transpose a Directive correctly it is not therefore acceptable that the Commission turns a blind eye and does nothing about it for years.

As soon as the Commission becomes aware of an incorrect transposition it has the responsibility and the obligation to do whatever is necessary to correct the matter, as quickly as possible and certainly not to look for feeble excuses for having done nothing and even resort to blatant lies.

In the case of Spain and the Directive 91/271/EEC no case can be taken in the Spanish courts using the Spanish transposition, as regards the failure to provide collecting systems, because as you know the Spanish transposition intentionally excludes the agglomerations themselves. As you also know the previously existing Spanish legislation (Law 7 1985) has a get out clause written into it for local authorities to escape any responsibility. Therefore the incorrect Spanish transposition effectively robbed EU citizens of their rights to Community Legislation, which you also know.

You should also remember that in my letter to you dated July 16th 2008, I asked you to give me details of legislation with which I could enforce my rights through the Spanish courts, but that letter was never answered, which suggests to me that you and the Commission are perfectly aware that the Spanish Government made sure that there was no possibility of this Directive being enforced through the Spanish courts, at least as regards the lack of collecting systems.

Apart from all that, the Spanish legal system is so slow that justice in my opinion does not exist. Slow justice is synonymous with no justice and I think that suits Spanish politicians, as otherwise something would have been done about it long ago.

If the Commission expects citizens to enforce Community legislation through the Spanish courts which would take years, then I think there is little point in having Community Law at all. As Diana Wallis said in the debate, What is the point!

In conclusion, this is without doubt a case for enforcement through the ECJ, but for some reason which the Commission is not sufficiently transparent to explain, it would appear that that is not going to happen.

28/04/2009

You may also be interested to know that in the debate the word transparency, referring in reality to the lack of it, was about the most commonly used word by the speakers, which doesn't say much for the MEPs opinion of the Commission.

As you know, in my efforts to get some answers from you I have only encountered the equivalent of a brick wall, which says very little for your beliefs in citizens' rights to transparency.

Yours sincerely,

Geoffrey Kealty

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From: Geoffrey Kealty [geoffkealty@hotmail.com]
Sent: 19 April 2009 21:53
To: MARTINEZ ARAGON Jose
Cc: HIRSCH-ZIEMBINSKA Marta
Subject: Complaint Ref: 3418/2008/JMA - Your email of Friday 17th Feb.- Petition 0274/2006
Attachments: Reply from Mr. Garcia 18.2.09.tif; Analysis of definitions.tif; email received 26.02.09.doc; Mr Garcia Burgués 27.2.09.doc; Reply to letter dated 27.02.09.doc

Dear Mr. Martinez,

Thank you for your email, which I was rather surprised to receive considering that you never responded to my email of Feb. 5th 2009 at that time. I did in fact make a written complaint to the Committee on Petitions on Feb 9th 2009, regarding your email of Feb 4th 2009 as I considered it to be outrageous and still do, as my complaint has for a very long time been about the changed definition, which is Article 2, therefore I did not raise any new issues.

As regards my letter of the 15th January 2009, I received an unacceptable partial reply as usual, from Mr. Garcia Burgués dated 18.02.09 answering only the part of my letter referring to the experts analysis of Article 2 of the Directive. (attached)

As the analysis (attached) did not include any reference to collecting systems I sent Mr. Garcia an email on Feb 23rd and received the attached reply from his secretary dated Feb 26th.

I then sent the attached letter dated Feb. 27th 2009 and received the attached disgraceful reply from Mr Garcia Burgués, which is totally untrue as I had never ever asked the Commission for that information before, demonstrating that I had at last found the truth. It would seem that the Commission agreed the changed definition with the Spanish Government, I assume without the consent or approval of the Parliament.

I have not sent him any more emails or letters, because it is a total waste of time, as the senior officials in the Commission (Mr. Gammeltoft, Mr. Bloech and Mr. Garcia Burgués) do not tell the truth, are evasive and have no respect for EU citizens democratic rights or their rights to transparency and they seem to think that they are untouchable. Hopefully we will see in due course whether or not they are.

Unfortunately, I have very little hope of this matter ever being satisfactorily resolved through the official channels, although I still have some hope that the Committee on Petitions will one day do, what they should have done long ago and make a correct and just resolution.

My Petition has now been ongoing for three years and since my statement to the Committee on September 13th 2007 it has been obvious that the transposition is incorrect. In addition, according to Mr Bloech the Commission has always cooperated with the Committee on Petitions, therefore I must assume the Committee has been given information which I have been refused. Therefore I cannot understand why the Committee is still sitting on the fence, although I do appreciate that it is a very difficult Petition, as I assume that it is not normal that a Member State cheats EU citizens of their legal and democratic rights and the Commission turns a blind eye for so many years to total non-compliance.

In conclusion, I will leave it up to you to decide what resolution the ombudsman should make, although it is clear that the whole matter is far more serious than maladministration.

In May I shall be trying to get interest from the media on the matter, as I think it is the only way I will get some kind of justice although it won't be the justice I wanted and I believe I have a right to. That kind of justice is decided by the Courts of Law, but it is very clear that the Commission has no intention of referring this to the ECJ, due to its own implication in the

20/04/2009

matter.

Finally, there are one or two emails which I sent, which I cannot access now, but I think you should have, therefore I will send them separately.

If you need any more information I will be glad to help in any way I can.

Yours sincerely,

Geoff Kealty

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EUROPEAN COMMISSION

DIRECTORATE-GENERAL

ENVIRONMENT

Directorate A – Communication, Legal Affairs and Civil Protection

ENV.A.2 - Legal Implementation and Enforcement

The Head of Unit

 Brussels, **18 FEB. 2009**
 ENV A.2/JMS/cp - Ares (2009) 27020

 Mr. Geoffrey Kealty
Geoffkealty@hotmail.com
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 E-08757 Corbera de Llobregat (Barcelona)

Subject: Your e-mail of 16 January 2009.

Dear Sir,

Thank you for your above referenced e-mail, addressed to Mr Barroso, President of the European Commission, which was registered on 17 February 2009 (ref. Gestdem n° 979/2009) in order to be dealt with under Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

In said e-mail you request access to documents relating to the transposition by Spain of Article 2§5 of the Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (definition of "collecting system").

Enclosed you will find a copy of the document (in relation to Article 2§5) which I hope will meet your needs.

As stressed in our previous communication this document forms part of a study carried out by independent experts and does not necessarily represent the European Commission's views. I would draw your attention to the fact that it can in no way be reproduced or disseminated for commercial purposes unless we have first been consulted.

The Commission's views have been communicated to you in detail in the course of numerous exchanges with Mr Bloech, as he has explained to you in his e-mail of 6 February 2009 (ARES(2009) 22784).

Considering that the rest of your correspondence can be regarded as improper, as it is offensive, repetitive and abusive, I hereby inform you that, in line with the Code of Good Administrative Behaviour, the Commission reserves the right to discontinue any such exchanges of correspondence.

Yours sincerely,
 po *Julio Garcia-Burgués*
 Julio Garcia-Burgués

2 LEGAL ANALYSIS OF THE TRANSPOSING MEASURES FOR DIRECTIVE 91/271/EEC

Legislative competences concerning Directive 91/271 in Spain are under the Title of Environmental protection. According to Article 149.1.23 CE, the State is responsible for approving basic legislation, while the Autonomous Communities are enabled to approve additional protection laws. Royal Law Decree 11/1995¹³¹ transposes the UWWT Directive into Spanish Law and is developed by Royal Decree 509/1996¹³². Both legal instruments are complementary to other legislation as the regulation of water resources in Spain is complex.

Definitions

Almost all definitions were fully and accurately transposed into national law. However, we identified some inconsistencies:

- The definition of sludge regulated in Article 2(10) is effectively transposed in the Spanish legislation, but uses two different terms which are considered synonyms by the Dictionary of the Real Academia Española: “lodos” and “fango”. The Dictionary explains that “fango” is “sludge which is produced with earth settlements in places where water becomes stagnant”.
- The basic definition of estuary is correctly transposed into the Spanish legislation, but the Directive also requires MS to establish the outer (seaward) limits of estuaries for the purposes of this Directive as part of the programme for implementation in accordance with the provisions of Article 17 (1) and (2). We analysed the implementing program transposing Article 17 of the Directive, which is the Plan Nacional de Saneamiento y Depuración de Aguas Residuales, approved on 1995. It did not establish the outer limits of estuaries mentioned above¹³³. We researched in further legislation, but we did not identify any measure transposing the second part of this Article. Therefore, we consider this definition is not completely transposed into Spanish legislation.

¹³¹ BOE núm. 312 of 30 December 1995

¹³² BOE núm. 77 of 29 March 1996

¹³³ For further details on this Program see the Legal Analysis of Transposition of Article 17

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

Art.	EU Obligation	Corresponding national provision (legal ref. & art.)	Complete text of national provision (in language of Member State)	Translation into English of national provision	Fully in accord? (yes/no)	Notes/Problems
Art.2.5	'collecting system' means a system of conduits which collects and conducts urban waste water;	RLD 11/1995, Art. 2.(e)	e. Sistema colector: Todo sistema de conductos que recoja y conduzca las aguas residuales urbanas, desde las redes de alcantarillado de titularidad municipal, a las estaciones de tratamiento.	e. 'collecting system' means a system of conduits which collects and conducts urban waste water from the sewage system, owned by a municipality, to the waste water treatment plant.	Yes	Effective transposition.

FW: Directive 91/271/EEC - Petition 0274/2006

From: **Agnès.MARTIN@ec.europa.eu**
Sent: Thursday, February 26, 2009 2:55:33 PM
To: geoffkealty@hotmail.com
Dear Mr Kealty,

In reply to your question, it means that there is no identification of any other conformity problem with the definitions others than those indicated.

Best regards,

Agnès Martin

Secretary to Julio Garcia Burgues, Head of Unit
European Commission - Environment Directorate-General
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Please consider the

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27th February 2009

Dear Mr. Garcia Burgués,

Further to the email I received today from your secretary, with the attached analysis of the definitions done by the independent experts, which surprisingly makes no reference to the definition of a collecting system.

As I myself have some experience in proof reading translations from Spanish to English, I am of the opinion that it would be **IMPOSSIBLE** for any proof reader to fail to see the difference between the original 12 word definition in the Directive and the 25 word definition in the Real Decreto-Ley 11/1995.

In the short analysis, which your secretary told me is the complete analysis of the definitions, the experts enter into such detail that they compare the synonyms "lodos" and "fangos" used to define sludge. That suggests to me that the experts were competent and could not have missed the changed definition had it existed, which also makes me think that they were not comparing it with the original definition in the Directive.

That would also explain why they considered Article 3 to have been transposed correctly.

Therefore would you please send me the **exact text** of the definition of a collecting system against which the independent experts compared the definition in the Real Decreto-Ley 11/1995.

As you know, Mr. Bloech confirmed that the Spanish definition was different from the definition in the Directive, but denied having said that it was incorrect, which I must admit he has never said in so many words.

I now strongly suspect that the powers that be (or were in 1995) in the Commission agreed with the Spanish Government the changed definition, as the Spanish Government refused to finance local authorities' compliance, in any way shape or form, with the Directive, due to the extent of the problem which existed in urbanisations in Spain, even though the

administrations were responsible for the lack of sewers and other infrastructures in the urbanisations.

That would explain:

- 1) Why Spain did not transpose the Directive until December 28th 1995.
- 2) Why the Spanish Government was able to change the definition, knowing that it would not be rejected by the Commission in 1995/1996 or later.
- 3) Why the Commission has never supported my Petition.
- 4) Why Mr. Bloech who I considered to be a decent bloke when I met him has not confirmed that the definition is incorrect, because it is the "correct" transposition for Spain.
- 5) Why Mr. Gammeltoft and yourself have been unable to say that the transposition is incorrect, when it is so obviously different from the Directive approved by the European Parliament and therefore definitely incorrect.
- 6) Why the Commission has had to make the absurd claim that Article 26 of the Spanish Law 7/1985, itself a disgraceful piece of legislation, made the transposition correct, when a law made in 1985 and not amended to make it comply, could never do so.

I have the intention of making some very serious allegations to the European press shortly, therefore it is essential that you send me as soon as possible the exact text referred to above, as I would not like to make any allegations against important people which are incorrect and not fully true.

I am now sure that I have at last discovered the truth, as it explains everything.

Finally, as you should be aware doing an analysis of the transposition in 2007 was a rather strange thing to do, as the relevant analysis is in fact the one which should have been done when the Spanish Law was communicated to the Commission, as required by Article 19 of the Directive. I have already asked President [Barroso](#) for a copy of that, but I am still waiting for it.

I trust you will understand the importance of sending me the exact text used by the experts, as quickly as possible.

Yours sincerely,

Geoffrey Kealty

RE: Directive 91/271/EEC and Petition 0274/2006

From: **Julio.Garcia-Burgues@ec.europa.eu**

Sent: Friday, February 27, 2009 5:07:07 PM

To: geoffkealty@hotmail.com

Dear Mr. Kealty,

The Commission has already given its reply to you on the point you raise. We therefore consider correspondence on this specific issue as repetitive, and will discontinue it in line with the Commission Code of Good Administrative Behaviour.

There will be no further reply on this issue.

Yours sincerely

Julio García Burgués
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