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REPORT

on the Commission's seventeenth annual report on monitoring the application of Community law (1999)
(COM(2000) 092 – C5-0381/2000 - 2000/2197(COS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Ioannis Koukiadis

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PROCEDURAL PAGE

By letter of 23 June 2000 the Commission forwarded to Parliament its seventeenth annual report on monitoring the application of Community law (1999) (COM(2000) 92 – 2000/2197(COS)).

At the sitting of 4 September 2000 the President of Parliament announced that she had forwarded this report to the Committee on Legal Affairs and the Internal Market as the committee responsible and to all the committees concerned for their opinions (C5-0381/2000).

At its meeting of 13 September 2000 the Committee on Legal Affairs and the Internal Market appointed Ioannis Koukiadis rapporteur.

It considered the Commission's report and the draft report at its meetings of 24 April 2001, 29 May 2001, and 26 June 2001.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman, Willi Rothley, Rainer Wieland, Ward Beysen, vice-chairmen, Ioannis Koukiadis, rapporteur, Maria Berger, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Othmar Karas (for Antonio Tajani, (pursuant to Rule 153(2)), Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Hans-Peter Mayer, Manuel Medina Ortega, Bill Miller, Astrid Thors, Feleknas Uca, Diana Wallis, Joachim Wuermeling, Christos Zacharakis and Stefano Zappalà.

The opinions of the Committee on Employment and Social Affairs and the Committee on Petitions are attached.

The report was tabled on 13 July 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

Resolution of the European Parliament on the seventeenth annual report from the Commission on monitoring the application of Community law (1999)

(COM(2000) 92 – C5-0381/2000 – 2000/2197(COS))

The European Parliament,

– having regard to the Commission's seventeenth annual report on monitoring the application of Community law (1999) (COM(2000) 92),[1]

– having regard to the second annual survey on the application of, and respect for, environmental law – January 1998 to December 1999,

– having regard to petitions Nos 429/2000 and 555/2000,

– having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinions of the Committee on Employment and Social Affairs and the Committee on Petitions (A5-0250/2001),

A. whereas the task of the Commission's annual reports on monitoring the application of Community law is essentially twofold, namely: to establish to what extent Member States have transposed and properly applied directives and to account for the Commission's use of its discretionary powers to initiate violation proceedings,

B. whereas for all the directives applicable the average rate of communication of transposal measures by all the Member States is 94.53%, but account must be taken above all of the effective implementation of directives in national legislation,

C. whereas the consistent application of Community law in each country constitutes a primary precondition for the smooth operation of the single market and the substantial and continuing disparities between Member States regarding the application thereof mean that the *acquis communautaire* is incomplete,

D. bearing in mind that one of the reasons for the poor implementation of Community law is the inability correctly to understand secondary Community legislation,

E. whereas the enlargement and consolidation of the Community call for a re-evaluation of the procedure for drawing up the Commission's annual reports on monitoring the application of Community law and the role of these reports,

F. whereas the Commission sent 1075 letters of formal notice in 1999,

G. whereas the number of complaints received by the Commission services has increased by 16% and the number of petitions resulting in the initiation of proceedings for non-compliance has steadily risen and the state of application of Community law thus casts a shadow over the

[1] OJ C 30, 30.1.2001, p. 1

future of the single market,

H. whereas the right to petition the European Parliament enables EU citizens to engage in dialogue with the men and women whom they have elected and who represent them, to provide them with information on cases which they consider to represent incorrect applications of Community law, and to ask them to remedy the problems;

I. whereas this dialogue must be both encouraged and further developed, since it is a basic precondition for citizen confidence in the European institutions;

J. whereas the judgements of national courts referred to by the Commission concerning the right of individuals to compensation owing to losses caused by the failure of Member States to meet their obligations under Community law still leave much to be desired,

K. whereas the unappealable judgments handed down by national courts which resort to the theory of the 'acte clair' to refuse to ask prejudicial questions is a cause for serious concern,

L. whereas the number of judgments handed down by the European Court of Justice establishing a violation of Community law by the Member States which have not yet been implemented remains high,

M. whereas the proper and effective application of Community law constitutes one of the most basic criteria for assessing the credibility of the European Union and strengthening European citizenship,

N. bearing in mind that Community law is no longer simply a branch of law, but has penetrated all the individual branches of law and requires systematic knowledge by legal practitioners,

O. whereas the European Union is grounded on the principle of the rule of law, a principle which is common to the judicial systems of all the Member States, and the Member States must be the custodians *par excellence* of this principle,

P. bearing in mind that various forms of violation occur, each with its own specific features, and the reasons for each category of violation are different,

Q. whereas some Member States deliberately fail to transpose Community legislation in the manner prescribed,

R. whereas the recent acquisition of a 20% stake in Montedison by Electricité de France (EDF), a French state-owned monopoly in the electricity sector, is part of a policy of expansion on the part of EDF, which is taking advantage of the incomplete application by France of Directive 96/92/EC[1],

1. Calls on the Commission to undertake a systematic evaluation of the causal links between the various reasons for violations and the different forms of violation of Community law and in

[1] *OJ L 95, 10.4.1997, p. 31.*

the light of this to seek appropriate measures to reduce violations;

2. Calls on the Commission to include its evaluation of statistical data contained in the annual report;

3. Calls on the Commission to do everything within its power, notably by imposing stricter deadlines on Member States, to speed up the procedure for dealing with complaints or petitions;

4. Calls on the Commission to consider the simplification of Community law as a matter of priority, notably through the SLIM initiative, and to present a complete programme of codification with binding deadlines;

5. Calls on the Council and the Commission, in conjunction with the European Parliament, to lay down new rules for the consideration of petitions and re-examine the procedure in order to make the substantial processing of citizens's petitions more effective; reiterates its wish to see closer cooperation between the Committee on Petitions, the Council and the Commission, on the basis of a new interinstitutional agreement, thus making it possible to act effectively on all occasions when a petitioner lodges a justifiable complaint over non-compliance with Community law; reminds the Council of Parliament's previous requests to be present at its meetings in cases of serious infringements of Community law;

6. Regrets that, of the 53 directives that came into force in the field of European social law, only 38 have been incorporated into national law in all Member States and calls on the Member States to expedite the procedures for the remaining directives;

7. Points out that all four cases in the review period where the Commission has for a second time opened infringement proceedings against a Member State for failure to comply with a European Court of Justice judgment concern aspects of social law; encourages the Commission firmly to apply Article 228(2) of the Treaty; calls on the Commission to threaten to impose a fine that would have a sufficiently dissuasive effect;

8. Calls on the Commission, taking into account the present state of application of Community law, to consider in detail the impact of future enlargements on the effectiveness of the present system of transposing directives and monitoring the application thereof;

9. Calls on the Commission, in the light of experience to date in applying Community law and bearing in mind the increased problems resulting from the enlargement and consolidation of the Union, to draw up as a matter of top priority a programme of measures seeking to apply Community law effectively, if necessary by proposals for amendments to the Treaties, and in particular to draw up a list of the entire *acquis communautaire*;

10. Calls on the Commission to examine in greater detail the unappealable decisions handed down by national courts invoking the theory of the 'acte clair';

11. Calls on the Commission to give separate attention to the issue of 'voluntary' violations of Community law in which Member States simply delay implementation, and to make appropriate proposals;

12. Calls on the Commission once again to endeavour to find political solutions and, in particular, to consider the possibility of proposing the revision of those elements of Community legislation which are most frequently the occasion of complaints concerning breaches of Community law, by more than one Member State;

13. Draws attention to the disproportionate number of infringement cases in the area of freedom of movement (Regulation 1612/68) and coordination of social security schemes for migrant workers (Regulation 1408/71) and to the increasing number of problems faced by cross-border workers and urges therefore that the Council should at last adopt comprehensive rules concerning the free movement of persons and expedite its work on the adaptation and simplification of Regulation 1408/71;

14. Notes that the number of infringements in the field of the equal treatment of men and women is still high, particularly as regards the protection of pregnant women, in respect of which the Commission forwarded reasoned opinions in 1999 to five Member States relating to the poor implementation of Directive 92/85/EEC;

15. Calls on the Member States and the Commission to put forward proposals imposing automatic penalties upon Member States which do not transpose Community legislation in the manner prescribed;

16. Recalls that Parliament attaches particular importance to the rigorous transposition of the electronic commerce directive, as emphasised in its legislative resolution at second reading, and calls on the Commission and Member States to resist any attempts to roll back the electronic commerce directive or dilute its provisions, in particular with respect to the country of origin principle and the liability of Internet intermediaries;

17. Regrets that (a) the number of five states which have failed to implement the Framework Directive 89/391 – even though Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 – is particularly high, and (b) the transposition of the individual directives adapting the corpus of existing law in the field of safety and health at work is proceeding very slowly; calls on the Commission to urge the Member States to speed up the transposition of these directives and to assign more staff to this policy area, to ensure that transposition procedures are systematically checked;

18. Calls on the Commission to consider the possibility that national parliaments may not discuss the annual report and to ensure that national parliamentary controls take place and to forward their conclusions to the Commission, the Parliament and the Council;

19. Calls on the President of the Council to publish a report on compliance with Community law and the transposition of this law by the Member States;

20. Reiterates its appeal to the Commission to add to the annual report sections on the application of Article 95(4) of the Treaty and on the application of the international agreements adopted by the Community and the legislation resulting from such agreements;

21. Calls on the Commission once again to include in its future annual monitoring reports on the application of Community law a section on the petitions forwarded to it by the Committee on

Petitions;

22. Calls on the Commission to encourage the national authorities to request technical aid from the Commission in order correctly to transpose Community law:

23. Calls on the Commission to take whatever measures are necessary to ensure the full application of Directive 94/80 on the right to vote and stand as a candidate in municipal elections and Directive 93/109 on the right to vote and stand as a candidate in elections to the European Parliament;

24. Expects the Commission to reach agreement with the Member States on a definition of precise criteria for delimitation of occupations carried out in a self-employed or employed capacity that are subject to national social security systems, so as to prevent complaints, especially by those involved in teaching;

25. Calls on the Commission, in view of numerous complaints by students and trainees, to remove the barriers to educational mobility that still exist;

26. Calls on the Commission to intervene in specific cases of the poor application of Community law by the national administrations;

27. Calls on the Commission to investigate whether particularly lower courts in the Member States are properly applying Community law;

28. Calls on the Commission to take all measures that the Community legal system allows to put an end to the violations of Community law and of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996[1] concerning common rules for the internal market in electricity, with a view to obviating any imbalances which might thwart the purposes for which the directive was adopted: the creation of a genuine internal market in the electricity sector, the completion of a competitive electricity market, the liberalisation of national markets and the prevention of any abuses of dominant positions and predatory behaviour;

29. Takes the view that the Commission should give increased priority to the swift electronic dissemination of Community law in a comprehensible and easily accessible form, particularly through the Internet, to non-governmental organisations and citizens particularly in remote regions;

30. Calls on the Commission to step up work to put the main legal instruments in force into electronic form and to make it possible to access them by Internet;

31. Calls on the Commission to draw up a list of all the reports on the application of Community law - both general and sector-based - by the national authorities of the Member States and the countries which are members of the European Economic Area;

32. Calls on the legal authorities in the Member States to ensure that there is no discrimination in the manner in which legal aid is made available between cases which are exclusively

[1] *OJ L 95, 10.4.1997, p. 31.*

concerned with national law, and those which involve Community law;

33. Notes that with regard to the free movement of persons, problems in the application of Community law are due more to defective implementation by the authorities of the Member States than to lack of transposition; therefore calls on the Commission to intervene in individual cases with the Member States involved;

34. Calls on the Commission to mention in the annual report the follow-up it has given to European Parliament proposals on improving the methods for the correct application of Community law and, where it has not followed them, to state the reasons why it did not do so;

35. Reiterates its view that citizens who are well-informed and conscious of their rights under Community law play a key role in the comprehensive and sound application of Community law and therefore also welcomes initiatives such as Europe Direct and strongly supports them;

36. Calls on the Member States and the Commission to introduce a genuine transparency policy - following the fruitful example of the Commission's press releases and the Committee on Petitions' passing on details to the media of possible delays, obstructions or refusals in providing information on petitions by the Member States' responsible authorities - with the aim of securing an attitude of acceptance and confidence vis-à-vis the Community institutions on the part of the citizens of the EU;

37. Instructs its President to forward this resolution to the Commission, the Council, the Court of Justice, and to the parliaments and governments of the Member States.

EXPLANATORY STATEMENT

Introduction

The Commission's annual reports on monitoring the application of Community law can be seen as snapshots of a continuing process in which the Commission attempts to ensure that the legal authority of the Communities is respected. The Commission and its departments should be expressly congratulated on their efforts.

Consideration should be given to measures to make better 'external' use of the Commission's significant accomplishments.

This report is the first to be drafted for this new decade, which is also the beginning of a new century, and I think that it could turn out to be an opportunity to take a more integrated approach to the problems which have so far been associated with the application of Community law, and the beginning of a radical rethinking of the whole approach to the subject, in view of three new factors: impending enlargement, on an unprecedented scale, the quest for the 'deepening' of the EU and the ever increasing rate of legislative intervention. Just as it was thought necessary to adapt the working of the EU bodies through a revision of the treaties, in the same way a new basis must also be created for the proper application of Community law on which the single economic area and uniform application of this law can be established. The need to eliminate the delays in transposing directives and, as far as possible, to forge a uniform interpretation of Community law, with the elimination of national opposition, should be absolute priorities if we do not wish to have various internal markets functioning in parallel at various speeds, various rates of efficiency and, above all, with unacceptable discrimination and differentiation at the expense of certain countries.

We only have to consider the consequences in one single country of the failure to apply one single directive, such as the directive on the recognition of professional skills, which at best estimates has taken four or five years, in order to perceive the adverse effects that result for the free movement of persons. We must seek more forward-looking solutions. Change of this kind cannot be effected from one year to the next. It needs gradual application over a certain period of years, and with a view to the new Intergovernmental Conference, may require certain amendments to the treaties. We must start work straight away on this issue.

There is a rich fund of experience of the way Community law has been applied to date, contained in previous reports as well as this one, and perhaps we should at some point work on a more integrated evaluation covering a longer time period, such as a decade. In a more significant evaluation of this kind we would also have to include an assessment of the extent to which the Commission has to date accepted the suggestions of the European Parliament, as expressed in previous reports on improvements to ways of applying Community law. The Commission should at least, for those suggestions which it has not adopted, provide a reasoned opinion justifying its position so that Parliament may make further decisions.

In addition, as emerges from the reports of previous years, in spite of the improvements recorded concerning the extent to which Community law is applied, the trend is not one of consistent progress, since changes for the worse are also observed. Primarily however, apart from the

expected variations observed in statistical data, the causes and effects of violations remain the same and the general picture cannot be described as a clear improvement. In short, the extent of the problem continues to be about the same. These violations of Community law take many forms, including, for instance, delays in transposal, direct or indirect violations by the legislator, violations of the letter or the spirit of Community law, omissions, administrative malfunctions and difficulties experienced by national judges in incorporating new concepts and new arrangements into their traditional legal order.

The origin of these violations is not uniform. They are qualitatively different, and there are also different reasons behind them. Sometimes they are due to bureaucratic obstacles, sometimes to the negative stance of the authorities – as is primarily the case for free movement of people, the prohibition of discrimination and issues connected with equality between men and women, among others – and sometimes to a failure to understand the content of an arrangement, sometimes to corporate pressures to prevent an unfavourable arrangement and sometimes to general fears and worries over the incursions of Community law, which is still perceived in some quarters as foreign law.

Part I – The European Commission's activities

1. Trends

These are the key data for 1999:

- The Commission sent 1075 letters of formal notice, similar to the figure of 1101 letters of formal notice in 1998. These last two years show a reduction in comparison with the 1461 letters in 1997.
- The number of reasoned opinions fell in 1999 to 460, after having doubled between 1997 and 1998 from 331 to 675.
- The number of referrals to the Court of Justice rose: 178 cases were referred in 1999, compared with 123 in 1998 and 121 in 1997.
- The number of complaints received by the Commission rose by 16%, from 1128 in 1998 to 1305 in 1999. The number of cases detected by the Commission fell from 396 in 1998 to 288 in 1999, of which 16 resulted from parliamentary questions and 10 from petitions.
- The number of termination decisions fell slightly, by 3.2%, from 1961 in 1998 to 1900 in 1999.

One would have expected someone from the Commission to have made an evaluation of the reasons and circumstances influencing these statistical data. If such a step is particularly difficult for the Commission, it could have set up a group for on the spot monitoring with the main aim of obtaining a precise picture of the reasons for failure to apply Community law.

In general, the rate of transposal of directives fell slightly in 1999 in all the Member States. Currently it is estimated that the average transposal rate is 94.35%, representing a slight fall in comparison with 1998, when the average was 95.70%.

The accomplishments of Italy in 1999 should be emphasised; in spite of the general fall in transposal rates, Italy managed to transpose 94.15% of directives in 1999, thus jumping from last but one position in 1998 to tenth in 1999.

In 1999, the Commission adopted four decisions to refer cases to the Court of Justice for the second time with requests for imposition of a penalty payment and it actually asked the Court to order one Member State to make a penalty payment. The threat of penalty payments had a dissuasive effect, since four cases were terminated. However, four other cases were still before the Court in 1999. At a time when Europe is attempting to stress the importance of the European social model, it is truly worrying to find that the four decisions taken in 1999 to refer cases for a second time concerned social policy issues.

Annex V of the Commission report, entitled 'Judgments of the Court of Justice up to 31 December 1999 not yet implemented' lists 76 judgments not yet implemented, a number which is rather high and cannot be justified, since the Member States are required to be guardians of legitimacy. The fact that these are violations by states and not by individuals should be given particular emphasis, since they have practical implications which affect European citizenship, and secondly - a point which so far has escaped notice – are the main source of the erosion of fundamental rights, which we worked on the adoption of the Charter to safeguard.

The delays in implementation of the Court of Justice's judgments and the necessity to impose penalty payments for their non-implementation reduces the credibility of the decisions of the Community courts.

A reduction of 35-40% is apparent between all the Commission's procedural stages. Thus, there is a reduction of 37% between the number of letters of formal notice and the number of reasoned opinions; similarly, the number of referrals under Article 226 is 38.5% lower than the number of reasoned opinions. It seems that almost all the Member States feel that this transitional period for the implementation of directives, between the formal notice given by the Commission and the application of Article 228, is a long one. It is therefore clear that the Member States are exploiting the length of the period. This forces us to consider the effects of such a period on the unity of European law. The pursuit of this unity is necessary since otherwise we will have great inequalities in the working of the internal market with marked differentiation in law and order between different countries.

2. Problems encountered in certain specific sectors

(a) Internal market

The rapporteur would like to point out various problems in certain sectors falling within the area of responsibility of the Committee on Legal Affairs and the Internal Market.

In 1999 the Commission evaluated the implementation of the Action Plan for the Single Market. This Plan has enabled significant progress to be made both on the legislative and non-legislative fronts, which should be welcomed.

However, it would also have been interesting to look at performance with regard to practical implementation of Community legislation on the recognition of diplomas and professional qualifications, to see whether, as well as being formally transposed, the provisions are being properly applied. It is true that problems in implementing Community law are more often caused by incorrect application by national authorities than by a lack of transposal. Additional efforts should be made to ensure that the legislation is properly, fairly and effectively implemented.

The single market scoreboard for November 1999 shows that the percentage of directives not yet transposed has fallen by half in two years. Nonetheless, it is disappointing that five Member States still have a non-transposal rate of over 5%. The 'fragmentation factor' – the percentage of directives on the single market not yet transposed in one or more Member States – had been reduced by November 1999 to 12.6%. The vital importance of correct and timely transposal into national law of all legislation on the single market must therefore be stressed; in 1999 the Member States had not yet succeeded in completely catching up on the backlog in adopting transposal measures.

(b) Free movement of persons

The Commission should be called on to take all complaints in this field seriously and take appropriate steps to apply pressure, and if necessary to speed up appeals to the Court of Justice for all cases of non-transposal, incomplete transposal or incorrect application of Community law.

Several decisions of principle by the Court concerning the free movement of persons[1] and direct taxation[2] should be welcomed. At the same time, it should nonetheless be noted that legal proceedings may be off-putting for individuals because of their length and complexity.

It is depressing that, of the three freedoms relating to free movement, violations in connection with the free movement of persons continue to take precedence, since this means the Member States do not fully believe in a single integrated market. The problem of cross-border workers falls within the same category. The number of violations and, by extension, of refugees, continues to be particularly high, although the fundamental problems are well-known and should not be still awaiting action.

The Commission has adopted a report on the implementation of Directives 90/364, 90/365 and 93/96, on the right of residence of students, pensioners and other persons not in employment, in which it stresses the need to improve information provided to citizens on their rights and to continue to ensure that existing Community law is observed, while making it more transparent.

In a communication of 19 July 1999, the Commission also clarified the scope and requirements for the application of Directive 64/224, which specifies the circumstances in which the Member States may restrict the right to free movement of persons on grounds of public policy, public security or public health. These guidelines for proper interpretation and application of this directive, designed to reduce disparities between the Member States in implementing it, and to take into account the introduction of the concept of EU citizenship, should be welcomed.

All the Member States have transposed Directive 94/80 on the right to vote and stand as a candidate in municipal elections for citizens of the Union residing in a Member State of which they are not nationals. On 27 January 1999 Belgium passed legislation transposing this directive into the national legal system. However, it should be noted that there are cases of incorrect transposal of

[1] CJEC, judgment of 19 January 1999, Case C-348/96 *Criminal proceedings against Donatella Calfa* [1999] ECR I-11; judgment of 21 September 1999, Case C-378/97 *Wijsenbeek* [1999] ECR I-6207; judgment of 23 November 1999, Case C-376/96 *Leloup-Arblade* [1999] ECR I-8453.

[2] CJEC, judgment of 26 January 1999, Case C-18/95 *Terhoeve* [1999] ECR I-345; judgment of 29 April 1999, Case C-311/97 *Royal Bank of Scotland* [1999] ECR I-2651; judgment of 8 July 1999, Case C-254/97 *Baxter* [1999] ECR I-4809; judgment of 14 September 1999, Case C-391/97 *Gschwind* [1999] ECR I-5451.

this directive, as well as Directive 93/109 on the right to vote and stand as a candidate in elections to the European Parliament.

(c) Environment

19.26% of cases where infringement proceedings were started concern the environment. Reasoned opinions were sent in 165 cases, representing 20.22%. The Article 228 penalties procedure continues to be applied to environmental law far more than to any other area.

One case in this field (decided in 2000[1]) was the first in which the Commission asked the Court to impose financial penalties on Member States who had not implemented a judgment which had ruled that they had failed in their obligations under the Treaty.

Part II – Access to Community law

In 1999, the Court of Justice received 255 requests for preliminary rulings from national courts who had difficulties in interpreting Community law or doubts concerning the validity of Community acts. This poses a dilemma: should national courts be encouraged to ask for preliminary rulings, which might increase the Court's workload, or should it be more cautious in this regard? The rapporteur considers this to be a false dilemma. The national courts must be encouraged to ask for preliminary rulings in all cases where there are genuine problems concerning interpretation or validity. A distinction should, however, be drawn between the former and those cases where inadequate training in Community law or lack of necessary information results in national courts asking questions needlessly. Additional efforts could be made to improve the dissemination of knowledge of Community law.

The discrepancies in the number of requests for preliminary rulings from each Member State leads us to conclude that in some Member States, judges and lawyers are not sufficiently familiar with Community law. Another theory is that the law of Member States whose national courts who do not ask for preliminary rulings is very close to Community law and that therefore the directives are transposed without difficulty. It may be that such an explanation is correct, but it should be stressed that only Member States with a high transposal rate may use this argument. To do otherwise would be contradictory.

1. <u>The procedural rights of complainants</u>

Complainants play a crucial procedural role: of 2270 cases opened by the Commission in 1999, 924 were the result of complaints.

It should be emphasised that there are two aspects to the rights of complainants: first of all, receiving an individual reply from the Commission – subject to the Commission's discretionary power to initiate proceedings for failure to fulfil an obligation (Article 226 EC); secondly, a formally correct and fair procedure. Under Article 255 EC, complainants' access to documents was to be improved, following proposals by the European institutions[2]. The wording of the Treaty

[1] CJEC, judgment of 4 July 2000, Case C-387/97 *Commission* v. *Republic of Greece*, not yet published.

[2] Code of conduct concerning public access to Council and Commission documents, adopted by the Council on 20 December 1993 (OJ L 340, 31.12.1993, p. 43), and by the Commission on 8 February 1994 (OJ L 46, 18.2.1994, p. 58). The European Parliament adopted a decision on public access to its documents on 10 July 1997 (OJ L 263,

on European Union also includes among the general principles of the EU the idea that decisions must be taken as openly as possible and as closely as possible to the citizen.

2. Recent developments in the case law of the Court of Justice concerning civil liability of Member States

The case law laid down in *Francovich* and *Brasserie du pêcheur* continues to apply. It lays down the principle by which infringement of Community law by national authorities may render the Member State liable. Member States are rendered liable when three conditions are met: the result prescribed by the Community legislation must entail the grant of rights to individuals, it must be possible to identify the content of those rights on the basis of the provisions of the Community legislation, and there must be a causal link between the breach of the State's obligation and the loss and damage suffered by the injured party. In fields where the Member States have a certain degree of discretion, they are rendered liable if the rule of law breached is intended to confer rights upon individuals, if there is a direct causal link between the initial action and the damage, and if the breach is sufficiently serious. This last condition is met in cases where a Member State manifestly and gravely disregards the limits on its discretion.

In the *Rechberger* case[1], the Court of Justice made a ruling concerning Directive 90/314 on package travel, package holidays and package tours. Article 7 of the directive provides that the travel organiser must provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency. In the above case, Austria had failed to transpose the directive in good time and in full. Consumers who had reserved travel did not benefit from any security following the bankruptcy of the travel organiser. The Court ruled that this breach of Community law rendered the Member State liable and required it to remedy the damage sustained by the plaintiffs.

However, the judgments given by the national courts listed by the Commission with regard to the liability of Member States are on occasion disappointing. With a view to obtaining further clarifications regarding developments in the case law, the European Parliament should ask the Commission to expand the section of the annual reports listing the most recent national case law on liability of Member States.

If the results of this review were to prove unsatisfactory, the Commission should embark on reflections on how to ensure this case law is followed.

3. Simplification, codification and consolidation

As mentioned above, faulty application of Community law has several causes. One major cause is that Community law, as it is drafted, contains ambiguities, inconsistencies, complexities and repeated amendments. For this reason the attempt set out as part of the SLIM initiative to draft proposals to simplify Community legislation should be further encouraged and improved. It is strange that while the Commission has entrusted the improvement of Community legislation to the

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25.9.1997, p. 27). Cf. the proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (COM(2000) 30 final), OJ C 177E, 27.6.2000, p.70

[1] CJEC, judgment of 15 June 1999, *Walter Rechberger, Renate Greindl, Hermann Hofmeister and others* v. *Republic of Austria* [1999] ECR I-3499.

SLIM initiative, it does not devote much space to it in its report and even avoids linking defective implementation of Community law with its own specific evaluation of weaknesses in Community law.[1] The importance of these observations should make us particularly interested in the recent Commission communication 'Review of SLIM: Simpler Legislation for the Internal Market'. The fact that to date, as observed in the 1996 Doorn report, only 14 sectors have been investigated and only a few proposals have been transformed into legislative proposals by the Council, in some cases only after considerable delay, should also be given special emphasis in the report which is the subject of this working paper, with the aim of reversing this state of affairs in coming years.

Within the framework of the initiative for simpler legislation for the internal market (SLIM), the Commission has adopted a report addressed to the Council and the European Parliament entitled 'Results of phase III of SLIM and monitoring of the implementation of recommendations from phases I and II'[2], which summarises the recommendations drawn up during phase III of the SLIM initiative, dealing with legislation in the insurance field, rules on the coordination of social security and the directive on electromagnetic compatibility, as well as the state of implementation of recommendations from phases I and II of this initiative.

Continuing its codification efforts (the procedure designed to repeal the acts which are being codified and replace them with a single act containing no change to the substance of the acts), the Commission has adopted eight codification proposals involving the repeal of 131 legislative acts and has consolidated for the purposes of information approximately 180 basic acts. These efforts are to be welcomed.

4. **The right of petition**

The report rightly attempts to link the application of Community law with the petitions mechanism, since petitions lead directly or indirectly to initial detection of cases of failure to apply Community law. The continually increasing number of petitions, which rose from 4236 during 1989-1994 to 6500 during 1994-1999, in combination with the number of petitions which resulted in the Commission initiating infringement proceedings, confirm the above observation. However, the report should have been more comprehensive on this subject. The petition mechanism is the chief one for recognising European nationality and the basic means for exercising rights as a European citizen. Strengthening it is the most reliable way of achieving European integration. At the same time it is the most practical method for uncovering loopholes in legislation, cases of incorrect application, deficiencies in administrative measures for implementing Community law and in general the bureaucratic obstacles to proper application of Community law. Special attention should thus be paid to the issue of delays in the consideration of petitions, which can be as long as a year, the large number of disputes from previous years still under consideration and, from a more general perspective - in regard to the Ombudsman - the procedural position of petitioners and complainants should be officially recognised. To this end, immediate priority should be given to implementing the European Parliament's resolution accompanying the Lambert report on the deliberations of the Committee on Petitions during the parliamentary year 1999-2000, and to the motion for a resolution on the petition at the dawn of the 21st century.

Part III – Suggestions for the drafting of the annual report in the future

[1] COM(2000)104
[2] COM(2000) 88.

1. Article 95 EC

The annual report does not contain any section indicating the use made of Article 95(4) and following by the Member States and the measures taken by the Commission in this field. It would be interesting to verify to what extent the Member States apply national provisions 'on grounds of major needs', in particular insofar as such derogations are contrary to the uniform application of Community law.

The rapporteur suggests that the Commission should introduce a special new section in its annual reports giving a summary of the activities of the Member States and the Commission under this provision.

2. Application of international agreements

The Commission's annual reports still provide no information at all concerning the application of international agreements to which the Community is a contracting party and the law which results from these agreements. It is difficult to imagine what justification there could be for this omission. Since they 'shall be binding on the institutions of the Community and on Member States' (Article 300(7) EC), their status lies in between the Treaty and secondary legislation. As a result, questions concerning the compatibility of secondary legislation and international agreements may well arise.

It will not be possible for the Commission to evade its responsibilities in this field, which is of increasing importance. Some time ago, paragraph 9 of Parliament's resolution on the 13th annual report requested the creation of a special annual report on Community law resulting from the EU's external undertakings.

Therefore, the Commission should be asked to draft a specific section in the annual reports on the EU's external undertakings.

3. Area of freedom, security and justice

The new areas of EU law, which often call for trans-pillar legal regulations, are developing rapidly. A detailed and thorough annual examination of this body of law is needed, particularly for the area of freedom, security and justice.

After the revision of the treaties at Amsterdam an increasing number of directives relate to two Community pillars. The fact that the legal basis of these directives is becoming increasingly complicated makes their application and their transposal by the Member States increasingly difficult. Within this context, therefore, Mrs Grossetête's proposal should be followed up. She was the rapporteur for last year's annual report, and proposed a special assessment by the Commission of the manner of transposal and application of this type of directive in order to allow us to pinpoint individual problems.

This new approach will permit a horizontal view of issues affecting various pillars, such as money-laundering or counterfeiting.

4. Towards a new approach

A policy designed to bring about a more correct and effective application of Community law must take into account all the aspects referred to above and must match the remedy in each case to the problem. Of course we cannot expect the total elimination of violations. However, given the fact that, when we refer to violations of Community law we refer not to individual violations by citizens but to violations of a collective nature which derive from the Member States, guardians of legality, the reduction of many of the types of violation we have referred to is both possible and necessary.

There is a need in several cases to increase the effectiveness of sanctions, to increase the means of applying pressure and, most of all, to devise new means of political pressure; psychological preparation for the assimilation of reform must be improved, new ways of monitoring the manner of application of the law need to be found through the creation of Community supervision services and the promotion of broader and more systematically-based cooperation with the national authorities. There is also a need for new bases for the training programmes of administrative and judicial authorities, with the provision of incentives for promotions. In parallel, the dissemination of information must be boosted in such a way as to make access to it genuinely possible, not just for organised centres or a certain elite, but for all local bodies and the NGOs in individual areas. Dissemination of information to ordinary citizens and to remote areas is the most important indicator of the EU's democratic legitimacy and of how close it is getting to the European people. This, however, requires a special education and funding programme and a programme to monitor the results.

However, we should not forget that the issue of correct or incorrect application of Community law is a particularly delicate one because it forms part of delicate balances between European identity and national sovereignty and comes up against the sensitivities of national sovereignty and national characteristics. On the other hand, if we take into account the fact that, according to the reports of recent years, it is the same countries which continue to have the best record in the application of Community law and the same countries which play a leading role in not applying the law, we must admit that the primary reason for not applying the law is the attitudes that certain countries have towards the adoption of Community choices. In other words, the failure to apply the law is deliberate. The problem is thus transformed into a political problem and the remedy requires strong political pressure. Therefore we must encourage the Commission in various ways and strengthen our support for it so that it can more easily take the initiatives needed to enforce application.

Incorrect transposal of a directive should set in motion procedures immediately after the expiry of the deadline set, since this type of violation can easily be verified through setting a short deadline for notifying the EU that the Member State has complied with the deadline for applying the Community legislation. If the Member State fails to give notification within the deadline the procedure should automatically be set in motion.

In some cases emergency procedures should be provided for, like those in national legal orders, with the possibility for the Community legal order to prevail until the disagreement has been definitively settled. Consideration could also be given to the possibility of preventive checks by Community bodies on the draft laws transposing Community directives. It is encouraging that with regard to the major issue of the swift legal settlement of disputes the Nice Treaty adopted a series of innovations which will make it easier for the legal system to dispense justice more quickly. Among these innovations is the flexibility acquired by the Court for its divisions to sit independently, the possibility for the Court of First Instance to hear certain questions referred for

a preliminary ruling and provision for an overall review by the Commission, in cooperation with the Court of Justice, of the division of responsibilities between the Court of Justice and the Court of First Instance.

Primarily, however, within the framework of increasing political pressure for the transposal of directives on time and in full, provision could be made that at every Summit meeting the Presidency should raise the matter of correct application of Community law prior to considering the various topics on the agenda. Given that the country holding the presidency in the first six months of 2001 is one of the countries with the best records in applying Community law, this practice could begin on the initiative of the Swedish presidency.

With regard to sanctions against a country which does not implement a court judgment, perhaps we could consider, in a future revision of the treaties, making it automatically compulsory for the Member State to apply the directive, as interpreted by the court decision, within some strictly defined deadline.

Similarly, in order to facilitate further the swift detection of violations and to strengthen the position of citizens we could also give consideration to the possibility of appeal to the European Court by recognised collective bodies representing the community.

There should be an awareness that no other action can contribute more to ensuring the credibility of Community bodies, motivating European citizens and developing the single market than improving the rate of correct application of Community law. If the ever-increasing numbers of violations of Community law are not dealt with in good time, the single market, with the new developments mentioned above, will turn into a fragmented market.

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Legal Affairs and the Internal Market

on the Commission's 17th Annual Report on Monitoring the Application of Community Law (1999)
(COM(2000) 92 – C5-0381/2000 – 2000/2197 (COS))

Draftsman: Manuel Pérez Álvarez

PROCEDURE

At its meeting of 5 October 2000 the Committee on Employment and Social Affairs appointed Manuel Pérez Álvarez draftsman.

It considered the draft opinion at its meetings of 5 December 2000 and 27 February 2001.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad and Marie-Thérèse Hermange, vice-chairmen; Manuel Pérez Álvarez, draftsman; Jan Andersson, Elspeth Attwooll (for Elizabeth Lynne), Regina Bastos, Alejandro Cercas, Luigi Cocilovo, Elisa Maria Damião, Anne-Karin Glase, Richard Howitt (for Proinsias De Rossa), Stephen Hughes, Ioannis Koukiadis, Thomas Mann, Claude Moraes, Tokia Saïfi, Ulla Margrethe Sandbæk (for Jean-Louis Bernié) and Helle Thorning-Schmidt.

BACKGROUND/GENERAL COMMENTS

Substance of the Commission report

Monitoring the application of Community law is a primary task assigned to the Commission by Article 211 of the Treaty establishing the European Community. The main tools used by the Commission to accomplish this task are the infringement procedure provided for by Article 226 of the Treaty and the second referral to the Court of Justice provided for by Article 228.

In its annual report on the monitoring of the application of Community law, the Commission assesses progress in the transposition of the Community *acquis* in the Member States and on cases concerning infringement of the Treaties before the Court of Justice.

General overview

The Commission reports that the number of complaints received and infringement cases in 1999 rose compared with the previous year. However, these data do not make it possible to reach specific conclusions on whether the situation is better or worse. The increase in the number of infringement proceedings (178 compared with 123 in the previous year) at first sight gives an impression of a deterioration as regards the transposition of Community law. However this figure does not take account of the continued development of the corpus of Community law and the number of new directives. It might also be argued that the rise in the number of cases before the Court of Justice is due to the national courts' increasing awareness of Community law (requests for preliminary rulings). The following should be noted:

- The Community average for the transposition of directives is 94.53%, slightly below that for the previous year (95.7%). For social affairs, however, the figure is somewhat lower: according to the Commission, only 38 of the 53 directives (71.69%) have been transposed in all Member States. Work still remains to be done …

- A favourable trend is that the time taken in dealing with complaints in general and the length of proceedings in particular is noticeably shorter.

- The number of cases in which the Commission has had to open a second case against a Member State for failure to comply with a judgment remains small. This clearly shows that the option of imposing fines offered by the Maastricht Treaty has had an effect. However, the committee finds it regrettable that all four new cases relate to social affairs!

The committee's view

Your draftsman does not believe that it falls within the committee's remit to comment on infringement cases before the Court of Justice. In the same way, because of the large number of cases concerning social law, your draftsman does not think it possible to embark on more detailed analysis of the areas where there are problems. However, he does think it appropriate to inform Members of the problems associated with the incorporation of Community law into national law and has thus included the relevant sections of the Commission report as an annex. It appears from these sections that there are still considerable problems in respect of freedom of

movement and coordination of social security schemes for migrant workers and in the application of the directives on safety and health in the workplace. There are also several cases before the court concerning the directive on working time and the provisions for the protection of pregnant workers and young workers.

CONCLUSIONS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Regrets that, of the 53 directives that came into force in the field of European social law, only 38 have been incorporated into national law in all Member States and calls on the Member States to expedite the procedures for the remaining directives;

2. Points out that all four cases in the review period where the Commission has for a second time opened infringement proceedings against a Member State for failure to comply with a European Court of Justice judgment concern aspects of social law; calls on the Commission to threaten to impose a fine that would have a sufficiently dissuasive effect;

3. Draws attention to the disproportionate number of infringement cases in the area of freedom of movement (Regulation 1612/68) and coordination of social security schemes for migrant workers (Regulation 1408/71) and to the increasing number of problems faced by cross-border workers and urges therefore that the Council should at last adopt comprehensive rules concerning the free movement of persons and expedite its work on the adaptation and simplification of Regulation 1408/71;

4. Expects the Commission to reach agreement with the Member States on a definition of precise criteria for delimitation of occupations carried out in a self-employed or employed capacity that are subject to national social security systems, so as to prevent complaints, especially by those involved in teaching;

5. Calls on the Commission, in view of numerous complaints by students and trainees, to remove the barriers to educational mobility that still exist;

6. Regrets that (a) the number of five states which have failed to implement the Framework Directive 89/391 – even though Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 – is particularly high, and (b) the transposition of the individual directives adapting the corpus of existing law in the field of safety and health at work is proceeding very slowly; calls on the Commission to urge the Member States to speed up the transposition of these directives and to assign more staff to this policy area, to ensure that transposition procedures are systematically checked;

7. Notes that the number of infringements in the field of the equal treatment of men and women is still high, particularly as regards the protection of pregnant women, in respect of

which the Commission forwarded reasoned opinions in 1999 to five Member States relating to the poor implementation of Directive 92/85/EEC;

OPINION OF THE COMMITTEE ON PETITIONS

for the on Legal Affairs and the Internal Market
on the Commission's seventeenth annual Report on monitoring the application of Community law (1999)
(COM(2000) 92 – C5-0381/2000 – 2000/2197 (COS))

Draftsman: Carlos Candal

PROCEDURE

The Committee on Petitions appointed Carlos Candal draftsman at its meeting of 19 September 2000.

It considered the draft opinion at its meetings of 5 March 2001 and 21/22 March 2001.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: , Roy Perry, acting chairman; Proinsias De Rossa, Luciana Sbarbati, vice-chairmen; Mary Elizabeth Banotti (for Hans-Peter Mayer), Felipe Camisón Asensio, Jonathan Evans, Janelly Fourtou, Laura González Álvarez, Margot Keßler, Ioannis Koukiadis, Ioannis Marinos, Véronique Mathieu, Astrid Thors, Mark Francis Watts.

SHORT JUSTIFICATION

I. Introduction

Under Article 194 of the EC Treaty, any citizen or group of citizens residing or having a registered office in an EU Member State may address a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him or them directly. This right is an effect of the broader right of citizenship, as inferred from Article 21 of the same Treaty.

The number of petitions submitted to the European Parliament by EU citizens has been increasing every year; the nature of the citizens' complaints is increasingly specific, and their expectations are ever higher. Petitioners are, then, clearly more aware of their rights and of the impact of their petitions within our Institution. They are aware that they have the right and the duty to participate in the construction of a better Europe with a better quality of life. Whatever their age, educational level, religion or ethnic origins, petitioners want their opinion to be heard and demand action on their concerns.

The subjects most often raised by petitioners include, inter alia: social security matters; environmental protection; recognition of qualifications; discrimination on grounds of nationality, gender or religious belief; and impediments to the free movement of goods or persons.

The ever-growing number of petitions related to the environment usually concern problems within a single Member State and express the petitioner's deep concern for the quality of life of the present and future inhabitants of a particular area.

Petitions on environmental matters typically invoke the failure of Member States to apply the relevant Community directives and regulations properly. It is much less common for them to refer to the non-incorporation or the incomplete or incorrect incorporation of such legislation.

The *seventeenth annual report on monitoring the application of Community law (1999)* is the latest edition of a document drawn up annually by the Commission pursuant to Parliament's resolution of 9 February 1983. It is an extremely informative, detailed and well-presented document. The Commission is responsible for monitoring the application of Community law under Article 211 of the EC Treaty.

The report sheds considerable light on the Commission's role in the dialogue between the European Parliament and the citizen in the context of action against breaches of Community law. The subjects raised by the petitioners are not only numerous but of marked technical and legal complexity. The Commission's contribution is essential for the detailed clarification of such subjects. Its opinions are generally highly exhaustive, and constitute legal and technical analyses which are greatly appreciated.

The preamble to the report, in the part containing the statistical summary for 1999, states that of 288 cases of breaches of Community law officially recorded by the Commission, ten were based on petitions to the European Parliament.

II - Cooperation between the European Parliament, the Commission and the Council

If the citizens of the Union are to develop a high degree of trust in the Institutions, it is essential that the problems which they bring forward are satisfactorily dealt with. This cannot be achieved without the close cooperation of the Commission. For the Commission's input to be useful it must provide properly substantiated and timely replies to the Committee on Petitions.

The Council must also take part in this process, since its contribution is vital. Unfortunately, until now it has remained aloof.

Means must be swiftly devised to enable the three institutions to cooperate so that the legitimate expectations of the citizens can be met in a proper and rapid fashion.

III - Cooperation with the Member States

The fall in the rate of incorporation of Community directives in 1999 (by comparison with 1998) points up the need for enhanced action by the Member States. In a number of Member States, the incorporation rate is disturbingly low. As a result, in 1999 the number of proceedings brought before the ECJ rose.

In many of the proceedings for infringement of Community law, it is claimed that the national implementing measures for the directives are incorrect or that the directives have not been applied properly. This applies, for instance, to the areas of the environment and social policy.

In some cases, the only means of putting an end to an incorrect attitude on the part of a Member State is for the Commission, under Article 228 of the EC Treaty, to take out a second action raising the prospect of a mandatory penalty payment. This serves as confirmation that the system of penalties introduced by the Treaty of Maastricht has an essentially deterrent effect.

Citizens' expectations may, however, be frustrated for other reasons. Their confidence is also undermined in those cases where citizens, or the Commission itself, have repeatedly asked for information and a Member State refuses to supply the information, supplies it only late in the day or uses bureaucratic delaying tactics.

The provision of such information is absolutely necessary if citizens are to understand decisions which affect them directly. Without this information, the Commission cannot take further action on dossiers in its possession. The result is that many petitions cannot be dealt with rapidly.

IV - <u>Transparency</u>

A policy of administrative transparency must be introduced at both Community and national levels. The Commission's press releases may serve as an example here: citizens must be given accurate and detailed information on subjects which directly concern them.

CONCLUSIONS

The Committee on Petitions calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to include the following conclusions in its motion for a resolution:

- whereas the right to petition the European Parliament enables EU citizens to engage in dialogue with the men and women whom they have elected and who represent them, to provide them with information on cases which they consider to represent incorrect applications of Community law, and to ask them to remedy the problems;

- whereas this dialogue must be both encouraged and further developed, since it is a basic precondition for citizen confidence in the European institutions;

1. Stresses its efforts to ensure that the ever-increasing number of petitions which it receives are examined as correctly and as rapidly as possible;

2. Reiterates its wish to see closer cooperation between the Committee on Petitions, the Council and the Commission, on the basis of a new interinstitutional agreement, thus making it possible to act effectively on all occasions when a petitioner lodges a justifiable complaint over non-compliance with Community law;

3. Urges the Commission to ensure that petitions and complaints are dealt with more rapidly in particular regarding the deadlines for reply given to the Member States;

4. Recalls the Council on the Parliament's previous requests to be present at its meetings in cases of serious infringements of Community law;

5. Calls on the Member States and the Commission to introduce a genuine transparency policy - following the fruitful example of the Commission's press releases and the Committee on Petitions' passing on details to the media of possible delays, obstructions or refusals in providing information on petitions by the Member States' responsible authorities - with the aim of securing an attitude of acceptance and confidence vis-à-vis the Community institutions on the part of the citizens of the EU;

6. Calls on the Commission once again to include in its future annual monitoring reports on the application of Community law a section on the petitions forwarded to it by the Committee on Petitions;

7. Calls on the Commission once again to endeavour to find political solutions and, in particular, to consider the possibility of proposing the revision of those elements of

Community legislation which are most frequently the occasion of complaints concerning breaches of Community law, by more than one Member State.