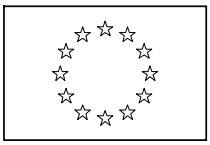

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.7.2001
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VOLUME I

EIGHTEENTH ANNUAL REPORT ON MONITORING THE APPLICATION OF COMMUNITY LAW (2000)

INTRODUCTION

SITUATION SECTOR BY SECTOR

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Each year the European Commission draws up a report on the monitoring of the application of Community law, in response to requests made by the European Parliament (Resolution of 9 February 1983) and the Member States (point 2 of Declaration No 19 annexed to the Treaty signed at Maastricht on 7 February 1992). The report also responds to the requests expressed by the European Council or the Council in relation to specific sectors.

1. INTRODUCTION

The task of monitoring the application of Community law is vital in terms of the rule of law generally, but it also helps to make the principle of a Community based on the rule of law a tangible reality for Europe's citizens and economic operators.

The importance of complaints in the process of detecting infringements (table 1.1) is clear evidence of the trust placed by the public in the Commission's exercise of this basic function.

It is also evidence of the Commission's concern to give complainants an important role in the infringement procedure, in which they previously played no role at all by reason of the nature of the procedure as organised by Article 226 of the Treaty establishing the European Community (and Article 141 of the Euratom Treaty). This status for complainants took the practical form of the following procedures: registration of complaint, respect for confidentiality, information for the complainant and possibility of making views known before a decision is taken to close the case.

The Commission has embarked on the codification of the current administrative rules to ease contacts with complainants.

But the primary objective of the infringement procedure is still, as before, to cause the offending Member State to come into line with Community law. Nor does it have any effect on the discretionary power that the Commission is acknowledged d to have by the Court of Justice as regards commencing infringement proceedings.

This is all the more important as the nature of the procedure may sometimes leave complainants feeling frustrated: they, of course, are aiming for a different result – the satisfaction of their individual interests which they see as threatened by the Member State's alleged unlawful conduct.

The Commission is therefore constantly at pains to remind complainants that if they wish to obtain compensation for the loss they sustain, they must proceed in the national courts. Since the national courts are the first stage in the Community legal order, they are the best placed to hear and determine disputes as to specific individual cases of violation of Community law. While such cases can constitute genuine infringements of Community law, it is extremely difficult to come up with a solution that will satisfy the complainant in infringement proceedings brought by the Commission. It will always be up to the Member State and the national courts to remedy the effects of the infringement.

Consequently, while paying special attention to complainants, whose procedural rights are expressly acknowledged at the pre-litigation stage, the Commission endeavours to combine proceedings wherever it can in the interests of uniform monitoring of Community law and to give priority to situations where there is evidence of a recurring tendency of the relevant Member State to violate Community law. In so doing it discharges its fundamental responsibility for defending the Community legal order under Article 211 of the EC Treaty.

The eighteenth report on monitoring the application of Community law is the first produced since the Commission was reorganised. It fully reflects the reorganisation, and the layout of this report will thus be more consistent and will better highlight the action taken by the Commission under Articles 226 and 228 of the EC Treaty (Articles 141 and 143 of the Euratom Treaty), as requested by the Resolution of the European Parliament on the sixteenth report.

The Commission endeavours to discharge this vital function of monitoring the application of Community law more and more efficiently by making use of modern communication and management techniques and by simplifying infringement procedures.

The way in which the Commission proceeds against infringements is described in the following ways:

– a statistical overview of the various stages involved in monitoring the application of Community law, comparing the 1999 figures with last year's (point 1.1);

– improvements in the pre-litigation procedure (point 1.2);

– progress in transposing Community directives in the Member States (point 1.3);

– applications for derogations from harmonisation measures – Article 95 of the EC Treaty (point 1.4);

– a graphical overview showing, by Member State, all the infringement procedures commenced or handled by the Commission during the year (point 1.5); and

– an overview of the Commission's use of the penalty procedure of Article 228 of the EC Treaty since the Maastricht Treaty came into force (point 1.6).

1.1. STATISTICS FOR 2000

The statistics for 2000 reflect a degree of stabilisation in the number of complaints registered by the Commission. For the first time, the total is actually down slightly. Even so, complaints are still the privileged means of detecting infringements, though the Commission has also boosted the efficiency of its machinery for monitoring the transposal of directives and is extending its own capacity to detect infringement situations through an increased number of proceedings opened on the basis of its staff's investigations.

Procedures are also being accelerated. The Commission is particularly keen to reduce the time taken to act in infringement proceedings. In the current situation 29 calendar days elapse between the adoption of decisions to issue letters of formal notice or reasoned opinions and their execution in the form of notification to the relevant

Member State. The current delay between a decision to refer a case to the Court of Justice and the actual filing of the action is far more difficult to measure in aggregate terms, since contacts with the Member State tend to intensify at this stage. The primary objective of the infringement procedure being to cause the offending Member State to come into line with Community law, the Commission commonly gives priority to such contacts and suspends implementation of its decision to go to the Court. There is consequently little statistical significance to be attached to the longer time taken to move on.

For the sake of transparency, since January 2001 decisions to issue letters of formal notice and reasoned opinions, to refer cases to the Court of Justice or to close cases have been announced forthwith on the Commission's Europa website. This may actually have a deterrent effect on Member States, who are immediately informed of the Commission's decisions on specific cases.

The statistics for 2000 can be summed up as follows:

– the number of **complaints** registered by the Commission in 2000 is down slightly (by 6.13%) on 1999.

The Commission also opened a far greater number of cases based on its own investigations than in previous years. In 2000 there were 896 such cases: this figure was last seen in 1996. Out of this total of 896, cases commenced on the basis of parliamentary questions (15, as against 16 in 1999) and petitions (5, as against 10 in 1999) are down slightly, which suggests that the Commission's investigation activity is accounting for a rising share of cases concerning the incorrect application of Community law and the conformity of national measures implementing directives.

– **1317 letters of formal notice** were issued in 2000, 22.51% up on the figure of 1075 for 1998. But it must be emphasised that the rise in the total number of letters of formal notice is primarily the result of the rising number of letters of formal notice for failure to notify national measures implementing directives (925 in 2000, up by 31% from 706 in 1999) and the number of letters of formal notice for non-conformity of such measures or for incorrect application of Community law (from 369 in 1999 to 392 in 2000). The latter increase is evidence of the increased effort made by the Commission to check conformity (see point 1.2 regarding the reinforcement of the qualitative approach).

Letters of formal notice based on failure to notify have felt the full effects of automation and modernisation of the procedure based on empowerment decisions. The growing use of computerised instruments and the ongoing development of Asmodée II, the directives database, have substantially cut the time taken to issue letters of formal notice, which are now all within the rule of one month after the transposal deadline provided for by the Commission's internal rules for operation infringement proceedings.

This modernisation in the procedure for formal notice in the event of failure to notify has helped to absorb the delays that built up in 1999, which has certainly helped to increase the number of letters of formal notice served in 2000.

– the number of **reasoned opinions** issued in 2000 was 460, the same as in 1999. This figure reveals the extent to which the procedure has been stabilised since the

delays accumulated in the years preceding 1998 were caught up. As has been seen, the time currently taken to serve this kind of decision averages 29 days. New adaptations to operational procedures relating to infringements are currently under study with a view to cutting the periods substantially.

– the number of **cases referred to the Court of Justice** is down slightly (by 3.5%) in 2000, with 172 decisions against 178 in 1999. At the same time the share accounted for by the cases referred in relation to letters of formal notice also fell from 16.5% in 1999 to 13.05% in 2000. It might be logically deducted, then, that the pre-litigation procedure is becoming more efficient.

– the **speed of handling cases** continued to rise in 2000: 1083 of the 1317 letters of formal notice sent to Member States in 1999 related to infringement procedures commenced in the course of the year, i.e. 82% as against 73% in 1999. But the speed of handling cases fell as regards reasoned opinions, since only 14% of reasoned opinions served in 2000 concerned proceedings commenced in 2000, against 26% in 1999 and 19% in 1998, the number of reasoned opinions remaining stable. this can be explained by the difficulty for the Commission of obtaining the information it needs to pursue the proceedings, and in particular by the delays in responding to letters of formal notice in some Member States.

– at the same time, this efficiency of the pre-litigation procedure was confirmed by the number of **termination** decisions, which stabilised at 1899 in 2000 (1900 in 1999);

– lastly, the Commission's policy of transparency intensified in 2000, chiefly through greater use of the Internet as a means of disseminating information (see below). Since 17 January 2001, the Commission has been announcing all recent decisions to issue letters of formal notice and reasoned opinions, to refer cases to the Court of Justice and to terminate cases on the Europa server, its Secretariat-General's website at:

http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm - infractions

All this information is now freely accessible, whereas it used to be available only to the Member State concerned. The Commission issued 178 press releases in 2000.

1.2. IMPROVEMENTS IN THE PRE-LITIGATION PROCEDURE

- The ongoing development of the Asmodée (directives) and infringements databases are an important aspect of this improvement.

The productivity gains from modernisation and the improvement of procedures are essential means of improving the monitoring of the application of Community law in a way that is more quality-oriented and less dependent on the unpredictable aspects of current detection techniques, which proceed primarily from complaints filed by citizens and firms.

For one thing, the level of development of the Asmodée II directives database now makes it possible to systematise the letters giving Member States formal notice for failure to notify national implementing measures with greater reliability.

This systematisation corresponds to the very nature of an infringement in the form of failure to notify, where there is no discretionary room for assessment, since the Member State either has or has not notified measures, and if it has, they are either complete or not.

For another, the infringements database has now become so reliable that it can be used as the basic tool for the pre-litigation procedure; the procedure now operates more smoothly, more transparently and more reliably.

In combination with the tools already established by the Commission to monitor the effect given to its infringement decisions and the effort to achieve minimum standardisation of letters of formal notice and reasoned opinions, the intensified use of the infringements database should further reduce the time needed to give effect to decisions ordering letters of formal notice and reasoned opinions.

- The web-based utilisation of the data available in the infringements and Asmodée II databases should also help to increase the frequency of the information currently put out on the European Communities' Europa server.

In 2000, part of the information given in this report on the transposal of directives was already analysed in the monthly statistics published in the website.

As already stated, since 17 January 2001, the Commission has been announcing all recent decisions to issue letters of formal notice and reasoned opinions, to refer cases to the Court of Justice and to terminate cases on the Europa server. Since this information is freely accessible, it means that complainants and the general public now have information that used to be reserved for the Member State concerned.

While the public has an interest in having access to information such as this, there is no doubt that public dissemination immediately after the Commission has taken its decision will give the national authorities an incentive to come quickly into line with Community law, especially in cases where there is little room for genuine dispute, such as failure to notify.

The Commission is currently wondering how to optimise and expand the information available to the public on the Europa server with an eye to setting up a genuine platform of information on Community law.

1.3. TRANSPOSAL OF DIRECTIVES IN 2000

The table below gives an overall picture of the rate of notification of national measures implementing all the directives applicable on 31 December 2000.

On 31 December 2000 the Member States had on average notified 96.59 % of the national measures needed to implement the directives. This figure represents a sharp improvement in the transposal situation, as it is the highest rate achieved since 1992.

It must be emphasised that the overall improvement is the result of an improvement in the situation in every Member State.

It was presumably encouraged by the acceleration of procedures for giving formal notice in cases of failure to notify in 2000 (see point 1.2).

In particular the efforts of four Member States are noteworthy:

– Belgium and Luxembourg, where the transposal rate is up by nearly 3%; in terms of rankings, Belgium rises from 9th to 3rd. This improvement is without doubt the initial statistical reflection of that Member State's declared intention of reducing the volume of litigation in Community matters, further borne out by the figures below at point 1.5.

– to a lesser but no more negligible extent, Greece and Portugal have improved their transposal rate by 2% or so, catching up some of the delays accumulated in 1999. But Greece is still the Member State with the lowest transposal rate.

	Member State	Directives applicable on 31.12.2000	Directives for which implementing measures have been notified	Percentage notification rate on 31.12.2000	Percentage notification rate on 31.12.1999
1	Denmark	1489	1466	98,46	97,13
2	Spain	1491	1461	97,99	96,47
3	Belgium	1497	1465	97,86	94,88
4	Finland	1496	1461	97,66	95,86
5	Sweden	1490	1452	97,45	95,80
6	Germany	1496	1449	96,86	95,49
7	United Kingdom	1493	1446	96,85	95,41
8	Netherlands	1495	1445	96,66	96,15
9	Austria	1490	1439	96,58	94,94
10	Luxembourg	1491	1434	96,18	93,28
11	Ireland	1488	1427	95,90	94,13
12	Portugal	1497	1433	95,72	93,36
13	Italy	1495	1430	95,65	94,15
14	France	1496	1422	95,05	93,82
15	Greece	1488	1398	93,95	92,02
	EUR total or average	***1493***	***1442***	***96,59***	***94,85***

The **summary table** at the end of Part 1 of Annex IV to this report shows the detailed transposal rate for each Member State and each sector in 2000.

1.4. APPLICATIONS FOR DEROGATIONS FROM HARMONISATION MEASURES – ARTICLE 95 OF THE EC TREATY

In 2000, only one Member State made a notification under Article 95. By letter dated 21 February 2000 Belgium applied under Article 95(5) of the EC Treaty for authorisation to apply from 1 January 2003 national provisions derogating from Directive 1999/51/EC concerning limitations on the marketing and use of organotin compounds.

Under Article 95(5) and (6) the Commission must approve or reject these national provisions within six months after checking whether:

– they are justified on the basis of new scientific evidence relating to the protection of the environment or the working environment on grounds of a

problem specific to that Member State arising after the adoption of the harmonisation measure,

– they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

The national provisions are implicitly deemed to have been approved if the Commission does not adopt a decision within six months. When considering the justification for measures notified under Article 95(5), the Commission must have regard to the reasons put forward by the Member State. In accordance with the Treaty, the responsibility for proving that these measures are justified lies with the applicant Member State. In the light of an analysis of the reasons put forward by the Belgian authorities, it was not possible to conclude that the application made by them satisfied the tests of Article 95(5). By decision dated 25 July 2000 the Commission accordingly rejected the draft national implementing measures of which it had been notified.

1.5. GRAPHICAL OVERVIEW OF ALL THE INFRINGEMENT PROCEEDINGS COMMENCED OR HANDLED BY THE COMMISSION DURING 2000

The three tables below show the numbers of infringement proceedings in motion on 31 December 2000, at the three separate stages: letter of formal notice, reasoned opinion and referral to the Court of Justice. The same trio – France, Italy and Greece – headed the lists in 2000 as in 1999, at all three stages of the procedure.

The fourth place in the ranking for letters of formal notice is again occupied by Germany this year, but Germany has moved up the table for reasoned opinions, taking over the fourth place occupied by Belgium in 1999.

But the most spectacular movements are in the ranking by number of cases referred to the Court of Justice, where Germany moves up from 7th to 4th place while Belgium moves exactly the opposite way from 4th to 7^{th,} having only 19 cases referred in 2000 as against 29 in 1999, a fall of 34.48%.

Table 2.3.1. Cases in motion on 31.12.2000 in which infringement proceedings have been commenced, by Member State

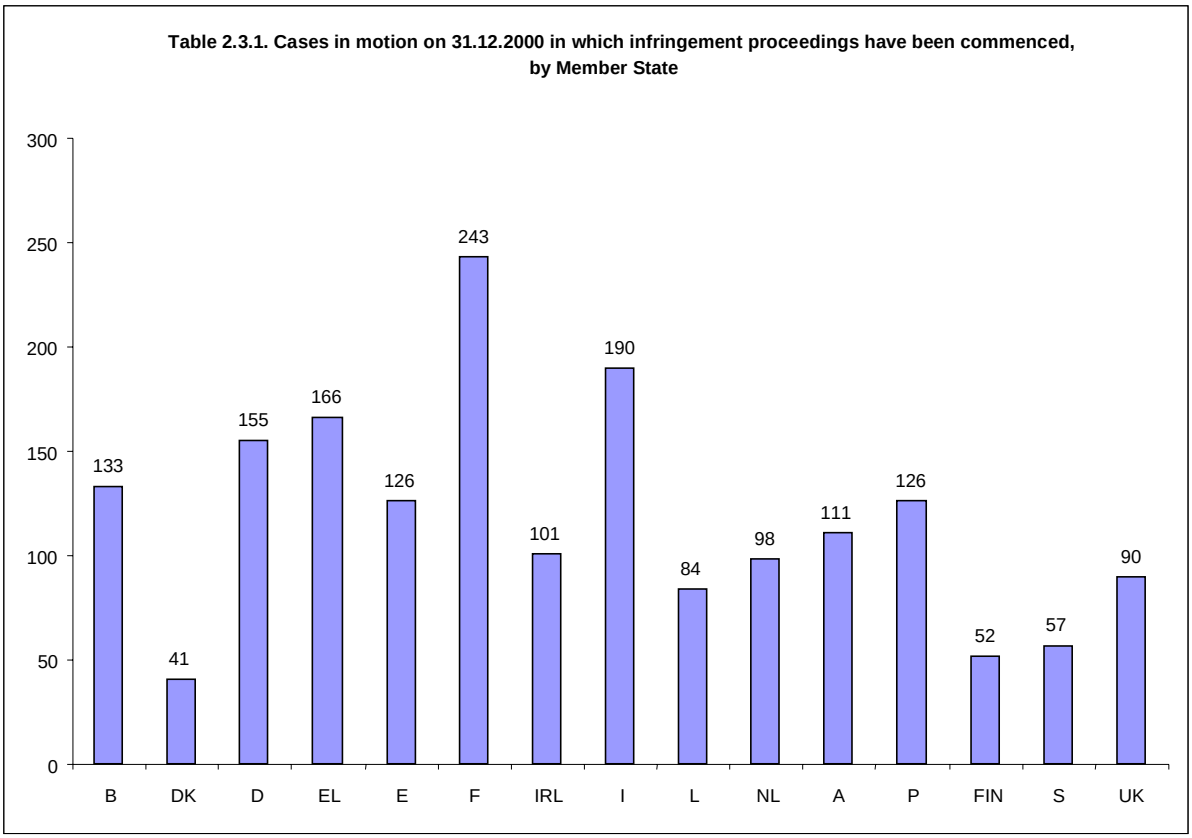


Table 2.3.2. Cases in motion on 31.12.2000 before the Court of Justice, by Member State

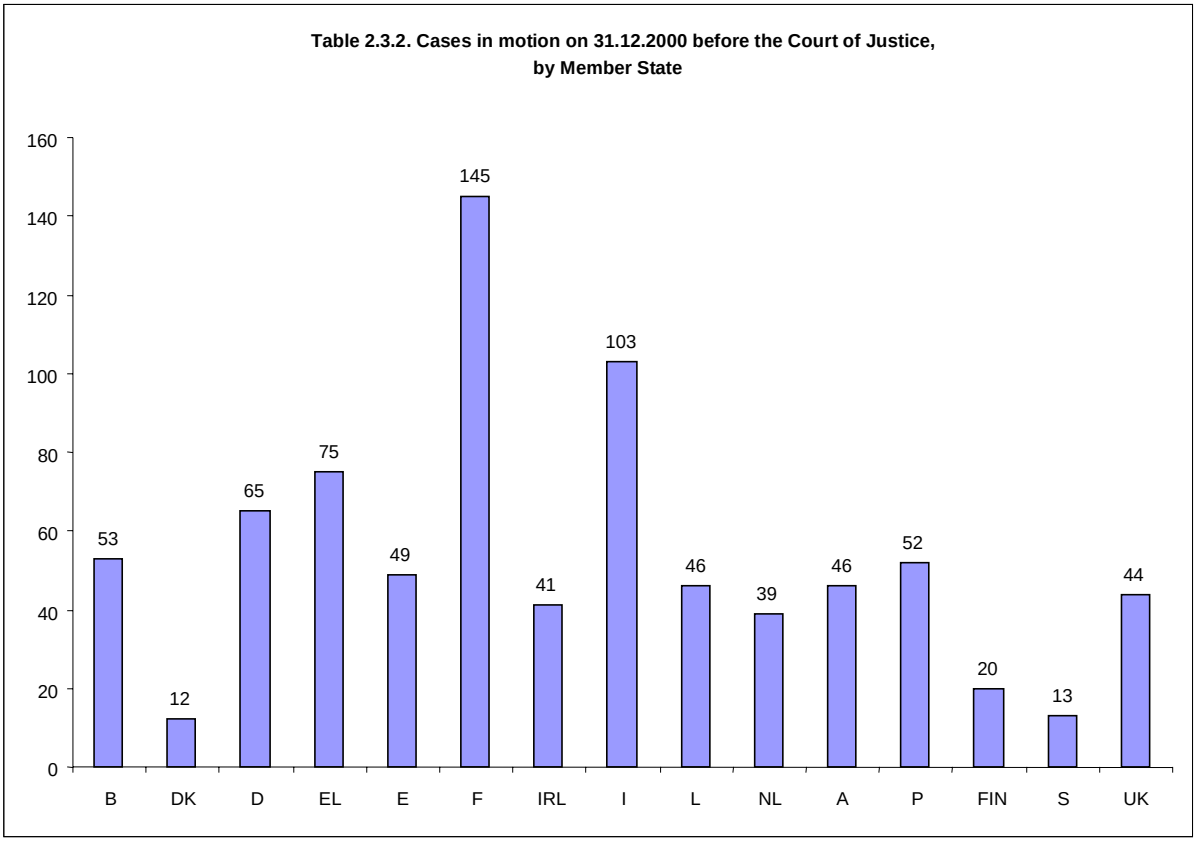
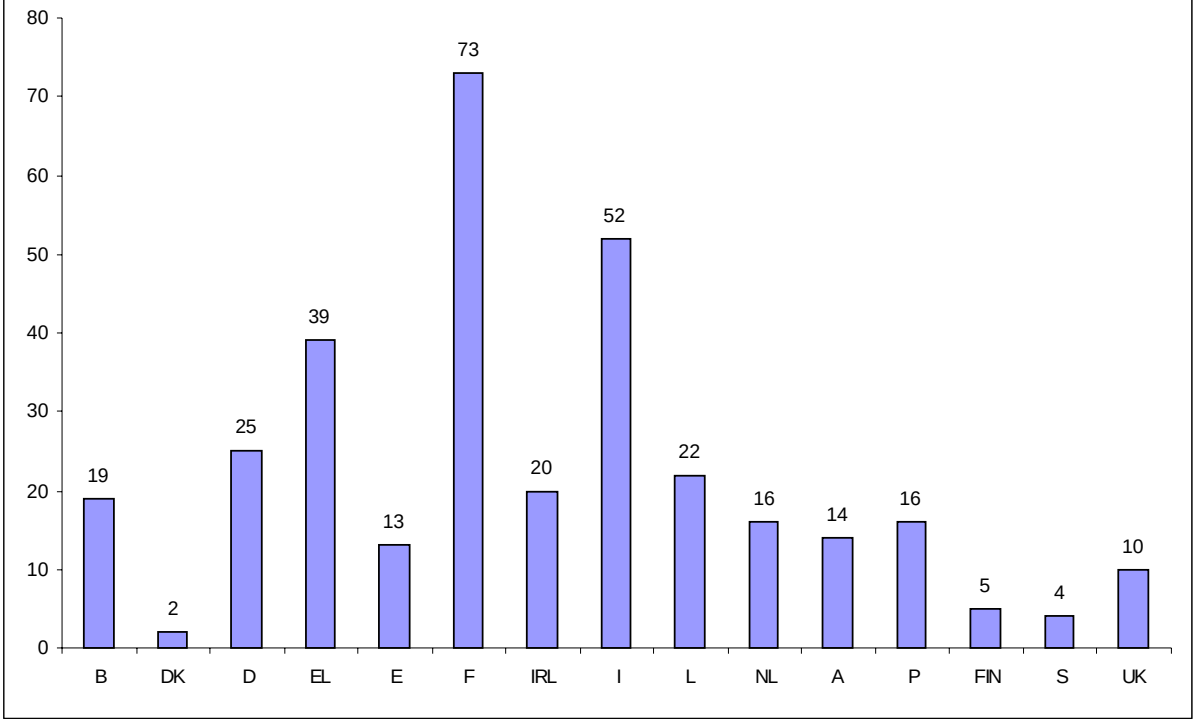


Tableau 2.3.3. Dossiers en cours au 31/12/2000, pour lesquels une saisine de la Cour de justice a été effectuée, par Etat membre (graphique)



1.6. APPLICATION BY THE COMMISSION OF ARTICLE 228 OF THE EC TREATY (DEVELOPMENTS IN 2000)

In 2000 the Commission adopted three decisions to refer cases to the Court of Justice for a second time with requests for imposition of a penalty payment, against Germany, Italy and the United Kingdom. Two of the cases (D and UK) concern the environment, and the third (I) concerns sea transport. The case against Germany was referred to the Court on 31 January 2001. The case against the United Kingdom is now in preparation. Italy has notified the Commission of implementing measures, which are now under scrutiny.

In 2000 the Court of Justice for the first time ordered a Member State, Greece, to pay a penalty payment in a second action under Article 228 of the EC Treaty. The Court gave judgment on 4 July 2000 (Case C-387/97, not yet reported), ordering the Hellenic Republic to pay into the Commission's EC Own Resources account an amount of €20 000 per day of delay in implementing the measures needed to comply with its judgment of 7 April 1992 (*Commission v Greece*, C-45/91).

It will be remembered that in that case it was held that Greece had failed to discharge its obligation to take the necessary measures for the elimination of toxic and dangerous waste in the Khania region of Crete (in particular, the closure of the illegal dump on the estuary of the Kouroupitos stream), under Council Directives 75/442/EEC of 15 July 1975 on waste and 78/319/EEC of 20 March 1978 on toxic and dangerous waste.

In compliance with the second judgment, the Commission demands payment of a monthly sum corresponding to the daily penalty of €20 000 imposed by the Court from the date on which judgment was given, i.e. 5 July 2000.

By 31 December 2000, Greece had still not adopted the measures required to comply with the judgment given by the Court on 7 April 1992.

Regarding the other cases pending in the Court in 1999, the other three infringement proceedings against Greece were terminated. The Court of Justice authorised the suspension of the proceedings against France concerning night work until 30 April 2001 to allow the French authorities to bring their legislation into line with Community law.

The Commission also decided to stay execution of the second referral of Belgium to the Court to allow continuation of the contacts in motion for a settlement of the question of reimbursement of enrolment charges wrongly ordered and other discriminatory measures against students with Community nationalities other than Belgian.

The case against Luxembourg concerning medical assistance on board vessels was terminated in 2000, when the Member State at last came into line with the Court's judgment of 2 July 1992.

The judgment given against Greece bears witness to the effectiveness of the Article 228 procedure but is none the less preoccupying as the Member State had to have judgment given against it in the first place. Moreover, at the time of writing the infringement situation has still not been cleared up, and the penalty payments are

being regularly paid by Greece into the Commission's EC Own Resources account to comply with the judgment of 4 July 2000. On 22 December 2000, for example, Greece paid €1 760 000, representing the full amounts due at the daily rate of €20 000 for the period from 5 July to 30 September 2000.

The summary table below lists the decisions taken by the Commission for second referrals since the procedure was introduced by the Maastricht Treaty (and the outcome in each case).

MS	Subject-matter	Year/ No	Initial judgment (226/EC	Proposed penalty (€ per day)	Date of Commission decision	Status
B	Wild birds	1990/0291	08/07/87	7.750	10/12/1997	Terminated
	Financing of students (nationality)	1989/0457	03/05/1994	43.400	22/12/1999	Suspended
DE	Surface water	1987/0372	17/10/1991	158.400	29/01/1997	Terminated
	Wild birds	1986/0222	03/07/1990	26.400	29/01/1997	Terminated
	Groundwater	1986/0121	28/02/1991	264.000	29/01/1997	Terminated
	Impact Directive	1990/4710	22/10/1998	237.600	21/12/2000	In motion
EL	Private schools (nationality)	1989/0165	15/03/1988	61.500	10/12/1997	Terminated
	Certificates of higher education	1991/0668	23/03/1995	41.000	11/10/2000	Terminated
	Public service contracts	1993/0711	02/05/1996	39.975	24/06/1998	Terminated
	Kouroupitos waste dump	**1989/0138**	**07/04/1992**	**24.600**	**26/06/1997**	**Judgment 4.7.2000: € 20.000**
	Acces to public service jobs	1991/0583	02/07/1996	57.400	21/12/2000	Terminated
F	Defective products	1989/0146	13/01/1993	158.250	31/03/1998	Terminated
	Wild birds	1984/0121	27/04/1988	105.500	24/06/1998	Terminated
	Night work (women)	1990/2109	13/03/1997	142.425	21/04/1999	C-99/224 procedure suspended
I	Radiation protection	1990/0240	09/06/1993	159.300	29/01/1997	Terminated
	Waste management plan	1988/0239	13/012/1991	123.900	29/01/1997	Terminated
	Urban waste water	1993/0786	12/12/1996	185.850	02/12/1998	Terminated
	Safety at sea: ; prevention of pollution and living and working on board vessels	1996/0997	11/11/1999	88.500	21/12/2000	implementing measures under scrutiny
L	Acces to public service jobs	1991/0222	02/07/1996	14.000	02/12/1998	Terminated
	Medical assistance on board vessels	1995/0142	29/10/1998	6.000	21/12/2000	Terminated
UK	Quality of bathing waters (Blackpool & Southport)	1986/0214	14/07/1993	106.800	21/12/2000	in motion

2. SITUATION SECTOR BY SECTOR

2.1. ECONOMIC AND FINANCIAL AFFAIRS

Broadly speaking, freedom of movement of capital is satisfactorily secured both within the European Community and in relation to non-member countries. There were relatively few complaints from economic operators during the report period, and certain restrictions earlier identified were removed. The number of infringement cases is really quite limited, though certain of them concern substantial barriers to the smooth operation of the single market.

New infringement proceedings were commenced as a result of monitoring the Member States' application of the principles of the Communication on certain legal aspects of intra-EU investment (OJ C 220/15, 19.7.1997). All the proceedings commenced on the basis of that Communication concern the special rights conferred by the Member States to control firms in the public utilities sector (energy, telecoms, airports, etc.). On 23 May 2000 the Court of Justice gave its first judgment[1] in such a case, against Italy, which had taken for itself special rights under the legislation on the privatisation of public enterprises. The Commission referred a number of similar infringement cases to the Court, and proceedings are continuing in others. These infringements in relation to special rights concern several Member States.

Certain restrictions on the investment activities of pension funds (Belgium, Finland) have been removed, but a new case has been commenced regarding the investment rules for pension-saving funds in Belgium.

Regarding the acquisition of securities, the Court gave judgment against Belgium on 26 September 2000 for prohibiting persons residing in Belgium from acquiring loan certificates issued by Belgium abroad.[2]

In a preliminary ruling given on 6 June 2000,[3] the Court held that certain provisions of Dutch tax legislation which make the grant of an exemption from the income tax payable on dividends paid to natural persons who are shareholders subject to the condition that those dividends are paid by a company whose seat is in that Member State constituted barriers to the free movement of capital.

Most of the complaints received in the course of the year, although limited in scope, concerned the acquisition by non-residents of real property in, chiefly, Denmark and Austria. These cases are now under supplementary investigation by the Commission. On 13 July 2000 the Court of Justice held that national legislation exempting exclusively nationals of the relevant Member State from the authorisation procedure applicable to acquisitions of real property in an area of military importance was incompatible with the free movement of capital.[4]

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1 Case C-58/99 – Privatisation of public undertakings - Grant of special powers.

2 Case C-478/98 – Loans issued abroad - Prohibition of acquisition by Belgian residents.

3 Case C-35/98 – Free movement of capital - Direct taxation of share dividends - Exemption - Limitation to shares in companies whose seat is within national territory.

4 Case C-423/98 – Authorisation procedure for the purchase of immovable property.

2.2. BUSINESSES

2.2.1. Preventive rules provided for by Directive 98/34/EC (formerly 83/189/EEC)

The notification procedure introduced by Directive 98/34/EC is an essential tool for preventing barriers to trade from being raised and for sharing information. The Directive obliges Member States to submit to the Commission, and to each other, their drafts of new technical regulations for monitoring of compliance with internal market rules before they are finally adopted.

This procedure, which previously applied only to products, has been extended since 5 August 1999 to information society services.[5] This is a sector where technological and legal progress also justify the establishment of an effective prior information, administrative partnership and review mechanism, notably with a view to securing fundamental rights and freedoms.

In 2000, the Commission received 751 drafts of technical regulations (of which 23 relating to rules on information society services and the rest relating to products) which were scrutinised by the relevant departments. The number involved was 604 in 1998 and 591 in 1999. These figures show that, despite the completion of the single market, the Member States are still adopting a wide range of technical regulations and even reverting to earlier regulatory patterns, partly on grounds of technical progress and of the concern to step up general health protection and food protection in particular. These initiatives must be kept under control so that they do not jeopardise the smooth operation of the internal market and so that sectors where Community rules might be necessary can be identified.

Of the drafts received by the Commission in 2000, 45[6] required a detailed opinion recommending changes to the planned measure in order to eliminate any unjustified barriers to the free movement of information-society goods or services which might arise as a result. The Member States issued 92 opinions.[7] The tendency for the number of detailed opinions to fall is broadly confirmed, which shows that the educational effort made in the context of the procedure is producing beneficial effects and that the quality of national rules is improving.

In a dozen or so cases the directive also helped to facilitate Community harmonisation by precluding the adoption of national measures that could have rigidified the positions of certain Member States when common solutions were being sought. Five notifications[8] were held over for a year since they concerned matters

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5 Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 which extends the information procedure to the rules on information society services (OJ L 217 p. 18).

6 As at 31 December 2000. The time-limit for issuing detailed opinions on draft regulations reported in 2000 ends on 31 March 2000. The figure also includes certain notifications dating from 1999 for which the time-limit ended on 31 March 2000.

7 As at 31 December 2000. The time-limit for issuing detailed opinions on draft regulations reported in 2000 ends on 31 March 2000. The figure also includes certain notifications dating from 1999 for which the time-limit ended on 31 March 2000.

8 As at 31 December 2000. The time-limit for notifying Member States of requests for postponements of 1999 notifications ends on 31 March 2000. The figure does not include notifications from 1999 for which the time-limit ended on 31 March 2000, as there were no requests for postponements of such notifications.

covered by a proposal for a Council directive, and four[9] were held over for a year since the Commission had announced its intention of legislating.

In response to the judgment given by the Court of Justice in 1996 in *CIA Security*,[10] the Member State were more scrupulous in the discharge of their obligations under Directive 98/34/EC. In that case the Court of Justice had held that the national court which must decline to apply a national technical regulation which has not been notified. On 26 September 2000, in Case C-443/98 *Unilever*, the Court of Justice further clarified the position, holding that a national court is also required to refuse to apply a national technical regulation which was adopted during a period of postponement of adoption prescribed in Article 9 of Council Directive 98/34/EC.

But in certain cases, when it discovers a breach of Directive 98/34/EC, the Commission starts a dialogue with the Member State concerned in order to rectify the situation, or even commences infringement proceedings under Article 226 of the EC Treaty. At the end of 2000, preparatory work was under way on around ten procedures of this type.

Other important judgments given by the Court in 2000 include Case C-37/99 *Donkersteeg* (judgment given on 16 November 2000), where the Court clarified the concept of technical specification in agricultural matters and the mandatory nature of the concept of technical regulation.

To improve the dialogue with firms and persons eligible for the procedure, projects notified are accessible at http://europa.eu.int/comm/entreprise/tris.

2.2.2. Pharmaceutical products

During 2000, almost all the measures implementing directives applicable to pharmaceuticals were notified to the Commission. Only France has yet to complete the transposal of Directive 93/41/EC in veterinary matters. As for the directives adopted by the Commission in 1999 and due for transposal, most Member States have already notified national implementing measures: Italy has yet to complete the transposal of Directives 1999/82/EC and 1999/83/EC, and Portugal has to complete Directive 1999/104/EC.

As in previous years, certain general problems remain with the interpretation and application of the pharmaceuticals directives by the Member States. The infringements here chiefly concern different interpretations put by the Member States on the term “medicine” (with the consequence sometimes of raising barriers to the free movement of goods) and complaints about the alleged failure of the relevant national authorities to comply with the transparency directive 89/105/EEC. The transposal of Article 4(8)(a)(i)-(iii) of Directive 65/65/EEC by Member States and the management of the re-authorisation of "old" medicinal products are also the subject of ongoing infringement proceedings. The Commission is carefully considering these problems and complaints.

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9 As at 31 December 2000. The time-limit for notifying Member States of requests for postponements of 1999 notifications ends on 31 March 2000. The figure does not include notifications from 1999 for which the time-limit ended on 31 March 2000, as there were no requests for postponements of such notifications.

10 Case C-194/94 [1996] ECR I-2201 (Judgment given on 30 April 1996).

2.2.3. Cosmetic products

In 2000, the Commission observed real progress in the application of Community rules on cosmetics, having had to handle only a few infringement cases based on *incorrect application.*

Regarding cases of *failure to notify* national measures transposing directives, the Commission was able to terminate a large number of infringement proceedings against Member States. Only France has yet to publish its Ministerial Orders and thus complete the transposal of Council Directive 93/35/EEC amending for the sixth time Directive 76/768/EEC and Commission Directive 98/62/EC (23rd Directive adapting to technical progress Directive 76/768/EEC).

National measures implementing Directives 2000/6/EC and 2000/11/EC adapting to technical progress Directive 76/768/EEC have been notified by 12 and 11 Member States respectively, and the other Member States have transmitted drafts at an advanced stage. Certain Member States have not yet transposed Directives 97/18/EC and 2000/41/EC postponing the date from which experiments on animals are prohibited for ingredients or combinations of ingredients in order to ensure that economic operators enjoy a degree of certainty as to the law. The fact that the Commission has presented a proposal for a Council and European Parliament Directive amending for the seventh time Council Directive 76/768/EEC, to prohibit tests on animals of finished cosmetic products and their ingredients does not release the Member States from their obligations to transpose the directives.

2.2.4. Chemicals

In the chemicals sector, 27 infringement cases *for failure to report measures* were closed in 2000. These were concerned with fertilisers (Directives 1997/63, and 1998/3), restrictions on the marketing and use of dangerous substances and preparations (Directives 1994/27 and 1999/43) and good laboratory practice (GLP) (Directives 1999/11 and 1999/12). After that five reasoned opinions had been sent with regard to the Directives for which the deadline for transposal had expired in 1999 (Directives 1999/11 and 1999/12), most of the Member States transposed the legislation.

There is still a total of twelve infringement proceedings under way for failure to give notification of transposal measures. Some of these cases have been brought to the Court of Justice, and relate to good laboratory practice (GLP) (Directives 1999/11 and 1999/12).

The deadline for transposal of three directives relating to restrictions on marketing and use of dangerous substances and preparations (Directives 1994/27, 1999/51, 1999/43) ran out during the first half of the year 2000. 8 Member States had not transposed the first two Directives on time, whereas 12 Member States failed to meet the deadline to transpose Directive 1999/43.

Two infringement cases are pending *for failure to properly transpose* Directive 93/15/EEC on the placing on the market and supervision of explosives for civil use.

2.2.5. Motor vehicles, tractors and motor-cycles

A satisfactory pace has been observed in the transposition of the numerous directives governing motor vehicle, component or technical system type-approval of in the field of passenger vehicles, light and heavy commercial vehicles, two or three-wheel motor vehicles and agricultural or forestry tractors. The comparatively large number of Directives adopted in these areas have nonetheless created evident difficulties for certain Member States to transpose punctually. The initiation of infringement proceedings in such cases is, as has been stated in the past, normally sufficient to bring about transposition within short time-frames.

In terms of the directives in the field of pollutant emissions, Directive 98/69/EC, in the field of passenger cars and light commercial vehicles, has now been transposed by all Member States. A similar result has not yet been achieved, however, with regard to Directive 1999/96/EC governing pollutant emissions of heavy duty vehicles which, as at 30 November 2000, had not been transposed by seven Member States.

The transposition into national law of Directive 97/54/EC relating to the maximum design speed of agricultural or forestry tractors has been completed by all Member States. With regard to the other Directives mentioned specifically in the 17th Annual Report concerning agricultural or forestry tractors, Directives 98/38/EC, 98/39/CE, 98/40/EC have been transposed by all Member States. Only 1 Member State has failed to transpose Directive 98/89/EC.

The numbers (in parentheses) of Member States still having failed to transpose Directives in the field of motor vehicles are 98/77/EC (0), 98/90/EC (1), 1999/0007/EC (1). Corresponding numbers for directives 1999/0023/EC, 1999/0024/EC, 1999/0025/EC and 1999/0026/EC on two- or three-wheeled vehicles are 2, 0, 1 and 3.

The majority of directives coming into force during the year 2000 were Commission directives adapting to technical progress previous Council directives. Certain Member States have introduced highly efficient mechanisms permitting the speedy transposition of such directives into national law. In other cases, delays appear to result from the relatively lengthy period required for the preparation, endorsement and publication of delegated legislative instruments rather than any complexities contained in the texts of the directives in question.

In respect of directives requiring to be transposed during the year under review, the numbers (in parentheses) of Member States failing to transpose are as follows:

1998/0091/EC: (5) / Directive of the European Parliament and of the Council

1999/0040/EC: (3) / Commission Directive

1999/0055/EC: (2) / Commission Directive

1999/0056/EC: (1) / Commission Directive

1999/0057/EC: (1) / Commission directive

1999/0058/EC: (1) / Commission Directive

1999/0086/EC: (9) / Council Directive

1999/0096/EC: (7) / Directive of the European Parliament and of the Council

1999/0098/EC: (2) / Commission Directive

1999/0101/EC: (3) / Commission Directive

2000/0001/EC: (6) / Commission Directive

2000/0002/EC: (7) / Commission Directive

2000/0003/EC: (4) / Commission Directive

With the exception of directives 1999/86/EC and 2000/0002/EC, the requisite action under article 226 has been instigated by Commission services.

2.2.6. Construction products

The infringement proceedings commenced against Austria for *incorrect transposal* of Directive 98/106/EEC were terminated in 2000 as a result of explanations supplied by the Austrian authorities on points raised by the Commission in the course of the procedure.

In the infringement proceedings against Greece regarding quality controls on certain steel imports, the Greek authorities notified new draft measures in October to be adopted and published at any early date, thus putting an end to the infringement. In its most recent A Report (2/2000) the Commission accordingly decided to defer its referral to the Court pending the adoption of the relevant instrument.

2.2.7. Machinery

(mechanical engineering, electronics, personal protection equipment, gas equipment, pre-packaging, measuring equipment, medical devices and pleasure craft)

Regarding cases of *failure to notify national transposal measures*, the situation is as follows:

For Directive 97/23/EC on pressure vessels, all the Member States have notified national transposal measures except Germany, which should be in a position to complete transposal in 2001.

Regarding Directive 95/16/EC on lifts, France was the last Member State (in 2000) to notify its transposal measures.

For Directive 98/79/EC on in vitro diagnostic medical devices, the following Member States have notified national transposal measures: Italy, United Kingdom, Denmark, Sweden, Portugal and Spain. Austria and Finland have also notified national transposal measures, but additional documents are still awaited. The transposal of the directive in France, Luxembourg, Belgium, the Netherlands, Germany and Greece is in the final stages. Ireland has notified no information and it has been decided that a reasoned opinion will be sent.

As regards cases of incomplete implementation of the directives or where national law conflicts with the directives, the situation is as follows.

Five cases concerning incorrect application of Directive 98/37/EC (machinery) were terminated in 2000. But several complaints relating to the market surveillance obligation imposed by that directive are still under scrutiny.

Complaints on similar subjects are still outstanding as regards Directive 73/23/EEC (low-voltage equipment). The referral of Italy to the Court[11]in a case concerning incorrect application of the directive proceeded in 2000.

A case against France concerning Directive 89/686/EEC (personal protective equipment was terminated. The decision was taken to refer Germany to the Court for incorrect application of the Directive.

A supplementary letter of formal notice was sent to Italy concerning non-conformity of national legislation with Directive 89/336/CEE (to electromagnetic compatibility) for aspects covered by Directive 1999/5 (radio equipment).

In 2000 decisions were taken to send an additional letter of formal notice **on the basis of Article 228** to Italy and a reasoned opinion to Germany concerning the non-conformity of national rules with Directive 90/396/EEC (appliances burning gaseous fuels).

2.2.8. Radio and telecommunications terminal equipment

Directive 1999/5/EC on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (R&TTE-Directive) which entered into force on 7 April 1999 had to be transposed into national law by the Member States not later than 7 April 2000. Nevertheless, several Member States had difficulties in adopting the national legislation in time in order to meet the transposition deadline foreseen by the Directive.

So far, only 10 Member States have notified to the Commission their national transposition laws enabling the Commission to close 6 non-notification proceedings. However, France, Germany, Ireland and Italy which have not yet transposed the Directive have put into place interim measures allowing to apply the Directive pending adoption of the legislation. Greece announced the adoption of interim measures for the beginning of 2001. As a result, the Commission continues *non-notification* proceedings against all aforementioned five Member States which have not yet fully transposed the R&TTE-Directive. In addition to these non-notification proceedings there are still 2 other infringements proceedings open under the R&TTE-Directive.

2.2.9. Tourism

The infringement procedure against Italy concerning concessions on entrance fees for Italian museums and monuments applicable only to Italian nationals was continued in 2000 (see 17th Annual Report). The Commission sent a reasoned opinion in February 2000. Further examination of the case is currently on-going.

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11 Case C2000/100.

2.3. COMPETITION

The number of new proceedings for suspected or established infringements opened in competition matters in 2000 was unchanged in 1999 at 36. On 31 December 2000, 67 infringement files were being dealt with by the Directorate-General for Competition.

Regarding the areas of activity, the number of new telecommunications cases hardly changed (1999: 11 new cases; 10 in 2000). The trend observed in 1999 for the number of new cases to fall sharply in transport but to rise in social insurance was confirmed in 2000.

2.3.1. Telecommunications.

The transposal and effective application of the directives on competition in the telecommunications industry were again closely monitored by the joint team, together with each Member State, in conjunction with the preparation of the sixth report, adopted by the Commission on 7 December 2000, on the implementation of the telecommunications regulatory package.[12] At the same time the Commission pushed ahead with ongoing Article 226 proceedings against certain Member States, and started a number of new ones.

Three new proceedings were terminated after reasoned opinions had been sent. They all concerned Greece. The cases closed concerned the transposal of Directive 94/46/EC (liberalisation of satellite communications services) and Directive 96/19/CE (alternative infrastructures).[13].

The Commission commenced infringement proceedings against Austria, Spain, Finland, France, Greece, Italy, Luxembourg and Portugal *for failure to notify* measures implementing Directive 1999/64/EC[14] within the time allowed. These measures were subsequently notified by the Austrian, Finnish, French and Luxembourg authorities, and the proceedings against them were terminated.

In 2000 the Commission issued three reasoned opinions regarding national measures which were not consistent with directives on competition in the telecommunications industry or did not transpose these directives correctly.

In 2000, the question of the **tariff adjustments** prescribed by Directive 96/19/EC[15] attracted considerable attention. The Commission sent Italy a reasoned opinion on 1 September 2000 concerning the measure preventing the historic operator from adjusting its tariffs – the price cap scheme in force since August 1999. But the Commission responded to the decisions modifying the price-cap scheme taken by the Italian authorities on 11 December 2000 with a decision postponing the case on 14

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12 COM(2000)814 final.

13 Two infringements: the authorities issued a licence for the construction of alternative infrastructures (measures taken in response to a reasoned opinion issued on 21 December 1998); no further state measures restricting cross-border interconnection of mobile networks (reasoned opinion issued on 22 December 1998).

14 Commission Directive 1999/64/EC of 23 June 1999 amending Directive 90/388/EEC in order to ensure that telecommunications networks and cable TV networks owned by a single operator are separate legal entities (OJ L 74, 10.7.1999, p. 39)

15 Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in the telecommunications markets, OJ L 74, 22.3.1996, p. 13.

December 2000, pending confirmation in the second half of 2002 that the adjustments required by the commitments entered into by the Member State have been completed. Still on the subject of tariff adjustments, but in Spain this time, the Commission continued the procedure commenced in 1998 by adopting a supplementary reasoned opinion on 21 December 2000. On 3 August the Commission sent Luxembourg a reasoned opinion concerning its failure to properly transpose the provisions of Directive 96/19/EC relating to the non-discriminatory grant of **rights of way** for telecommunications operators.

On 17 April the Commission referred the financing of the universal service in France to the Court of Justice.[16] The Commission accuses France of imposing on mobile operators contributions to the net cost of the universal service provided by France Télécom in 1997 even though France Télécom still had a monopoly of voice telephony at the time. It also criticises the method of calculating the various components of the cost of the universal service, which may have led to an over-estimation. And it accuses France of not having given proper assurances as to the reality of the completion of the tariff adjustment process. The written procedure was completed in November.

On 30 November 2000 the Court of Justice gave judgment against Belgium[17] since the Belgian rules provided for universal service financing in favour of the press, contrary to Directive 97/33/EC.[18] The Commission withdrew its other heads of action – the absence of a method of calculating operators' contributions to financing the universal service and of a method for calculating the estimated net cost of the service – following notification of a Royal Order governing these two aspects.

2.3.2. Postal services

In relation to postal services, the Commission adopted a decision on 21 December 2000 on the provision in Italy of new postal services with high value added, notably the guarantee that a transmission generated electronically arrives on a specific date or at a specific time.[19] This decision is the response to a complaint concerning the fact that the delivery of hybrid mail services (where postal items are generated electronically) are reserved for the historic operator. This prevents private providers from providing the full hybrid mail service. The Commission considered that Italian Legislative Decree No 261 of 22 July 1999, which introduced the system, was contrary to Article 86(1) of the EC Treaty, read with Article 82. Delivery on a specific date or at a specific time constitutes a market that is very different from traditional services (universal service). There is accordingly no reason for reserving it for the universal service provider, who does not provide this service. And this operator offers no guarantee as to delivery on a specific date or at a specific time. The decision obliges the Italian Government to make clear that the service consisting of delivery on a specific date or at a specific time is not one of the services that can be reserved. It aims to establish the certainty as to the law that private operators need regarding delivery on a specific date or at a specific time.

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16 Case C-146/00.

17 Case C-384/99.

18 Directive of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP).

19 OJ L 63, 3.3.2001, p. 59.

2.3.3. Liberal professions

In relation to the liberal professions, the Commission was able to terminate the infringement proceedings against Italy for violation by Act No 1612 of 22 December 1960, of Articles 5 and 85 of the EC Treaty (now renumbered as Articles 10 and 81). By judgment given on 18 June 1998,[20] the Court of Justice held that by adopting and maintaining in force an Act requiring the Consiglio nazionale degli spedidizioneri doganali - CNSD (National Council of Customs Agents), by a provision conferring the corresponding decision-making power, to adopt a decision of an association of undertakings contrary to Article 85 (now Article 81) of the EC Treaty setting mandatory charges for all customs agents, the Italian Republic had failed to comply with its obligations under those Articles. Since contacts between the Commission and the Italian authorities for the purpose of bringing the relevant legislation into line remained fruitless, the Commission had to send Italy a letter of formal notice under Article 228 in February 2000 and then a reasoned opinion on 3 August. But on 13 September Italy notified Act No 213 of 25 July 2000, published in the Gazzetta Ufficiale on 1 August, updating the rules governing the activities of customs agents. The Act repeals the provisions of the Act of 1960 contrary to the Treaty provisions, thus putting an end to the infringement established by the Court.

2.3.4. Transport.

In the field of transport, the Commission continued the proceedings commenced by the decision adopted under Article 86(3) on 10 February 1999 to the effect that the Portuguese system of discounts on landing charges and the differentiation of charges according to the origin of flights constituted discrimination incompatible with Article 86(1) in conjunction with Article 82. But it stayed the execution of its decision to refer the case to the Court of Justice since the action brought by Portugal against the Commission decision in May 1999 and already at the investigation stage also concerned the legality of the system.

There was a second Article 86(3) decision on the question of landing charges. On 26 July 2000, the Commission considered that the system of variable discounts and fees depending on the origin of the flight in Spain discriminated in favour of Spanish airlines. For all categories of planes, the Spanish system provides for higher fees for intra-Community flights than for domestic ones. It also provides for discounts ranging from 9% to 35%, depending on the monthly number of landings. The system in practice works for the benefit of Spanish airlines, which receive average discounts of between 20% and 25 %. There are no objective considerations in support of this discrimination. The Spanish Government has announced that corrective measures will be taken in due course.

2.3.5. Merger cases

The infringement proceedings against Portugal commenced in 1999 following a decision by the Portuguese authorities to oppose the merger between the Spanish bank BSCH and the Portuguese group Champalimaud was terminated. A new merger operation, whereby the Spanish bank acquired two banks from the Portuguese group, was notified on 29 November 1999 and authorised on 11 January 2000. the

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[20] Case 35/96 [1998] ECR I-3851.

Portuguese authorities stated that they did not oppose the new operation, which replaced the one on which the earlier infringement proceedings had been opened.

2.3.6. State aids

The Commission was able to terminate a very old state aid case. On 20 September 1990 the Court of Justice upheld[21] the Commission's final negative decision of 17 November 1987[22] ordering repayment of a grant of DEM 2 million made by the Land Baden-Würtemberg to BUG-Alutechnik, a firm manufacturing finished and semi-finished products in aluminium, in 1985. The grant had not been repaid despite Commission requests, so in 1991 the Commission commenced proceedings against Germany for infringement of Article 171 of the EC Treaty (now Article 228). In 1992, the "Staatsschuldenverwaltung Baden-Württemberg" ordered the firm to repay the grant. But BUG-Alutechnik applied to the Verwaltungsgericht Sigmaringen for judicial review of this order, with suspensory effect. The Court dismissed the application in 1994, and the firm appealed to the Verwaltungsgerichtshof Mannheim; the appeal also had suspensory effect. The Verwaltungsgerichtshof Mannheim upheld the first judgment in 1996, and the firm, now called Hoogovens Aluminium Profiltechnik, was given leave to apply for revision of the appeal judgment to the Bundesverwaltungsgericht. The application for revision was dismissed on 26 August 1999. The grant was finally repaid on 14 October 1999. Once the Commission had been officially notified, it terminated the case at the beginning of 2000.

2.4. EMPLOYMENT AND SOCIAL AFFAIRS

2.4.1. Freedom of movement for workers

The Commission has initiated and/or is continuing with a number of infringement proceedings against several Member States concerning the application of Regulations (EEC) Nos 1612/68 and 1408/71.

It is continuing with infringement proceedings against Belgium for failing to implement the Court's judgment in Case C-47/93 concerning the allocation of funding to Belgian universities for students who have come from other Member States solely to follow a university course.

Infringement proceedings have been terminated against Germany, first of all regarding the granting of welfare benefits to migrant workers when their families join them, and secondly concerning the rule making welfare benefits conditional on the presentation of a residence permit. In the first case, a, interpretative circular has been issued, calling on the relevant authorities to see that Community law is properly applied. The situation in the second has been regularised following amendment of the relevant legislation.

Infringement proceedings continue against Denmark concerning its rules and practices restricting the use by frontier workers in Denmark of vehicles registered in another Member State and belonging to their employer based in that country. Denmark has now amended its rules, but the Commission is not entirely satisfied, so a supplementary reasoned opinion has been sent.

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21 Case 5/89 [1990] ECR I-3437.

22 OJ L 1998, 30.8.1993, p. 29.

Greece as been sent a reasoned opinion regarding its legislation which requires members of the family of Union citizens who are not Greek nationals to obtain a work permit if they wish to work in Greece.

A reasoned opinion has also been addressed to Austria on the basis that Austrian legislation is discriminatory to the detriment of citizens of the Union exercising their right of freedom of movement of workers as well as of nationals of non-member countries with whom the Community has concluded co-operation or association agreements (for example. Morocco, Turkey, Poland etc.). In particular, on one hand, the Austrian provisions on elections to Chambers of Labour make all foreign workers ineligible to stand for election to these bodies and, on the other hand, the provisions of the Labour Constitution Act exclude from eligibility to stand for election to works councils the nationals of non-member countries with whom the Community has concluded co-operation or association agreements.

The infringement proceedings against Greece on the basis of Article 228 of the EC Treaty and against Spain on the basis of Article 226 concerning the nationality requirement for access to public service posts have been terminated now that the two countries have taken the measures needed to comply with Community rules.

The Commission sent reasoned opinions to Austria and Belgium regarding the reckoning of periods served in the public service in another Member State. The infringement proceedings against Germany and Ireland commenced on the same subject in 1999 are continuing.

In the field of coordination of national security systems, the European Court of Justice held in the cases against France concerning the payment of contributions for "Contribution Sociale Généralisée"[23] and "Cotisation pour le remboursement de la dette sociale"[24] that these contributions, which according to the French authorities should be categorised as taxes, are falling within the scope of Regulation 1408/71. Therefore they can not be levied on persons residing in France but working in another Member State, like e.g. French frontier workers working in Belgium, as they are not subject to French social security legislation. Not having received satisfactory information concerning the necessary measures to be taken to comply with these rulings, these procedures continue on the basis of article 228 of the EC-Treaty.

In the case which the Commission had brought before the Court of Justice against Germany in 1999 concerning the levying of contributions under a special law on social security benefits for artists *(Künstlersozialversicherungsgesetz)*[25], the Advocate General has delivered his opinion on 24 October 2000.

The case against Belgium[26] concerning the deduction of a personal contribution of 13,07 % where the claimants reside in another Member State is still pending before the European Court of Justice. The Advocate General has delivered his opinion on 23 January 2001.

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23 Case C-169/98
24 Case C-34/98
25 Case C-68/99
26 Case C-347/98

The Commission decided to continue a case against the Netherlands by bringing it to the Court of Justice. According to the Commission the refusal from the Dutch authorities to export a former frontier worker's unemployment benefit during a maximum period of three months to another Member State, contradicts Article 69 of Regulation 1408/71 since the latter does not make a distinction between frontier workers and other workers.

A reasoned opinion has been sent to France concerning the refusal by the French sickness institution to reimburse, according to French tariffs, costs for glasses which an insured person had bought in Germany. The Commission is of the opinion that this position contradicts the provisions of the EC Treaty on free movement of goods, notably Articles 28 and 30, as they had been interpreted by the Court of Justice in the case C-120/95 Decker[27] where the court offered persons the right to receive reimbursement for this type of medical product according to the tariffs of the Member State where the person is insured, without prior authorisation.

The Dutch government agreed with a reasoned opinion which the Commission had sent to the Netherlands concerning the calculation of a Dutch old age pension in situations where, while being compulsory insured, at the same time voluntary contributions have been paid in another Member State and is currently revising the respective administrative policy rules. Despite Article 15 (1b) of Regulation 574/72 which states clearly that periods of compulsory insurance prime over periods of voluntary contributions, the Dutch authorities had refused to take into account a certain employment period in the Netherlands because voluntary contributions had been made at the same time to the scheme of another Member State referring to Annex VI, J, 2 h of the Regulation. This interpretation from the authorities was shared by the national judge.

In an infringement procedure against France concerning the calculation of unemployment benefits for a person whose last employment had not been in France, the French government modified the respective circular letter to comply with Community law, after the Commission had brought the case before the Court of Justice. The case has been filed.

Following a reasoned opinion sent by the Commission concerning the refusal to apply the Danish social security legislation to workers of other Member States who work on oil rigs on the Danish continental shelf, the Danish government has modified its legislation and the infringement procedure has been filed.

2.4.2. Equal treatment of men and women

The Commission action before the Court against France under Article 228 of the EC Treaty[28] for failing to take the necessary measures to comply with the judgment of 13 March 1997 in Case C-197/96,[29] in which the Court ruled against France for maintaining a ban on night work by women in industry whereas no such prohibition exists in relation to men, is still in motion.

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27 Judgment Court of Justice 28.4.98

28 Case C-224/99.

29 Case C-197/96 *Commission of the European Communities v French Republic* [1997] ECR I-1489 (judgment given on 13 March 1997).

Regarding Directive 92/85/EEC on the protection of pregnant workers, the Irish authorities have amended their legislation in line with Community rules after a reasoned opinion was sent, and have notified new national measures. Proceedings against Ireland have accordingly been terminated. The Swedish and Luxembourg authorities also notified new legislation, now under scrutiny, after reasoned opinions were sent. The proceedings continue. The Commission decided to refer a case against France for incorrect transposal to the Court of Justice,[30] and the action against Italy continues.

Following notification of national transposal measures, the action against Italy in the Court of Justice for failure to notify measures transposing Directive 96/34/EEC on parental leave[31] was withdrawn.

The Commission brought Article 228 actions in the Court against France for failing to comply with the judgment given against it on 8 July 1999[32] for failure to notify it of measures implementing Council Directive 96/97/EC amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes. The Directive required the Member States to adopt transposal measures by 1 July 1997. The Court of Justice gave judgment against Greece on the same question on 14 December 2000.[33] Following notification of transposal measures by the Luxembourg authorities, the action in the Court of Justice for failure to notify measures transposing Directive 96/97/EC amending Directive 86/378/CEE on the implementation of the principle of equal treatment for men and women in occupational social security schemes[34] was withdrawn.

The Commission commenced new Article 228 proceedings against Greece for failure to comply with the judgment given on 28 October 1999[35] for non-conformity of its legislation relating to the grant of the marriage allowance and the reckoning of that allowance for the calculation of old-age and retirement pensions with Directive 79/7/EEC, Article 141 of the Treaty and Directive 75/117/EEC. The rules had no retroactive effect as regards the marriage allowance as from 1 January 1981 (when Article 141 of the Treaty and Directive 75/117/EEC became applicable in Greece), or as regards the calculation of old-age and retirement pensions as from 23 December 1984 (when Directive 79/7/EEC entered into force).

2.4.3. Working conditions

In the proceedings for failure to adopt measures implementing Directive 93/104/EC concerning certain aspects of the organisation of working time, the Court of Justice gave judgment against Italy and France.[36] No measures to give effect to the Court's judgment have been notified and the infringement proceedings under Article 228

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30 The French legislation does not specifically include the possibility for pregnant women to be released from work if necessary in order to protect their health;

31 Case C-445/99.

32 Case C-354/98.

33 Case C-457/98.

34 Case C-438/98. Mr Advocate General La Pergola delivered his opinion on 24 June 1999.

35 Case C-187/98.

36 Case C-386/98 *Commission v Italy* (judgment given on 9 March 2000) and Case C-46/99 *Commission v France* (judgment given on 8 June 2000).

continue. Following late notification of measures transposing Directive 93/104/CE the action against Luxembourg[37] for failure to notify was withdrawn.

In its judgment of 18 May 2000, the Court ruled against France for failing to notify transposal of Directive 94/33/EC concerning the protection of young people at work.[38] No measures to give effect to the Court's judgment have yet been notified and the proceedings under Article 228 continue.

Following Court of Justice judgments given against Luxembourg for failure to notify measures transposing Directive 94/33/EC on the protection of young people at work[39] and for failure to transpose Directive 94/45/EC on the establishment of a European Works Council,[40] the Luxembourg authorities notified transposal measures now under scrutiny.

As the Italian authorities did not give a satisfactory reply to the Commission's reasoned opinion for incorrect transposal of Directive 77/187/EEC on the safeguarding of employees' rights in the event of transfers of undertakings, the Commission decided to refer the case to the Court. In contrast with the preceding case, the Commission decided to defer the infringement proceedings for incorrect transposal in Greece of Directive 98/59/EC regarding collective redundancies, needing time for detailed analysis of the Greek authorities' reply before taking a decision.

Portugal and Italy received reasoned opinions for incorrect transposal of Directive 98/59/EC relating to collective redundancies.

The Commission decided to refer Ireland to the Court for incorrect transposal of Directives 98/59/EC relating to collective redundancies and 77/187/EEC on the safeguarding of employees' rights in the event of transfers of undertakings. At the end of December 2000, the Irish authorities notified transposal measures and undertook to take others. There is no further need for a referral to the Court.

2.4.4. Health and safety at work

Luxembourg having notified national measures implementing Directive 92/29/EEC on medical treatment on board vessels, all the Member States have transposed framework Council Directive 89/391/EEC and its implementing Directives,[41] as well as the independent Directive 92/29/EEC.

As for the directives amending the specific directives or adapting them to technical progress,[42] the rate of notification of national implementing measures improved again in 2000 (notably following Italy's notification of measures implementing Directives 95/30/EC,[43] 97/59/EC and 97/65/EC[44]), though the position is still not

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37 Case C-48/99. Mr Advocate-General Alber delivered his conclusions on 16 November 1999,

38 Case C-45/99.

39 Case C-430/98 (judgment given on 21 October 1999).

40 Case C-47/99 (judgment given on 16 December 1999).

41 Directives 89/654/EEC, 89/655/EEC, 89/656/EEC, 90/269/EEC, 90/270/EEC, 90/394/EEC, 90/679/EEC, 92/57/EEC, 92/58/EEC, 92/91/EEC, 92/104/EEC and 93/103/EC.

42 Directives 93/88/EC, 95/30/EC, 97/59/EC, 97/65/EC, 95/63/EC and 97/72/EC.

43 Case C-439/98 (judgment given on 16 March 2000)

44 Case C-312/99 (following this notification the action was withdrawn in the Court of Justice).

wholly satisfactory. Consequently, infringement proceedings are continuing against Member States which have not yet notified the Commission of their national implementing measures. Decisions have already been taken to refer some of these to the Court of Justice, such as the cases against Austria for failing to transpose Directives 95/30/EC,[45] 97/59/EC and 97/65/EC.[46] A reasoned opinion for failure to notify measures implementing Directive 95/63/EC was also sent to Ireland. The decision was taken to send reasoned opinions to France and Ireland for failure to notify measures transposing Directive 97/42/EC, the deadline for which was 27 June 2000.

Concerning the conformity of national measures implementing Framework Directive 89/391/EEC, the Commission has sent reasoned opinions, for incorrect transposal, to Portugal and Sweden. The Commission referred cases to the Court of Justice against Germany[47] and Italy[48] for incorrect transposal and decided to proceed likewise against Belgium as regards the framework Directive.

Proceedings against Sweden regarding the conformity of national measures implementing the specific directives[49] were terminated following notification of new measures implementing Directive 90/269/EEC, and Denmark received a reasoned opinion concerning incorrect transposal of Directive 89/654/EEC. The Commission decided to refer two cases against Italy for incorrect transposal of Directives 89/655/EEC and 90/270/EEC to the Court of Justice.

2.5. AGRICULTURE

2.5.1. Free movement of agricultural produce[50]

Freedom of movement for agricultural products in a single market is one of the principles underpinning the operation of the common agricultural policy and its common market organisations.

The Court of Justice has had regular occasion to recall that Articles 28 and 29 of the EC Treaty are an integral part of the common organisation of markets, even if express reference to them has been superfluous since 1 January 1970.

The Commission has maintained a permanent open eye to the task of rapidly removing all barriers to trade in agricultural produce in the Community.

The downward trend in recent years in the number of new cases involving traditional barriers to trade in agricultural produce - such as routine import checks and demands for import licences - has been further confirmed this year.

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45 Case C-473/99.

46 Cases C-110/00 and C-111/00.

47 Case C-5/00.

48 Case C-49/00.

49 Directives 89/654/EEC, 89/655/EEC, 89/656/EEC, 90/269/EEC, 90/270/EEC, 90/394/EEC, 90/679/EEC, 92/57/EEC, 92/58/EEC, 92/91/EEC, 92/104/EEC and 93/103/EC.

50 Further to the re-organisation in Commission services, legislation and questions related to human, animal and plant health affairs have been lodged in Directorate-General Health and Consumer Protection. From the last quarter 1999 onwards, this Directorate-General is in charge of the instruction and management of infringement files relating to these matters, including questions relating to obstacles to free circulation of agricultural products for health protection reasons.

Certain countries' persistence in reserving "quality labels or descriptions" for products of their own regions or countries led the Commission to press ahead with the infringement proceedings commenced against France, Spain and Germany. The Commission considers that, pursuant to Article 28 of the EC Treaty, as interpreted by the Court of Justice in Cases C-13/78 Eggers[51] and C-321/94 Montagne,[52] a quality description or quality label should not be reserved for products from a particular geographical entity but should be based exclusively on the intrinsic characteristics of the product. That being the case, any national quality label or description should, pursuant to Articles 12 and 34 of the EC Treaty, as of right be accessible to any potential Community producer or user whose products meet the objective and verifiable criteria required.

In the case of France the infringement proceedings concern the following regional quality labels: "Normandie", "Nord-Pas-de-Calais", "Ardennes de France", "Limousin", "Languedoc-Roussillon", "Lorraine", "Savoie", "Franche-Comté", "Corse", "Midi-Pyrénées", "Salaisons d'Auvergne" and "Qualité France". The continued use of these labels caused the Commission to issue reasoned opinions. The French authorities are at present disposed to change the legal arrangements governing such labels.

Reasoned opinions were issued concerning the following quality descriptions used in Spain: "La Conca de Barbera", "El Valles Occidental", "El Ripolles", "Alimentos de Andalucia", "Alimentos de Extremadura" and "Calidad Cantabria". In the wake of these reasoned opinions, the competent regional authorities have now scrapped these contested descriptions.

Finally, faced with the refusal by the German authorities to make the CMA quality label (Markenqualität aus deutschen Ländern), given exclusively to products processed in Germany without specific requirements as to the original environment or geographical place, available to products from other Member States, the Commission referred Germany to the Court of Justice. The Commission considers that the label in question constitutes a mandatory restriction as to the place where processed products can come from.

Regarding the less traditional forms of barriers to trade, such as the repeated acts of violence by individuals in France against fruit and vegetable imports from other Member States, in particular from Spain, and the authorities' failure to take measures to prevent such acts, it is worth recalling the judgment given by the Court of Justice on 9 November 1997 in Case C-265/95,[53] where it held that "by failing to adopt all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by actions by private individuals, the French Republic has failed to fulfil its obligations under Article 30 of the EC Treaty (now Article 28 EC), in conjunction with Article 5 of that Treaty (now Article 10), and under the common organisations of the markets in agricultural products." The fact that the marketing of fruit and vegetables from Spain was untrammelled in 1998 suggests that the measures taken by the French Government to give effect to the Court's judgment worked better than those taken in previous years. The same was

51 Judgment given on 12.10.1978 [1978] ECR 1935.

52 Judgment given on 7.5.1997 [1997] ECR I-2343.

53 Judgment given on 6.11.1997 [1997] ECR I-6959.

true in 1999 and 2000, with the exception of a few isolated incidents. The Commission trusts that the marketing campaigns in the years ahead will proceed smoothly.

2.5.2. The market

In addition to its efforts to remove barriers to the freedom of movement of produce, the Commission also sought to ensure that the other provisions of the Community's agricultural legislation are effectively and correctly applied.

In monitoring the application of specific market organisation mechanisms, the Commission continued to keep a close watch on the use of production control mechanisms, particularly in the milk sector, where it conducted a systematic analysis of national measures to implement Regulations (EEC) Nos 3952/92 and 536/93.

The Commission addressed reasoned opinions to Italy and Spain because of deficiencies in their implementation of the milk quotas scheme. The main concern was the persistent failure by the relevant authorities to pass the supplementary levy on to the producers responsible for the excesses.

In February 1997 the Italian government instructed a commission of inquiry to conduct a special inquiry into milk production during 1995-96 and 1996-97. Pending the conclusions of this inquiry, and subject to the reimbursement of an estimated excess in relation to the levy actually due, the accounts relating to the levy advances received by the purchasers for the periods in question have been frozen. In the light of widespread allegations concerning fraud and irregularities, the Italian authorities had taken the view that payments to the competent authority could not be made until there had been a new in-depth inquiry into the level of actual production and the level of the reference quantity for each producer. These circumstances formed the subject of the infringement proceedings.

The Commission has been kept informed of the progress of each successive inquiry and has itself carried out control visits to all the bodies concerned.

The indications seem to be that this exceptional exercise will help to clarify a previous situation based on doubts concerning actual production in Italy. The production level initially declared by purchasers has been confirmed (the figures are out by less than 1%, and part of this may yet be confirmed). The inquiry results have also clarified the situation of each individual producer, except in instances where lawsuits are involved. In November 1999 the results of the new scheme for offsetting deliveries were notified to those concerned. The Commission is keeping a close watch on trends in the actual collection of amounts due. A mission has just taken place for the purpose of ascertaining precise figures for amounts immediate recovery is not possible on account of actions brought in regional courts which have the power to order suspension. Detailed verification of these cases is in progress. The Commission will not hesitate to continue the infringement proceedings regarding any amount that is left unrecovered without good reason.

In Spain, only a fraction of the levy payable for 1993/94, 1995/96 and 1996/97 has actually been paid by producers. Both producers and purchasers have commenced large-scale actions against decisions affecting them.

Following commencement of infringement proceedings, the Spanish authorities have adopted new measures for managing the scheme, aimed at avoiding large-scale recourse to the courts in the future. The key elements consist of an obligatory scheme for collecting advance payments from producers who exceed their quota during the period and the imposition of restrictive conditions governing the approval of purchasers. The scheme's management in 1998-99 did not produce the widespread problems that had been encountered in previous years.

Regarding actions commenced earlier, the Spanish authorities caused sureties to be established for the sums in dispute in the numerous cases where this had not already been done. They now consider that the levy still due is fully covered, either by these sureties or by compulsory recovery orders.

The Commission has also had occasion to look into cases of failure to comply with Community rules governing the designation of agricultural products.

Regarding spirit drinks, the Commission addressed a reasoned opinion to France for authorising the marketing of spirits made by adding a percentage of water to whisky and using the word "whisky" as a generic sales description. Under Regulation (EEC) No 1576/89, whisky must have an alcoholic strength of at least 40% and no water may be added to an alcoholic drink so that the nature of the product will not be changed.

A preliminary ruling was requested on the same subject by the Paris Tribunal de Grande Instance (Case C-136/96). The Court of Justice ruled on 16 July 1998[54] that Community rules prohibited such product designations.

In their reply to the reasoned opinion the French authorities continued to support the marketing of the relevant product under the designation contested by the Commission, which accordingly referred the case to the Court of Justice.

The Commission has worked on persuading the Greek authorities to fully implement the integrated management and control system for certain Community aid schemes under Regulation (EEC) No 3508/92, which establishes an integrated administration and control system for certain Community aid schemes, in particular for arable farming and meat production (beef and veal, sheepmeat and goat’s meat) to boost efficiency and profitability by means of a policy of preventing and punishing irregularities in EAGGF-financed operations. Article 2 of Regulation No 3508/92 as amended requires each Member State to establish by 1 January 1997 an integrated system comprising: a computerised data base, an alphanumeric identification system for agricultural parcels, an alphanumeric system for the identification and registration of animals, aid applications and an integrated control system. The Greek authorities have not fully met all these requirements, the aim of which is to ensure that payments made by Community bodies are in accordance with the regulations. The fact is that the identification and numbering of agricultural land parcels has not been commenced and the procedure for registering and identifying animals is no more than embryonic. High-performance databases do not exist. The Commission has accordingly issued a reasoned opinion.

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54 Judgment given on 16.07.1998 [1998] ECR I-4571.

Implementation of Directive 98/34/EC (technical standards and regulations) in the field of agriculture

In 2000 as in previous years, the Commission received notification of a great many draft instruments pursuant to Directive 98/34/EC, which requires the Member States to give notice prior to the adoption of any draft rules containing technical standards or regulations which might impede intra-Community trade.

In agriculture, **135** draft instruments notified by the Member States and the EFTA countries were scrutinised in 2000 against Article 28 of the EC Treaty and relevant secondary legislation

2.6. ENERGY AND TRANSPORT

The Commission monitors three aspects of the implementation of Community energy law: notification of the national measures implementing the directives, conformity of these measures and practical application of directives, regulations and Treaty provisions.

2.6.1. Internal market for electricity and natural gas

Parliament and Council Directive 96/92/EC of 19 December 1996 concerning common rules for the internal market in electricity was transposed by all the Member States. The infringement proceedings against Luxembourg were terminated. Belgium should have transposed the directive by 19 February 1999 but had not done so *entirely*, as implementing decrees are still awaited. Likewise there are infringement proceedings against France for *incomplete and incorrect transposal* of this directive, but recent should remove obstacles to the opening up of the electricity market to competition in France.

Directive 98/30/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas must be transposed by 10 August 2000. France, Luxembourg and Portugal *have not transposed* it. On 20 December the Commission decided to send France and Luxembourg a reasoned opinion. Germany has *transposed only part* of the directive, and infringement proceedings have been commenced accordingly.

The Commission continues to analyse the conformity of national measures implementing the two directives in all the Member States.

2.6.2. Energy efficiency

Italy has now transposed Directive 96/57/EC of the European Parliament and the Council on energy requirements for household electric refrigerators, freezers and combinations thereof. So all the Member States have now transposed it.

All the directives implementing Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances[55] have now been transposed by

[55] -Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations;

all the Member States (except Italy for Directive 98/11/EC with regard to the energy labelling of household lamps).

The Commission has commenced infringement proceedings against eight Member States for *incorrect application* of Council Directive 93/76/EEC of 13 September 1993 to limit carbon dioxide emissions by improving energy efficiency (Save).

2.6.3. Oil and gas

Council Directive 98/93/EC of 14 December 1998 amending Directive 68/414/EEC imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products, due to be transposed by 31 December 1999, has been transposed by all the Member States except Italy and Portugal, against which infringement proceedings are in motion.

2.6.4. Transport

The Commission monitors three aspects of the implementation of Community transport law: notification of the national measures implementing the directives, conformity of these measures and practical application of directives, regulations and Treaty provisions.

In 2000, eight new transport directives became due for transposal. Regrettably, as in previous years, most of the Member States are very late in adopting national measures. This has resulted in a very poor rate of notification of national measures implementing directives due for transposal in the second half of 2000. There is only a slight improvement in the average rate of transposal of transport directives – from 86% at the end of 1999 to a little over 88% at the end of 2000.

However, notification speeded up once infringement proceedings were started. Failure to notify thus accounted for over three quarters of the 111 instances in which proceedings were dropped by the Commission in 2000.

The year-on-year figures for complaints received and cases identified on the Commission's own initiative have remained stable.

But the number of infringement proceedings which the Commission has referred to the Court of Justice continues to rise (from 30 in 1999 to 39 in 2000), with a large proportion of cases of failure to notify national measures transposing directives (30 cases), bringing to 69 the total number of cases that the Commission has decided to refer to the Court of Justice. The case against Italy for failure to transpose Directive 95/21/EC ((port State control) has been referred a second time, with a request for a penalty payment, for failure to comply with an earlier judgment (given on 11.11.1999).

- Directive 95/12/EC with regard to energy labelling of household washing machines;
- Directive 95/13/EC with regard to energy labelling of household electric tumble dryers;
- Directive 96/60/EC with regard to energy labelling of household combined washer-dryers;
- Directive 96/89/EC with regard to energy labelling of household washing machines;
-Directive 97/17/EC with regard to energy labelling of household dishwashers, as amended as regards the transposal deadline by Directive 1999/9/EC;
- Directive 98/11/EC with regard to energy labelling of household lamps;

2.6.5. Road transport

The transposal of Directive 98/76/EC, which seeks to promote the exercise of the freedom of establishment of road haulage operator in national and international transport by amending Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator, is still worrying as seven proceedings are in motion for failure to notify, and the Commission has decided to refer the cases against Luxembourg, Belgium, Italy and Greece to the Court of Justice. The Finnish authorities have still to notify provisions transposing Directive 96/26/EC in the Åland Islands.

But there as been progress in the *notification* of legislation on the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (Directive 96/53/EC) and roadworthiness tests for motor vehicles and their trailers (Directive 96/96/EC), as all the proceedings have been terminated.

Regarding safety in the transport of dangerous substances by road, the Court gave two judgments against Ireland[56] for *failure to notify* the Commission of national measures implementing Directives 94/55/CE and 96/86/CE on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road or Directive 95/50/CE on uniform procedures for checks on the transport of dangerous goods by road. Ireland has not transposed any of the directives on road or rail transport of dangerous goods (*cf. infra*, point 2.8.4). But the proceedings against Greece were terminated in 2000.

In the same area, the rules on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway (Directives 96/35/EC and 2000/18/EC*) have not been transposed* by Greece or Ireland (or by Portugal in the case of the amending directive).

Greece has transposed none of the surface transport directives adopted since 1998 and falling due for transposal in 1998-2000. The situation is much the same in Ireland.

As for road taxation, the infringement proceedings against Belgium for *non-conformity* of measures implementing Directive 93/89/EEC (taxes, tolls and charges) are still at the investigation stage, but the Court has given judgment in the case against Austria regarding tools at the Brenner pass.[57] Parliament and Council Directive 99/62/EC of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures *has not been transposed* in 13 Member States, and infringement proceedings for *failure to notify* national implementing measures have been commenced.

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[56] Case C-408/99 *Commission v Ireland* [2000] ECR 0000 - Judgment given by the Court on 26 September 2000.
Case C-347/99 *Commission v Ireland* [2000] ECR 0000 - Judgment given by the Court on 14 December 2000.

[57] Case C-205/98 *Commission v Austria* [2000] ECR 0000 - Judgment given by the Court on 26 September 2000.

Concerning driving licences, the *conformity of measures transposing* Directive 91/439/EC still gives serious cause for concern. The proceedings against Italy were terminated in 2000 but examination of national transposal measures reveals that in eight other Member States there are many discrepancies in such matters as the minimum age for a vehicle category, renewal of licences for EU citizens no longer residing in the Member State of issue, criteria for test vehicles, the duration of the practical test and minimum requirements in terms of physical and mental aptitude. The procedures for automatic registration of licences belonging to drivers who move from one country to another are incompatible with the principle of mutual recognition of driving licences.

2.6.6. Combined transport

The proceedings against Finland for *non-conformity* of national measures implementing Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States were terminated in 2000 following notification of Act No 440/2000 of 19 May 2000, which correctly transposes the Directive. But the proceedings against Italy for incorrect application of the Directive continue and the case is still before the Court of Justice.

2.6.7. Inland waterways

Transposal of Directive 96/50/EC on harmonisation of the conditions for obtaining national boatmasters' certificates for inland waterway navigation, which was due for transposal in 1998, has given rise to non-notification proceedings. The Commission decided to refer to the Court of Justice the cases against France and the Netherlands, which have not yet adopted and published national measures transposing the directive, even though both Member States have announced drafts of measures to be adopted in the near future.

Proceedings against Germany and Luxembourg, which concluded bilateral inland waterways agreements with third countries, are continuing with the Commission's decision to refer the two cases to the Court of Justice on the grounds that this is exclusively a matter for the Community.

2.6.8. Rail transport

In the field of carriage of dangerous goods by rail, Directive 96/49/EC as amended by Directive 96/87/EC provides for the approximation of the laws of the Member States with regard to the transport of goods, laying down uniform safety rules in this sector to improve safety and facilitate movement of rolling stock and equipment throughout the Community. These directives, which apply to transport of dangerous goods by rail in or between Member States, have still to be transposed in Ireland and Greece, and the Commission has decided to refer the two Member States to the Court of Justice. Directive 99/48 adapting for the second time to technical progress Council Directive 96/49/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail, has not been transposed by Italy, Ireland or Greece, and the Commission has accordingly decided to issue a reasoned opinion for *failure to notify* national measures implementing it in the three Member States.

The situation regarding Directive 96/48/EC on the interoperability of the trans-European high-speed rail system, the purpose of which is to promote interconnection and interoperability between national high-speed rail networks at different stages of conception, construction and entry into service, but also of operation and access to networks, remains preoccupying. Seven Member States have still *not notified* transposal measures, and the Commission has felt the need to refer the cases against them to the Court of Justice (France, United Kingdom, Greece, Ireland, Austria, Sweden and Finland).

2.6.9. Transport by sea

The Commission notes that there has been considerable progress in implementing Community sea transport law in the whole area of safety at sea, but the situation regarding freedom to provide services is less satisfactory.

In 1999 the Commission regretted the general delay in properly transposing the directives of safety of sea transport and the prevention of pollution of the sea in the Member States. In 2000 there was a great improvement in the situation regarding the transposal of directives though it is still the case that the most recent directives have not been fully incorporated in national legal orders. This is the case in particular of Directive 99/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services and Directive 99/97/EC (port State control) which fell due for transposal in December 2000 but *have not been transposed* in most of the Member States.

But the progress made by the Member States in transposing the safety at sea directives is perfectly illustrated by the example of Directive 96/98/EC on marine equipment, as amended by Directive 98/85/CE, for all the proceedings for *failure to notify* measures implementing these two Directives were terminated in 2000. Likewise the directives on minimum standards for vessels transporting dangerous or polluting goods have now been transposed by all the Member States (Directive 93/75/EEC and the amending Directives 96/39/EC, 97/34/EC, 98/55/EC and 98/74/EC).

Regarding the safety of passenger transport by sea; directives 98/18/EC and 98/41/EC on safety rules and standards for passenger ships seek to improve safety and likelihood of rescue for passengers and crew on passenger ships bound for or leaving Community ports and to ensure more effective action in the event of an accident. Delays in notifying national measures transposing these two directives prompted twenty new infringement proceedings in 1999 but have been substantially made up – only four proceedings are still running, three of them in the Court of Justice (Luxembourg and Portugal for Directive 98/18/EC and the Netherlands for Directive 98/41/EC). But proceedings for *incorrect transposal* were commenced against three Member States, one of them, Belgium, being referred to the Court.

But three of the four infringement proceedings for incorrect transposal of Directive 94/57/EC, and its amending Directive 97/58/EC, on common rules and standards to be observed by the Member States and ship-inspection, survey and certification organisations so as to ensure compliance with international conventions on maritime safety and marine pollution, are still running. The proceedings against France were terminated but the cases against Italy, Ireland and Portugal continue, with a decision to refer Portugal to the Court.

As regards Directive 95/21/EC (port state control), which harmonises ship inspection criteria, including rules for detention and/or refusal of access to Community ports, the Court of Justice gave judgment against Italy.[58] The Commission not having been notified of measures to give effect to the judgment, the Commission decided to refer the case back to the Court of Justice under Article 228 of the Treaty with a request for a penalty payment. Italy is also the last Member States that has *not yet transposed* the amending Directives 98/25/EC and 98/42/EC (port State control), and the Commission has decided to refer the two cases to the Court.

The Commission recently commenced four cases concerning *incorrect application* of Directive 95/21/EC against Member States which have not met their obligation in the inspection field to inspect at least 25% of all ships flying foreign flags that land in their ports or navigate waters under their jurisdiction.

As for the human element, the Commission decided to refer to the Court the five Member States that have *not yet notified* full measures transposing Directive 98/35/EC amending Directive 94/58/EC on the minimum level of training of seafarers (Luxembourg, Netherlands, Italy, Portugal and Austria).

The transposal of Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24 metres in length and over, as amended by Directive 99/19/EC, is still creating difficulties in the Netherlands, which has *still not transposed* the two directives, and the case concerning Directive 97/70/EC has been referred to the Court. Proceedings are in motion against France and Italy for *non-conformity* and against Belgium for *failure to notify* measures transposing the amending directive.

Compliance with Community legislation on registration and flag rights continues to be a problem. While it has finally been possible to drop the proceedings against Greece and Finland, arrangements for entering vessels in shipping registers and granting flag rights remain discriminatory in France and the Netherlands, against which proceedings are continuing. France has notified draft legislation that is in order and is to be approved by the Joint Parliamentary Committee, promulgated and published in the *Journal officiel*, but the action in the Court of Justice continues.

As regards right of establishment, the Commission has decided to refer to the Court the case against Italy for non-conformity with Articles 43 and 48 of the Treaty of its national legislation specifying the conditions on which shipping lines legally established in another Member State may participate on the same terms as Italian shipping lines in the Italian conference traffic quota.

As regards maritime cabotage, proceedings have been taken against several Member States (France, Spain, Denmark, Portugal, Germany and Greece) for maintaining or adopting national regulations in contravention of Regulation (EEC) No 3577/92, which provides for maritime cabotage to be opened up to Community shipowners operating ships registered in and flying the flag of a Member State. The Court gave

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[58] Case C-315/98 *Commission v Italy* [1999] ECR I-8001 - Judgment of the Court (Fifth Chamber) given on 11 November 1999.

judgment against France[59] for *incorrect transposal* of the maritime cabotage rules, but the French legislation is now being adapted.

The principle of freedom to provide services where cargo-sharing agreements between Member States and third countries are concerned, enshrined in Regulation (EEC) No 4055/86, is not yet respected by all Member States. Fresh proceedings for *incorrect application* were commenced in 2000. Proceedings are continuing against Belgium[60] (but might be terminated in 2001 when protocols with the relevant non-member countries enter into force and are published), Luxembourg[61] and Portugal[62] following the judgments given by the Court in 1999 and 2000.

The Commission also pays special attention to the application of Regulation (EEC) No 4055/86, given the possible forms of nationality between operators and types of transport and the barriers they can raise. Two infringement proceedings for *incorrect application* are in motion concerning the discriminatory dock dues imposed in Italy and Greece. The dues vary in accordance with the port of destination. The amounts are lower for shipping between two ports in national territory than for international shipping. The Commission referred to the Court of Justice the case against Italy concerning dock dues at Genoa, Naples and Trieste. Several comparable cases are under scrutiny.

2.6.10. Air transport

The rate of transposal of air transport directives is most satisfying at nearly 98% by the end of 2000. There are two reasons for the improvement of the previous year: for one thing, the fact that no new directives fell due for transposal in 2000, and for another, the fact that the Member States that had fallen behind finally came into line with Community law.

The rate of transposal is actually 100% for all Member States except Greece, Luxembourg and Ireland. Ireland has still not transposed Directives 98/20/EC and 1999/28/EC on the limitation of the operation of subsonic civil aeroplanes; but the two directives are expected to be transposed in the next few weeks, according to the Irish authorities.

Directive 94/56/CE establishing the fundamental principles governing the investigation of civil aviation accidents and incidents has still not been transposed in Greece or Luxembourg. In the case of Luxembourg the decision has been taken to send a letter of formal notice under Article 228 of the treaty following the judgment given on 16 December 1999.[63] The Court proceedings against Greece for *failure to transpose* the directive are still running.

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59 Case C-160/99 *Commission v France* [2000] ECR 0000 - Judgment of the Court (Fifth Chamber) given on 13 July 2000.

60 Cases C-170/98 and C-171/98 *Commission v Belgium* [1999] ECR I-5493 - Judgment of the Court (First Chamber) given on 14 September 1999.

61 Case C-202/98 *Commission v Luxembourg* [1999] ECR I-5493 - Judgment of the Court (First Chamber) given on 14 September 1999.

62 Cases C-62/98 and C-84/98 *Commission v Austria* [2000] ECR 0000 - Judgment given by the Court on 4 July 2000.

63 Case C-138/99 *Commission v Luxembourg* [1999] ECR I-9021 - Judgment of the Court (First Chamber) given on 16 December 1999.

Regarding air traffic control, the only proceedings still running for failure to notify measures transposing Directive 97/15/EC (adopting Eurocontrol standards) were dropped. In 2000 this Directive was amended by Commission Regulation (EC) No 2082/1999 of 6 September 2000.

In recent years there were several proceedings for *incorrect application* of Directive 91/670/EEC on mutual acceptance of personnel licences for the exercise of functions in civil aviation. The proceeding against Belgium has been terminated but the proceeding against France is still in motion.

Directive 96/67/EC on groundhandling at airports has been transposed by all the Member States. But complaints about *incorrect application* of Directive 96/67/EC in two Member States have prompted infringement proceedings.

The infringements noted in connection with airport taxes also continued. Imposition by Member States of varying rates of tax depending on passenger destinations (internal flights/intra-Community and/or international routes) is incompatible with the principle of freedom to provide services stipulated in the field of air transport by Regulation (EEC) No 2408/92 and with EU citizens' freedom of movement under Article 18 of the Treaty. Proceedings against Italy, Portugal and Greece for *incorrect application* of the Regulation are continuing in the Court of Justice. Although the proceedings against Ireland and the United Kingdom were terminated, those against the Netherlands and Spain are to be referred to the Court of Justice.

The infringement proceedings against Belgium, Denmark, Germany, Finland, Luxembourg, Austria, Sweden and the United Kingdom relating to bilateral open-skies agreements with the United States are continuing in the Court of Justice. Pre-litigation proceedings against France and the Netherlands are still in motion.

Lastly, proceedings were commenced against a Member State for *incorrect application* of Regulation 3922/1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation.

2.7. INFORMATION SOCIETY

In March 2000 the European Council set the European Union a new objective for the decade ahead – to become the world's most competitive and most dynamic economy. One of the things that needs is a fully integrated and liberalised telecommunications market.

In this context the Commission has stressed the need for Europe to play its trump cards and act rapidly to remedy its weaknesses. One of those trump cards is manifestly the legal framework to liberalise telecoms services and define the conditions for the establishment of a single European market in this sector.

To open markets up to effective competition, the EU's framework requires the Member States to integrate into their national law a full set of principles aiming in particular to ensure that all players are not all subject to the same right and obligations – the heaviest obligations should be on those with the greatest market power. The EU framework is much broader but fully encompasses the reference framework annexed to the General Agreements on Trade in Services (GATS).

On 7 December 2000, the Commission adopted its Sixth Report on the implementation of the telecommunications regulatory package.[64] The main conclusion in regulatory terms is that the current position regarding implementation provides a solid basis for the redeployment of the European electronic communications industry and the attainment of the broader objectives of the *e*Europe initiative. The basic framework is in place in all the Member States; but there are still a number of weak points to be tackled.

In parallel with the monitoring activities set out in the Report, the Commission commences infringement proceedings whenever it considers that Member States are not discharging their Treaty obligations by failing to transpose, notify or apply the principles laid down by the directives.

The Commission's method of looking in detail at the implementation of the EU's regulatory framework ensures full compliance with the general principles of the GATS.

Since total liberalisation was introduced on 1 January 1998 , a significant number of infringement proceedings has now reached the final stage of Court of Justice action. Of a total of 53 proceedings running at the end of 2000, 17 are at the reasoned opinion stage (12 for non-conformity, 5 for incorrect application), and the Commission has already decided to refer nine cases to the Court (six for failure to notify, three for non-conformity). In 2000 the Court gave judgment in four cases concerning the regulatory framework. However, 22 cases (8 for failure to notify and two for incorrect application) were dropped in 2000 when the Member States took action to comply. On the same grounds the Commission withdrew two actions in motion in the Court (one for failure to notify and one for non-conformity).

The position with regard to implementation of the various directives and decisions and the proceedings brought under Article 226 of the EC Treaty is as follows.

The Framework Directive 90/387/EEC laying down the principles to be applied to open network provision (ONP) had already been transposed by all the Member States in 1998.

All the Member States have notified the Commission of national measures implementing Directive 92/44/EEC (leased lines). Portugal has been sent a reasoned opinion on the grounds that the national provisions notified are not in conformity with the directive. In December 2000 the Commission decided to refer a case against Luxembourg to the Court.

Directive 97/51/EC amended the two foregoing directives to adapt them to a competitive environment in telecommunications. All but two of the Member States have notified the Commission of national transposal measures. The Commission had already refer its cases against France and Italy for failure to notify to the Court of Justice in 1999. On 30 November 2000, in Case C-422/99, the Court of Justice held that by failing to adopt the requisite provisions by way of legislation, regulation or administrative action within the time allowed, Italy had failed to meet its obligations

64 COM(2000) 814 final.

under the directive. Three proceedings for non-conformity of national legislation were terminated in 2000.

All the Member States have notified measures transposing Directive 95/62/EC on the application of open network provision (ONP) to voice telephony. The infringement proceedings against Belgium for failure to notify national implementing measures were discontinued in March 2000.

Measures transposing the new Voice Telephony Directive (98/10/EC), which had repealed Directive 95/62/EC as from 30 June 1998, have been notified by all Member States except France and Italy. The Commission had already refer its cases against France for failure to notify to the Court of Justice in 1999. On 7 December 2000, in Case C-423/99, the Court held that Italy had failed to meet its obligations under the directive. The Commission has also decided to send reasoned opinions to Belgium, Austria and Luxembourg since the national rules notified were not in conformity with the Directive. The infringement proceedings against Belgium for non-conformity of national implementing measures were terminated in 2000.

All the Member States have notified the Commission of national measures implementing Directive 97/13/EC (licences). The Commission sent reasoned opinions to Germany and Italy on the grounds that the national provisions notified were not in conformity with the directive; France was sent a supplementary reasoned opinion. Two cases had already been referred to the Court in 1999, against Luxembourg and Austria. The Advocate-General presented his conclusions in the case against Luxembourg (C-448/99) on 21 September 2000; the case against Austria (C-446/99) was withdrawn following amendment of the national legislation. The proceedings against Belgium and Spain were terminated for the same reason.

All Member States have notified measures implementing the Interconnection Directive (97/33/EC). Since the national rules received were not in conformity with the Directive, the Commission decided in 1999 to institute court proceedings against Belgium, France and Luxembourg. For the same reason, it sent a reasoned opinion to Germany. The proceedings against France were suspended in 2000; but Luxembourg received a supplementary reasoned opinion. On 30 November 2000, in Case C-384/99, the Court of Justice held that by failing to bring into the requisite provisions by way of legislation, regulation or administrative action within the time allowed, Italy had failed to meet its obligations under the directive. Two proceedings for incorrect application were terminated in 2000.

By the end of 2000, all Member States had notified implementing measures for the Numbering Directive (98/61/EC) amending Directive 97/33/EC with regard to operator number portability and carrier preselection. The infringement proceedings against Belgium and Italy for failure to notify national implementing measures were discontinued in March 2000. The Commission sent reasoned opinions to France and Finland on the grounds that the national provisions notified were not in conformity with the directive; Two proceedings for non-conformity of national legislation were terminated in 2000. Reasoned opinions for incorrect application of the directive were sent to Belgium, Germany, the Netherlands and Austria. The Commission also decided to send a reasoned opinion to the United Kingdom in December 2000.

All Member States but three have notified measures implementing the data-protection Directive (97/66/EC). The proceedings against Belgium, Denmark,

Greece and the United Kingdom were terminated in 2000; the Commission is studying the measures of which it has been apprised. But in July 2000 the Commission decided to refer its case against Ireland for failure to notify full transposal measures to the Court; it had taken the same decision in relation to France and Luxembourg in 1999. The Advocate-General presented his conclusions in the case against France (C-151/00) on 26 October. Regarding Article 5 of the directive, which was due to be transposed by 24 October 2000, letters of formal notice were sent to France, Ireland, Italy, Luxembourg and the United Kingdom for failure to notify the Commission of implementing measures. Eleven Member States had notified implementing measures by the end of 2000.

All the Member States had already notified national measures implementing the three directives on frequencies - Directives 87/372/EEC (GSM), 90/544/EEC (Ermes) and 91/287/EEC (DECT).

Finally, all the Member States except France and the Netherlands have notified national measures transposing Directive 95/47/EEC on the use of standards for the transmission of television signals. Proceedings against Belgium for failure to notify were withdrawn when measures were notified in 2000. For the same reason, the Commission withdrew its action against Austria (C-411/99). But in June 2000 the Commission referred its case against the Netherlands for failure to notify to the Court of Justice. On 23 November 2000, in Case C-319/99, the Court of Justice held that by failing to adopt the requisite provisions by way of legislation, regulation or administrative action within the time allowed, France had failed to meet its obligations under the directive. Portugal was sent e reasoned opinion for non-conformity of national legislation.

All the Member States have adopted measures required under Decision 91/396/EEC on the introduction of “112” as the standard emergency services number throughout the Union. The infringement proceedings against Greece for incorrect application were terminated in July 2000.

All the Member States had already transposed Decision 92/264/EEC on adopting "00" as the standard code for access to the international network in the Community.

Three proceedings for failure to transpose Parliament and Council Decision 710/97/EC of 24 March 1997 concerning a coordinated approach to authorisations in the field of satellite personal communications in the Community were terminated in 2000.

2.8. ENVIRONMENT

During the year 2000 the number of new cases (complaints, own initiative cases and infringements) in the environmental sector continued to show a rising trend (755 in 2000, compared to 612 in 1999). The Commission brought 39 cases against Member States before the Court of Justice (none on the basis of Article 228 of the Treaty) and delivered 122 reasoned opinions or supplementary reasoned opinions (eight of them under Article 228). In this respect, it must be borne in mind that the Commission aims at the settlement of suspected infringements as soon as they are identified without it being necessary to initiate formal infringement proceedings.

The Article 228 (ex Article 171) procedure has continued to prove effective as a last resort to force Member States to comply with the judgments given by the European Court of Justice. In 2000, in two cases a decision to go to the Court was taken and several letters of formal notice or reasoned opinions were sent for failure to notify, non-conformity or incorrect application. Further details are given below in the discussion of the various sectors.

For the first time since the possibility to fine a Member State for not complying with the ECJ judgments entered into force in 1993, the Court has taken a decision on the basis of Article 228. This was Case C-387/97 *Commission v Greece* on waste disposal in Crete (see section on "waste" below).

The Commission is continuing the practice of using Article 10 of the Treaty, which requires Member States to cooperate in good faith with the Community institutions, in case of a consistent lack of reply to Commission letters of request for information. This lack of cooperation prevents the Commission from acting effectively as guardian of the Treaty.

The Commission continued work in 2000 as a follow up to the Communication adopted in October 1996 ("Implementing Community Environmental Law") in particular with regard to environmental inspections where the Commission tabled a proposal for a European Parliament and Council Recommendation on minimum criteria for environmental inspections based on Article 175 of the Treaty. In the final stage of the conciliation procedure, launched in September 2000 as a result of diverging views between the European Parliament and the Council on the form of the act, agreement was reached in early January 2001 on a recommendation for environmental inspections in the Member States. It was largely based on a compromise put forward by the Swedish Presidency and a few additional amendments made by the European Parliament.

On the basis of reports to be provided by Member States, the Commission may possibly propose a directive in 2003 in the light of the experience gained from the recommendation and additional work to be carried out by IMPEL ("Implementation and Enforcement of EU Environmental Law" network) on minimum criteria for qualifications for inspectors and training programmes. IMPEL will also, by way of contribution, elaborate a scheme under which Member States report and offer advice on inspectorates and inspection procedures which could be described as a peer review.

The IMPEL network continued its work. Particularly worthy of note was the Conference on Implementation and Enforcement of Environmental Law held in Villach, Austria in October 2000 where, among other things, the idea of developing national networks under the umbrella of IMPEL was thoroughly discussed

In 2000, the Commission also took certain initiatives to develop the principles of Community environmental policy. In 9 February 2000, the Commission adopted a White Paper on Environmental Liability[65]. The objective of the Paper is to explore various ways in which an EC-wide environmental liability regime could be shaped. The purpose of such a regime is: (a) to improve the application of the environmental

65 COM(2000)66 final.

principles in the EC Treaty (i.e. the polluter pays principle, the prevention principle and the precautionary principle); (b) to improve implementation of EC environmental law; and (c) to ensure adequate restoration of the environment. The White Paper concludes that the most appropriate form of action would be an EC Framework Directive on Environmental Liability. The Commission intends to adopt a proposal in the course of 2001. In 2 February 2000, the Commission adopted a Communication on the precautionary principle[66]. The objective of the Communication is to inform all interested parties how the Commission intends to apply the principle and to establish guidelines for its application.

No major developments have occurred since last year's report in the *notification by Member States of measures implementing environmental legislation*. Several directives fell due for transposition in 2000. As before, the Commission was forced to start proceedings in several cases of failure to notify it of transposing measures, involving in many cases all Member States. Details of these cases are given in the sections on individual sectors and directives.

Proceedings are in hand in all areas of environmental legislation and against all the Member States in connection with the *conformity of national transposing measures*. Monitoring the action taken to ensure conformity of Member States' legislation with the requirements of the environmental directives is a priority task for the Commission. In connection with transposition of Community provisions into matching national provisions, there has been some improvement as regards the provision, along with the statutory instruments transposing the directives, of detailed explanations and concordance tables. This is done by Germany, Finland, Sweden, the Netherlands, France and sometimes Denmark and Ireland.

The Commission is also responsible for checking that *Community environmental law* (directives and regulations) *is properly applied*, and this is a major part of its work. This means checking Member States' practical steps to fulfil certain general obligations (designation of zones, production of programmes, management plans etc.) and examining specific cases in which a particular administrative practice or decision is alleged to be contrary to Community law. Complaints and petitions sent to the European Parliament by individuals and non-governmental organisations, and written and oral parliamentary questions and petitions, generally relate to incorrect application.

The number of complaints continued to rise in 2000, following the trend already apparent in previous years (1998 : 432, 1999 : 453 : 2000 : 543). Spain, France, Italy and Germany were the countries most often concerned. While complaints often raise more than one problem, a broad classification of those registered in 2000 shows that one in every three is concerned with nature conservation and one in every four with environmental impact, whereas waste-related problems were raised in one in six cases and water pollution one in ten; the remaining sectors account for between 1-4%.

As stated in the previous report, the Commission must, when considering individual cases, assess factual and legal situations that are very tangible and are of direct concern to the public. It thus encounters certain practical difficulties. Without

66 COM(2000)1 final.

abandoning the pursuit of incorrect application cases (especially those which highlight questions of principle or general interest or administrative practices that contravene the directives) the Commission therefore concentrates on problems of communication and conformity.

2.8.1. Freedom of access to information

Directive 90/313/EEC on the freedom of access to information on the environment is a particularly important piece of general legislation: keeping the public informed ensures that all environmental problems are taken into account, encourages enlightened and effective participation in collective decision-making and strengthens democratic control. The Commission believes that, through this instrument, ordinary citizens can make a valuable contribution to protecting the environment.

Although all Member States have notified national measures transposing the Directive, there are several cases of non-conformity where national law still has to be brought into line with the requirements of the Directive.

The Commission issued a reasoned opinion based on Article 228 of the Treaty against Germany for not having implemented the judgment in Case C-217/97 where it was found that Germany had failed to provide for access to information during administrative proceedings where the public authorities have received information in the course of those proceedings, to provide in the Umweltinformationsgesetz for information to be supplied in part where it is possible to separate out confidential information and to provide that a charge is to be made only where information is in fact supplied. The Commission also brought an action (Case C-29/00) before the Court against the same Member State because of non-respect of the deadline to provide a response to the request for information within two months.

Several cases of non-conformity could be closed during the year 2000. A court action brought against Belgium in 1999 (Case C-402/99) over several aspects in which transposition was incorrect, both at federal and regional levels, was dropped as Belgium has corrected the relevant national measures. The Commission decided to close also another case against Belgium before the Court, because the measures were adopted to transpose the obligation to provide a formal explanation of any refusal of access to the information mentioned in Article 3(4) of the Directive. Having received notification of new measures by Spain, the Commission was able to withdraw the court action brought earlier against that Member State (Case C-189/99) over several inconsistencies between the Spanish law and the Directive. Also proceedings for non-conformity of the Portuguese legislation transposing the Directive were closed during 2000 after examining the measures notified by Portugal.

The Commission started court proceedings against France (Case C-233/00), since the French measures did not ensure formal, explicit and correct transposition of several aspects of the Directive, including the obligation to provide a formal explanation of refusal of access to the information.

The Commission decided to start court proceedings against Austria for not having completely transposed Directive 90/313/EEC (failure of six Austrian Länder to correctly transpose the provisions concerning free access to information and the exceptions from it as well as concerning the definitions of public authorities and bodies).

Among the most common subjects of complaint brought to the Commission's notice are refusal by national authorities to provide the information requested, slowness of response, excessively broad interpretation by national government departments of the exceptions to the principle of disclosure, and unreasonably high charges. Directive 90/313/EEC is unusual in containing a requirement for Member States to put in place national remedies for improper rejection or ignoring of requests for access to information or unsatisfactory response by the authorities to such requests. When the Commission receives complaints about such cases, it advises the aggrieved parties to use the national channels of appeal established to allow the Directive's aims to be achieved in practice. The Commission therefore does not generally follow up such individual complaints by infringement proceedings unless they reveal the existence of a general administrative practice in the Member State concerned.

In June 1998, the Community and the Member States signed the Convention of the United Nations Economic Commission for Europe on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the "Aarhus Convention"). Community practice does not allow the Community to ratify the Convention until the pertinent provisions of Community law, including those of Directive 90/313/EEC, have been duly amended to take account of these international obligations.

The Commission adopted on 29 June 2000 a proposal for a Directive of the European Parliament and of the Council on public access to environmental information.[67] The proposal is designed to replace Directive 90/313/EEC on the freedom of access to information on the environment, and is based on the experience gained in the application of that Directive. The proposal incorporates the obligations arising from the Aarhus Convention in relation to access to environmental information. It will therefore also pave the way for Community ratification of this Convention. Its third purpose is to adapt the 1990 Directive to the so-called electronic revolution to reflect the changes in the way information is created, collected, stored and made available to the public. A Report from the Commission to the Council and European Parliament on the experience gained in the application of Council Directive 90/313/EEC[68] accompanies Commission's proposal.

2.8.2. Environmental impact assessment

Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC, remains the prime legal instrument for general environmental matters. The Directive requires environmental issues to be taken into account in many decisions which have a general impact.

The deadline for transposition of Directive 97/11/EC amending Directive 85/337/EEC was 14 March 1999. By the end of 2000, six Member States (Belgium, France, Germany, Greece, Luxembourg and Spain) still had not notified the Commission of transposing measures and therefore the Commission decided to take these Member States to Court. Non-communication proceedings opened earlier

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67 COM(2000) 402 final.

68 COM(2000) 400 final.

against Austria, Finland, Denmark, Portugal and the United Kingdom could be dropped during 2000.

Following the European Parliament's opinion of 20 October 1998 on the proposal for a directive adopted by the Commission in December 1996 on the assessment of the effects of certain plans and programmes on the environment,[69] the Commission adopted an amended proposal in February 1999.[70] The aim of this proposal is to ensure that environmental considerations are taken into account when preparing and adopting plans and programmes setting out the context for future projects. On 30 March 2000 a common position on this proposal for a Directive was adopted. The European Parliament finalised its second reading on the common position on 6 September 2000 and adopted 17 amendments. The Council started its second reading based on the opinion of the European Parliament in the second half of the year 2000. The Directive is expected to be finalised in the first half of 2001.

As already mentioned in previous Reports on Monitoring of the Application of Community Law, many complaints received by the Commission and petitions presented to Parliament relate, at least incidentally, to incorrect application by national authorities of Directive 85/337/EEC as amended. These complaints about the quality of impact assessments and the lack of weight given to them are a major problem for the Commission, since it is extremely difficult to verify compliance by the national authorities and the basically formal nature of the Directive provides a limited basis for contesting the merits of a choice taken by the national authorities if they have complied with the procedure it lays down. As the Commission has already pointed out, most of the cases brought to its attention concerning incorrect application of this Directive revolve around points of fact (existence and assessment). The most effective check on any infringements is therefore very likely to be at a decentralised level, particularly through the national courts.

On 22 October 1998, the Court had found against Germany (Case C-301/95), holding that it had failed to discharge its obligations on several counts. Since Germany had not taken sufficient measures to comply with this judgment, the Commission decided to initiate court proceedings under Article 228 of the Treaty against Germany. The point at issue is an incomplete transposition of the Directive in relation to the projects listed in Annex II. The Court held that Germany had failed to discharge its obligations by excluding entire classes of projects so listed from the requirement for environmental impact assessments. Germany had transmitted several legislative drafts with time-tables during the procedure, but still failed however to adopt and notify the required laws to the Commission.

On 21 January 1999 the Court had ruled in Case C-150/97 that Portugal's failure to adopt the provisions of law, regulation or administrative action needed for full compliance with Directive 85/337/EEC constituted a failure to meet its obligations under Article 12(1) of the Directive. Following the opinion of Advocate General Mischo, the Court found not only that Portugal had failed to comply with the deadline for transposition but also that the Portuguese legislation[71] transposing the

69 COM(96) 511 final.
70 COM(1999) 73 final.
71 Decree-Law 278/97, 8.10.1997.

Directive after the due date had passed did not apply to projects for which the authorisation procedure was in progress when it entered into force, on 7 June 1990.

The Commission therefore asked the Portuguese authorities to inform it of the measures taken to comply with the judgments. Since the measures taken by Portugal were not sufficient, it continued proceedings under Article 228 of the Treaty against Portugal.

In case C-392/96 the Court had found that, by not adopting all the necessary measures for proper transposition of Article 4(2) as regards projects falling within points 1(d) and 2(a) of Annex II to Directive 85/337/EEC, and only partly transposing Article 2(3), (5) and (7), Ireland had failed to fulfil its obligations under Article 12 of the Directive. The case related particularly to Ireland's setting of thresholds for certain types of projects, i.e. initial reforestation where there was a potential negative ecological impact, land reclamation and peat extraction. The thresholds were so high that in practice a large number of projects with a considerable environmental impact were taken out of the assessment procedure provided for by the Directive. Ireland did not contest that it had failed to transpose Article 2(3), (5) and (7). Since Ireland however did not take the necessary measures to comply with the judgment, the Commission submitted a letter of formal notice to Ireland under Article 228 of the Treaty.

The Commission brought a court case (C-230/00) against Belgium over the possibility to grant tacit approvals for many types of plans and projects falling under the Directive. The Commission also sent a reasoned opinion to Italy, in some regions of which there were excluded, from the impact assessment procedures, the projects for which a request for development consent had been introduced before the entry into force of certain recent regional impact assessment acts although the Directive is applicable in Member States since 3 July 1988, which was the deadline for Member States to transpose it in their internal legal systems.

The Commission is continuing proceedings against Italy for insufficient regional legislation to transpose Annex II of the Directive and is studying the new information provided by Italy in 2000.

Proceedings are also being taken in certain cases of incorrect application. The Commission has sent a reasoned opinion to Luxembourg for not following the impact assessment procedure required by the Directive in the authorisation of a motorway project in Luxembourg, to Portugal for insufficient public consultation concerning certain expressway projects and to Spain on infringement of the Directive in the context of the expressway project Oviedo-Llanera (Asturias) as well as the modification project of the railway Valencia-Tarragona.

In a preliminary ruling of 19 September 2000 requested by a court in Luxembourg (Case C-287/98), the Court of Justice held that a national court, called on to examine the legality of a procedure for the expropriation in the public interest, in connection with the construction of a motorway, of immovable property belonging to a private individual, may review whether the national legislature kept within the limits of the discretion set by Directive 85/337/EEC, in particular where prior assessment of the environmental impact of the project has not been carried out, the information gathered has not been made available to the public and the members of the public

concerned have not had an opportunity to express an opinion before the project is initiated, contrary to the requirements of Article 6(2) of the Directive.

2.8.3. Air

Council Directive 96/62/EC on ambient air quality was due to be transposed by 21 May 1998. This Directive forms the basis for a series of Community instruments to set new limit values for atmospheric pollutants, starting with those already covered by existing directives, lay down information and alert thresholds, harmonise air quality assessment methods and improve air quality management in order to protect human health and ecosystems. By the end of 2000, all Member States except Spain had fully complied with their obligation to notify transposing measures. During 2000, the Commission was able to close the non-communication proceedings against Belgium following a reasoned opinion sent in 2000 and against Greece following a court action initiated in 1999 (Case C-463/99). On the other hand, the court action against Spain (Case C-417/99) had to be continued.

Directive 97/68/EC of the European Parliament and of the Council on the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery was due to be transposed by 30 June 1998. By the end of 2000, all Member States except France had communicated the transposition measures for this Directive and therefore court actions against Italy (Case C-418/99) and Ireland (Case C-355/99) could be dropped. Court action against France (Case C-320/99) had to be continued.

Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC[72] was due for transposition by 1 July 1999. After receiving the notifications of transposing measures, proceedings which were started in 1999 against Luxembourg, Belgium, the Netherlands, Germany, Ireland, Denmark, Greece, Spain, Portugal, Austria, Sweden and Finland could be dropped in 2000. Italy has also adopted the transposing decree, but it has not yet been published. On the other hand, the Commission decided to continue infringement actions for non-communication against the United Kingdom (as far as Gibraltar is concerned).

Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC[73] was due for transposition by 1 July 2000. Sweden, Denmark, Finland and the Netherlands have communicated the transposition measures while the transposition by the United Kingdom and Austria does not cover the whole of their territory. Other Member States had not yet communicated their transposition measures by the end of the year 2000.

The following directives adopted in 1999 relevant to air quality are to be transposed during 2001, but earlier transposition is possible :

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72 OJ L 350, 28.12.1998, p. 58.

73 OJ L 121, 11.5.1999 p.13.

- Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations[74];

- Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air[75];

- Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars[76].

The Commission also took several measures because of incorrect application of Directives relevant to air quality, but as these measures essentially concern other environmental directives, they are mentioned in the context of other sectors (see section *10.8. Waste* and section *10.9. Environment and industry*).

2.8.4. Water

Monitoring implementation of Community legislation on water quality remains an important part of the Commission's work. This is due to the quantitative and qualitative importance of the responsibilities imposed on the Member States by Community law and by growing public concern about water quality.

There are several cases under way over infringements of Directive 75/440/EEC concerning the quality required of surface water intended for the abstraction of drinking water. Some of the proceedings concern the preparation of systematic action plans (Article 4(2)) as an essential part of the effort to safeguard water quality (nitrates, pesticides, etc.) Others are concerned with the criteria for exemptions under Article 4(3).

In the judgment of 17 June 1998 (C-214/97) against Portugal, the Court held that the documents provided by the Portuguese authorities did not constitute a systematic action plan, despite their title and the projects described, because there was no timetable for water improvement, they did not cover all waterways and did not provide a framework for improving water quality. Following a reasoned opinion against Portugal for not submitting an appropriate systematic action plan even after the Court's judgment, the Commission was able to close the case after Portugal had finally in 2000 submitted a systematic action plan which fully complied with the requirements of the Directive.

The Commission brought a court action (Case C-375/00) against Italy over its lack of a systematic action programme for Lombardy.

With regard to Directive 76/160/EEC concerning the quality of bathing water, monitoring of bathing areas is becoming increasingly common and water quality is improving. Despite this progress, however, proceedings are still under way against

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74 OJ L 85, 29.3.1999, p. 1.
75 OJ L 163, 29.6.1999, p. 41.
76 OJ L 12, 18.1.2000, p.16.

most Member States since implementation still falls far short of the Directive's requirements.

The Commission decided to bring a court action under Article 228 against the United Kingdom over bathing waters on the Fylde Coast in North West England, where certain of the designated beaches have not met the Directive's standards. The Commission therefore considers that the UK has not fully complied with the Court judgment of 14 July 1993 (Case C-56/90).

The Commission continued Article 228 proceedings against Spain following the Court ruling of 12 February 1998 that Spain had failed to act to bring the quality of inland bathing waters into line with the binding values set by the Directive (Case C-92/96). The reply by Spain to Commission's reasoned opinion which was issued during 2000 is being examined.

On 8 June 1999, the Court had ruled in Case C-198/97 that Germany had failed to fulfil its obligations with respect to water quality and sampling frequency. Given the still existing non-compliance with the Court judgment, the Commission decided to open proceedings under Article 228 of the Treaty against Germany.

In a judgment of 25 May 2000 (Case C-307/98), the Court found against Belgium for excluding, without proper justification, from the scope of the Directive numerous inland bathing areas and not adopting, within 10 years of notification of the Directive the measures needed to comply with the limit values fixed by the Directive. The Commission decided to send a letter of formal notice to Belgium under Article 228 of the Treaty for non-compliance with the above judgment.

The Commission brought court proceedings against France (Case C-147/00), the Netherlands (Case C-268/00), United Kingdom (Case C-427/00) and Sweden (Case C-368/00) over water quality and/or sampling frequency. It also decided to bring Court action against Denmark and send a reasoned opinion to Finland for the same reason. Also court proceedings against Portugal are continuing. Italy's reply to the reasoned opinion issued in 1999 is being examined. The court action decided in 1999 against France over the failure to measure "total coliforms" parameter required by the Directive was combined with the above mentioned Court proceedings against France.

Proceedings have been started against most Member States over their implementation of Directive 76/464/EEC on dangerous substances discharged into the aquatic environment and of the directives setting levels for individual substances.

Court proceedings have been started in many cases and there were new rulings by the Court against the Member States in 2000 because of their failure to produce programmes incorporating quality objectives in order to reduce pollution by substances on List II in the Annex to the Directive.

Following the Court judgments of 11 June 1998 against Luxembourg (Case C-206/96), of 25 November 1998 against Spain (Case C-214/96) and of 1 October 1998 against Italy (Case C-285/96), ruling that these States had failed to establish programmes incorporating quality objectives to reduce pollution by these substances, the countries concerned have notified measures intended to ensure

compliance with Article 7 of the Directive. These measures are complex and they are still being examined.

The Commission intends to facilitate the adoption by the Member States of programmes under Article 7 of Directive 76/464/EEC by drafting a guidance document on this issue. By this document the Commission aims to support Member States in the implementation of both the existing Directive and (Article 7 of Directive 76/464/EEC) and the new Water Framework Directive 2000/60/EC. The document will identify eight elements to be included in the programmes on pollution reduction.

Court judgments against Belgium on 21 January 1999 (Case C-207/97) and against the Federal Republic of Germany (Case C-184/97) on 11 November 1999 over the same issue were followed by two new judgments during 2000 : judgment of 25 May 2000 against Greece (Case C-384/98) and judgment of 13 July 2000 against Portugal (Case C-261/98). The similar case against the Netherlands is still pending (Case C-152/98). The Commission decided to bring a Court action also against France and Ireland.

Following two Court of Justice rulings in 1998 (cases C-208/97 and C-213/97) that Portugal had not fulfilled its obligations to implement directives based on Directive 76/464/EEC on discharges of certain dangerous substances into the aquatic environment, Portugal notified the adequate measures to comply with the judgments and thus both cases could be closed.

Inadequacy of pollution reduction programmes leads to many specific cases of incorrect application of this Directive (pollution of specific waterways by agricultural or industrial effluent). These local difficulties can be solved only by an overall approach to the problem. Furthermore, there are still problems in several Member States where prior authorisation is not always required for discharges.

Thus the Article 228 proceedings against Greece following the judgment of 11 June 1998 (Joined Cases C-232/95 and C-233/95) are continuing, since Greece has not put in place programmes to reduce pollution by the substances on List II of Directive 76/464/EEC for Lake Vegoritis or the Gulf of Pagasaí. The measures notified by Greece were not considered to be sufficient, therefore a reasoned opinion under Article 228 of the Treaty was submitted.

Article 226 proceedings are also continuing against Portugal over effluent from an agri-food plant at Santo Tirso and the Commission is studying the measures taken by the Portuguese authorities. After sending a reasoned opinion to Portugal to the effect that the operating conditions for a herbicide plant which discharges untreated effluent into the Capa Rota river may constitute incorrect application of Directive 76/464/EEC, the Commission was able to close the case during 2000.

The Commission decided to bring a Court action against the United Kingdom for inadequate designation of the waters covered by Directive 79/923/EEC on shellfish waters as well as for the failure to draw up improvement programmes and adequately monitor the waters in question. The application to the Court in this case is still pending following the communication by the UK authorities of a significant number of newly designated shellfish waters and corresponding improvement programmes which are being investigated by the Commission.

Following notification by Finland of measures concerning designation of the waters concerned, setting of quality objectives, establishment of pollution reduction programmes and sampling, the Commission was able to close proceedings against Finland for incorrect application of Directive 78/659/EEC on waters supporting fish life.

The Commission was also able to close Article 228 proceedings against Portugal following the judgment of 18 June 1998 (Case C-183/97) on non-conformity of the Portuguese legislation with Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances.

The Court had ruled on 22 April 1999 in Case C-340/96 that the United Kingdom, by accepting non-binding undertakings from the water companies, had failed to fulfil its obligations under Directive 80/778/EEC relating to the quality of water intended for human consumption. In 2000 the Commission was able to close proceedings under Article 228 of the Treaty, as the United Kingdom communicated the adopted necessary measures to the Commission.

The Commission brought a court action (Case C-2000/316) against Ireland for incorrect application of Directive 80/778/EEC following widespread detection by the Irish Environmental Protection Agency of microbiological contaminants in drinking water, especially rural water supplies.

The Commission decided to go to court against Portugal for not fixing, as far as Azores are concerned, limit values for the parameters listed in Annex I to Directive 80/778/EEC.

The Commission issued a reasoned opinion to Spain for the bad quality of drinking water in several towns of the Alicante Province (Javea, Denia, Teulada-Moraira, Benitachell, Muchamiel, Bussot and Aigues). The response by the Spanish authorities is under assessment.

Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, which will replace Directive 80/778/EEC as from 2003[77] was due to be transposed into national law by 25 December 2000. Member States may have to take steps immediately to ensure compliance with the new limit values under the new directive. It must be noted with dissatisfaction that no Member State had notified complete transposition measures by 25 December 2000. The Commission has received notifications from Finland, the Netherlands and the United Kingdom, but they either do not cover the whole territory of the Member State at issue and/or do not transpose all parts of the Directive.

The European Parliament and the Council have adopted on 23 October 2000 a new Directive (2000/60/EC) establishing a framework for Community action in the field of water policy[78]. The Member States have three years to transpose its provisions into national law.

The Community has two legislative instruments aimed specifically at combating pollution from phosphates and nitrates and the eutrophication they cause.

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77 OJ L 330, 5.12.1998, p. 32.

78 OJ L 327, 22.12.2000, p.1.

The first, Directive 91/271/EEC, concerns urban waste-water treatment. Member States are required to ensure that, from 1998, 2000 or 2005, depending on population size, all cities have waste water collection and treatment systems. In addition to checking notification and conformity of the transposing measures, the Commission must therefore now follow up cases of incorrect application. Since this Directive plays a fundamental role in the campaign for clean water and against eutrophication, the Commission is particularly eager to ensure that it is implemented on time.

By a judgment of 6 June 2000 (Case C-236/99) the Court found against Belgium for failure to fulfil its obligations under Article 17 of the Directive by communicating to the Commission a programme for the implementation of the Directive which does not comply with the Directive as regards the Brussels-Capital. The Commission continued infringement proceedings against Spain over insufficient and incorrect designation of vulnerable zones under Article 5 of the Directive**.**

The Commission brought a Court action against Italy (Case C-396/00) over failure to treat urban waste water in the Milan area and against Austria over non-conformity of transposition of the Directive as regards the delays for the establishment of both collection and treatment of urban waste water. The procedure concerning the failure of Germany to fulfil several requirements under the Directive was continued during 2000. The Commission also sent a reasoned opinion to Belgium for several infringements of the Directive.

The second anti-eutrophication measure is Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources. The Commission has continued to lay great stress on enforcing this Directive.

Following the judgment of 1 October 1998 in Case C-71/97, by which the Court found that Spain had failed to draw up codes of practice or designate vulnerable zones, the Commission has been able to drop proceedings under Article 228 of the Treaty after notification by Spain of the necessary measures. On the other hand, the Court condemned Spain in a judgment of 13 April 2000 (C-274/98) for not establishing action programmes referred to in Article 5 of the Directive.

The Commission continued a pending court action against Italy over action programmes and reporting requirements (Case C-127/99).

The Commission also brought action before the Court (Case C-258/00) against France for failure to designate vulnerable zones adequately and against Germany (Case C-161/00) over non-conformity of the action programmes carried out. Court action decided against Greece in 1999 over lacking establishment of action programmes, non-adoption of codes of good agricultural practice and certain control measures was continued but not yet executed in view of certain measures notified to the Commission by Greece. Court action was brought against the Netherlands (Case C-322/00) for several insufficiencies of action programmes. On the other hand, the Commission was able to drop the case against Austria over non-mandatory character of action programme after changing the national law on the issue and notification of the Commission thereof. The Commission also closed proceedings against the United Kingdom after it had designated the Ythan estuary as a nitrate vulnerable zone following the reasoned opinion of the Commission.

Two cases remain open against Belgium, one for non-conformity of transposition as regards the national implementing measures, the production of codes of practice and the designation of vulnerable zones, and the other for incorrect application of the Directive. The Commission decided to refer both cases to the Court.

In its judgment of 7 December 2000 (Case C-69/99), the Court condemned the United Kingdom over failure to adopt all measures necessary to comply with the obligations laid down in Article 3(1) and (2) (designation of vulnerable zones) and Article 5 (drawing up of action programmes) of the Directive.

The Commission brought an action before the Court (Case C-266/00) against Luxembourg over codes of practice, programmes and reporting.

The Commission also sent a reasoned opinion to Finland concerning insufficiencies in action programmes relating to prohibition periods, capacity of storage vessels and rules for land application of manure. New measures adopted by Finland following the reasoned opinion are being examined by the Commission.

The Commission also started proceedings against several Member States concerning Directive 91/692/EEC on the standardisation and rationalisation of reports in the water sector. Certain Member States had failed to send in the reports they were required to produce on the implementation of certain directives or had sent them in late or incomplete. As a result, the Commission in turn has not been able to draw up properly the Community reports it is required to produce. The Commission has therefore taken court action against Portugal (Case C-435/99). Proceedings against Belgium are continuing as the Commission is examining the reply received at the end of 2000. On the other hand, in the course of the year 2000 the Commission was able to drop proceedings against Spain, Italy and Ireland as they had earlier provided the Commission with reports in response to the reasoned opinions they had received. Also, proceedings against France were dropped after examining the French reply to Commission's earlier reasoned opinion.

2.8.5. Nature

The two main legal instruments aimed at protecting nature are Directive 79/409/EEC on the conservation of wild birds and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

Regarding the transposition of Directive 79/409/EEC several conformity problems remain unresolved, particularly concerning hunting and derogations (Article 7(4) and Article 9). Thus, in a judgment of 7 December 2000 against France in relation to the opening and closing dates of the hunting season for migratory birds (Case C-38/99), the Court found that France had failed correctly to transpose Article 7(4) of the Directive, by having omitted to communicate all the transposition measures relating to the whole of its territory and by having failed correctly to implement the aforesaid provision. The Commission also continued the action before the Court against Italy (Case C-159/99) for non-transposition of Article 9 (derogations from the protection schemes resulting from Articles 5, 6, 7 and 8). The Commission also decided to bring court action against Greece concerning the duration of the hunting period. Furthermore, the Commission decided to bring court action against Sweden for its failure to correctly transpose certain provisions of Directive 79/409/EEC, including

Article 9. This case also concerns Article 4 (as replaced by Articles 6, paragraphs 2,3 and 4 of Directive 92/43/EEC) and Article 6(3) of Directive 79/409/EEC.

The Commission decided to bring an action before the Court against Finland concerning the non-conformity of the Finnish hunting legislation with the Directive (hunting of certain waterfowl species in the spring time, hunting season for certain other bird species). Following the reasoned opinion sent to Spain in the beginning of 2000 over the hunting of certain migratory bird species, the Commission is examining the reply sent by Spain. Infringement proceedings concerning hunting practices in two special protection areas (Baie de Canche and Platier d'Oye) in France are still under examination by the Commission.

Also other non-conformity issues under Directive 79/409/EEC were addressed during 2000. The Commission decided to bring a Court action against Belgium for the absence of transposition of Article 5 (c) and (e) and Article 6(1) of Directive 79/409/EEC. Another case against Belgium concerning the incorrect transposition of Article 4(1), (2), (4) and Annex I of Directive 79/409/EEC was referred to the Court.

By the end of 2000, i.e. about six and a half years after the deadline which expired in June 1994, the last Member States had finally notified the Commission of their transposition measures for Directive 92/43/EEC. However, in many cases the transposition is insufficient, particularly concerning Article 6 on the protection of habitats in the special conservation sites which are to be set up, and Articles 12 to 16 on protection of species. Thus, in its judgment of 6 June 2000 (Case C-256/98) the Court ruled against France for failure to adopt within the prescribed period all the laws, regulations and administrative measures necessary to comply with Article 6(3) and (4) of the Directive. Since France had not adopted the necessary measures to comply with the judgment, the Commission sent a letter of formal notice and subsequently decided to send also a reasoned opinion under Article 228 of the Treaty to France. The Commission also decided to refer Luxembourg and Belgium to the Court for failure to implement a number of provisions of the Directive properly. A Court action was also brought against Sweden for its failure to correctly transpose Articles 4(5), 5(4), 6(2)-(4), 15 and 16 of Directive 92/43/EEC.

As in the past, the main problems with the implementation of Directives 79/409/EEC and 92/43/EEC relate to the nomination and protection of sites of natural interest, either in connection with the designation of sites for birds and the selection of other sites for inclusion in the Natura 2000 network, or the protection of such sites.

As mentioned in the last report, problems still arise in several Member States with Article 4 of Directive 79/409/EEC, which requires that sites shall be designated as special protection areas (SPAs) for wild birds wherever the objective ornithological criteria are met.

The Commission is pressing ahead with infringement proceedings in certain key cases.

The Court had in 1999 given two judgments against France. In the first one (Case C-166/97), the Court found against France for failing to classify a sufficiently large area of the Seine estuary as a special protection area (SPA) and for failing to adopt measures to provide the classified SPA with an adequate legal regime under Article 4(1) and (2) of the Directive. But the Court dismissed the complaint relating to the

building of an industrial plant in the middle of the SPA, finding that the Commission had not furnished sufficient proof to contradict the information provided by the French authorities. In the course of the year 2000, Article 228 proceedings remained open against France to oblige the French authorities to take all necessary measures to comply with the judgment.

In the second one (Case C-96/98), the Court found against France for failing, within the prescribed period, to classify a sufficient area in the Poitevin Marsh as special protection areas, failing to adopt measures conferring a sufficient legal status on the special protection areas classified in the Poitevin Marsh, and failing to adopt appropriate measures to avoid deterioration of the sites in the Poitevin Marsh classified as special protection areas and of certain of those which should have been so classified. As France did not take the necessary measures to comply with this judgment, the Commission decided in 2000 to send a letter of formal notice under Article 228 of the Treaty to France.

In 7 December 2000 the Court gave one more judgment (Case C-374/98) against France concerning similar complaints, finding that France has failed to fulfil its obligations under Article 4(1) of the Directive by not classifying any part of the Basses Corbières site as a special protection area and by not adopting special conservation measures for that site sufficient in their geographical extent.

The Commission was able to close proceedings against Austria, as that Member State had notified the Commission of the measures concerning designation of Lech valley in the Tyrol as a SPA.

Although areas should have been designated SPAs when the Directive entered into force in 1981, existing sites in a number of Member States are still too few in number or cover too small an area. The Commission's present strategy revolves around initiating general infringement proceedings, rather than infringement proceedings on a site by site basis.

Thus, the Commission decided to bring an action before the Court against France for insufficient designation of special protection areas under Article 4(1) and 4(2) of the Directive. Proceedings opened earlier in relation to two individual areas (the Plaine des Maures and the Basses Vallées de l'Aude) were combined with this case.

The Commission is also pursuing proceedings against other Member States on the same grounds. It continued proceedings against Germany, Italy, Luxembourg, Portugal and Finland. Of these, the Commission brought a court action against Finland (Case C-240/00), but is at present still examining measures communicated by Germany and Portugal before deciding to what extent to press ahead against these two Member States. The Commission also brought Spain to the Court for failure to designate a sufficient number of SPAs in the Murcia region (Case C-354/00). The Commission has also decided to send a reasoned opinion to Spain for insufficient designation of SPAs in the whole country.

The Commission is examining a significant number of new special protection areas designated by the Netherlands after Commission’s reasoned opinion under Article 228 to oblige that Member State to comply with the Court's judgment of 19 May 1998 (Case C-3/96).

Member States continued to propose conservation sites within the meaning of Directive 92/43/EEC. The United Kingdom has undertaken to identify additional sites under the Directive and has started sending in newly designated sites to the Commission. These new sites are now under evaluation and the Commission has decided to suspend the execution of the Court action decided in 1999 against the United Kingdom until the assessment of the newly notified sites is complete. In 2000 the Commission also decided to prolong the suspension of infringement proceedings against the Netherlands, having received a substantial list from that Member State. That list will be assessed in the framework of the Atlantic biographical region, together with the lists of sites that are provided by other Member States in that region. The situation with the list submitted by Austria is still not completely satisfactory, but further proceedings will depend on the biogeographical seminars planned for 2001. Also the complementary list submitted by Portugal during 2000 following the infringement proceedings opened by the Commission is under examination. With regard to the substantial list submitted by Finland in 1998, the Commission decided to suspend the Court action opened in 1998 against Finland to examine the measures taken by Finland in the course of the year 2000.

The Commission continued Court actions against Ireland (Case C-67/99), Germany (Case C-71/99) and France (Case C-220/99).

Having decided to prolong the execution of the Court action against Sweden in order to assess the 'indicative list' submitted by Sweden, the Commission decided by the end of 2000 to press ahead with this case because of the insufficiencies in the 'indicative list'. Finally, the Commission decided to send Belgium a reasoned opinion since the national list transmitted did not contain any sites representative of numerous types of habitat present on Belgian territory, including priority habitats. Having examined the new list of sites submitted by Belgium during 2000, the Commission decided to continue the procedure against Belgium.

On 7 November 2000, the Court of Justice gave an important preliminary ruling requested by a British court under Article 234 in the Bristol Port case (Case C-371/98). The Court held that a Member State may not take into account economic, social and cultural requirements or regional and local characteristics, when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance.

As mentioned in the last report, in many cases the details provided by Member States on sites and the species they support are neither complete nor appropriate. This makes it more difficult to proceed to the subsequent stages of the plan laid down in Directive 92/43/EEC and to the setting up of the Natura 2000 network.

The Commission has maintained its strict policy with regard to the granting of Community funding for conservation of sites under the LIFE Regulation on sites being integrated or already integrated into the Natura 2000 network. Furthermore, it scrutinises requests for cofinancing from the Cohesion Fund very thoroughly for compliance with environmental regulations. In June 1999, the competent Commissioners for environment and regional policy sent the Member States a letter reminding them of their obligations under Directives 79/409/EEC and 92/43/EEC. Those Member States that had not submitted adequate lists for the setting up of the Natura 2000 network were warned that the Commission might not be able to evaluate the plans and cofinancing programmes submitted. During 2000, conditions were

inserted in Structural Funds plans and programmes and rural development programmes requiring Member States to submit outstanding Natura 2000 site lists.

Problems remain concerning unsatisfactory application of the special protection regime under Article 4(4) of Directive 79/409/EEC and Article 6(2) to (4) of Directive 92/43/EEC, i.e. failure to designate areas fulfilling the objective ornithological criteria as special protection areas and/or by setting aside the special protection regime in relation to projects affecting sites. In April 2000 the Commission published an interpretation guide in order to provide guidelines for the Member States on the interpretation of certain key concepts used in Article 6 of Directive 92/43/EEC.

The Commission sent a reasoned opinion to Austria for infringing Article 6(3) and (4) of Directive 92/43EEC in the context of an extension of a golf course in the Enns valley and decided to bring a Court action against Belgium for its failure to protect the SPA in the Zwarte Beek valley. The Commission referred Ireland to the Court of Justice for failure to adopt measures to protect against overgrazing of habitats populated by species of wild birds covered by the Directive 79/409/EEC in the West of Ireland (Case C-117/00).

Finally, the Commission decided to refer Portugal to the Court concerning the "Abrilongo" dam project affecting the Campo Maior SPA and species required to be protected under Directive 79/409/EEC and sent a reasoned opinion to the same Member State for authorisation of an expressway project without appropriate impact assessments.

Problems with the implementation of Directive 92/43/EEC may also arise with regard to the protection, not of designated or nominated sites, but of species. For example, the Commission has brought a court action against Greece for threats to a species of turtle (*Caretta caretta*) on the island of Zakynthos (Case C-103/00). It also decided to send a reasoned opinion to Germany for failure to properly protect the habitats of an endangered hamster (*Cricetus cricetus*) population at Horbacher Börde near Aachen close on the frontier with the Netherlands, one of the most important sites for this species in the North West Germany. Another reasoned opinion was decided against the United Kingdom for its failure to ensure the proper protection of the Great Crested Newt (*Triturus cristatus*).

Regarding the implementation of Regulation (EEC) No 338/97 on the implementation in the Community of the 1973 Washington Convention on international trade in endangered species of wild fauna and flora (the Cites convention), the infringement procedures against Greece resulted in Greece notifying the Commission in 1999 of various measures and Ministerial decisions supplementing Act 2637 of 27 August 1998. The decision to refer the matter to the Court has been deferred pending verification of the Greek legislation's conformity with the Community requirements.

2.8.6. Noise

As in the past, implementation of Directives on noise poses few problems, since these Directives set standards for new products. However, the complaints received by the Commission in fact relate to ambient noise and consequently cannot be addressed at Community level.

On 8 May 2000, the European Parliament and the Council adopted Directive 2000/14/EC on the approximation of laws of the Member States relating to noise emission in the environment by equipment for use outdoors[79].

2.8.7. Chemicals and biotechnology

Community legislation on chemicals and biotechnology covers various groups of directives relating to products or activities which have certain characteristics in common: they are technically complex, require frequent changes to adapt them to new knowledge, apply both to the scientific and industrial spheres and deal with specific environmental risks.

One of the features of Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances is the frequency with which it has to be amended, to keep up with scientific and technical developments. Thus, Directive 98/98/EC of 15 December 1998[80] adapting Directive 67/548/EEC to technical progress for the 25th time, fell due in July 2000. In addition, the European Parliament and the Council Directive 99/33/EC of 10 May 1999 amending Directive 67/548/EEC as regards the labelling of certain dangerous substances in Austria and Sweden fell due on 30 July 2000 for those two Member States.

In this context, Member States are still frequently late in communicating their transposition measures, but the Commission automatically commences proceedings in order to make Member States meet their obligations.

In 2000 the Commission decided to send a reasoned opinion to Germany concerning the definition and handling of man-made vitreous (silicate) fibres (MMMF) in contravention of Directive 67/548/EEC. The Commission also decided to send a reasoned opinion to the United Kingdom, and subsequently to bring a court action against that Member State, for excluding the territory of Gibraltar from the scope of application of the transposition measures for Directive 67/548/EEC and subsequent amending Directives.

Directive 96/56/EC provides for the abbreviation "EEC" to be replaced by "EC", for the purpose of labelling dangerous substances, by 1 June 1998. The Commission sent reasoned opinions to Belgium, Germany, Portugal and Greece in 1998 for failure to transpose the Directive. All Member States have now transposed it, as the only remaining action against Germany (Case C-406/99) could be withdrawn and closed in 2000.

With regard to Directive 97/69/EC (23rd adaptation to the Directive) on dangerous substances, measures have recently been notified to the Commission by Austria and the Netherlands against whom the proceedings have therefore been set aside.

Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing on the market of biocidal products[81] was due to be transposed by the Member States by no later than 14 May 2000. Proceedings for

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79 OJ L 162, 3.7.2000, p.1.
80 OJ L 355, 30.12.1998, p.1.
81 OJ L 123, 24.4.1998 p.1.

non-communication of transposition measures had to be opened against twelve Member States : Austria, Belgium, Finland (as far as the Province of Åland is concerned), France, Germany, Greece, Ireland, Luxembourg, Portugal, the Netherlands, Spain and the United Kingdom, of which proceedings against Austria could be dropped during 2000.

As regards Directive 86/609/EEC on the protection of animals used for experimental and other scientific purposes, the Commission was able to close proceedings against Belgium under Article 228 of the Treaty, after Belgium had implemented the Court of Justice judgment against Belgium of 15 October 1998 for failure to transpose the Directive (Case C-268/97). However, the Commission decided to send a reasoned opinion to Belgium for having too many exemptions for using non-purpose bred cats and dogs in experiments.

The Commission also continued a court action against Ireland (Case C-354/99), brought a court action against France (Case C-152/00) and decided to refer the Netherlands to the Court for incorrect transposition of the Directive. The court action against Austria was withdrawn after Austria had notified the Commission of the required measures.

The use of genetically modified micro-organisms (GMMs) is governed by Directive 90/219/EEC (relating to their contained use). The use of genetically modified organisms (GMOs) is governed by Directive 90/220/EEC (relating to their release). The existing legislative framework (Directive 90/220/EEC of 23 April 1990) is under revision. The European Parliament and the Council achieved an agreement on a joint text on 20 December 2000. Final adoption of the new system is expected in February 2001.The revised Directive seeks to introduce a more transparent and efficient framework for the approval procedure for the marketing of GMOs, to set out common principles for risk assessment and a mandatory monitoring plan and to adapt administrative procedures to the risks involved, including indirect ones.

The Commission sent a reasoned opinion to France concerning incorrect transposition of several provisions of Directive 90/219/EEC into its national law.

Directive 90/219/EEC was amended by Council Directive 98/81/EC of 26 October 1998 (contained use of genetically-modified micro-organisms)[82], which had to be transposed by 5 June 2000. By the end of 2000, proceedings for non-communication of transposition measures for this Directive were open against all Member States excluding Sweden, Finland and Denmark.

Finally, two cases of incorrect application of Directive 90/220/EEC remain open against France.

The first failing concerns the subsequent stages of the authorisation procedure for the placing on the market of products consisting of or containing GMOs. The Directive stipulates that when a decision has been taken approving the placing on the market of such a product, the competent authority of the Member State which received the initial notification must give its consent in writing so as to permit the product to be placed on the market. France has not given its consent in respect of two favourable

82 OJ L 330, 5.12.1998, p.13.

decisions adopted in 1997. However, in a similar case regarding maize, the French *Conseil d'Etat* (supreme administrative court) asked the Court of Justice for a preliminary ruling (Case C-6/99) as to whether the national authorities had any power of discretion following the adoption of a favourable decision by the Commission pursuant to Article 13(4) of Directive 90/220/EEC. In its judgment of 21 March 2000, the Court held that after an application for placing a GMO on the market has been forwarded to the Commission and no Member State has raised an objection, or if the Commission has taken a 'favourable decision', the competent authority which forwarded the application must issue the consent in writing, allowing the product to be placed on the market. However, if in the meantime the Member State concerned has new information that the product may constitute a risk to human health and the environment, it will not be obliged to give its consent, provided that it immediately informs the Commission and the other Member States about the new information. In a recent judgment of 4 November 2000, the French *Conseil d'Etat* has followed the decision of the Court of Justice, and has considered that without new information regarding the risks, the French Ministry could not call into question the decision taken by the Commission and based on the opinion of the three scientific committees. The procedure against France is still open (reasoned opinion stage), while the Commission is considering the possible application of the safeguard clause in Article 16 of Directive 90/220/EEC.

The Commission also decided to bring a court action against France for non-transposition and incorrect transposition of several provisions of the Directive 90/220/EEC.

2.8.8. Waste

Infringement proceedings in relation to waste continue to abound, concerning both formal transposition and practical application. As mentioned in the last report, the most likely explanations for the difficulties in enforcing Community law in these matters are as much the need for changes in the conduct of private individuals, public services and business firms as the costs of such changes.

Regarding the framework directive on waste (Directive 75/442/EEC, as amended by Directive 91/156/EEC), most of the implementation difficulties concern its application to specific installations. This is at the root of the large number of complaints primarily concerned with waste dumping (uncontrolled dumps, controversial siting of planned controlled tips, mismanagement of lawful tips, water pollution caused by directly discharged waste). The Directive requires that prior authorisation be obtained for waste-disposal and waste-reprocessing sites; in the case of waste-disposal, the authorisation must lay down conditions to contain the environmental impact.

The adoption by the Council on 26 April 1999 of Directive 1999/31/EC on the landfill of waste[83] should help to clarify the legal framework in which sites employing this method of disposal are authorised in the Member States.

As mentioned previously, the Commission uses individual cases of this type to detect more general problems concerning incorrect application of Community law, such as

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83 OJ L 182, 16.7.1999, p.1.

the absence or inadequacy of waste management plans, based on the assumption that an illegal dump may provide evidence of an unsatisfied need for waste management.

This was the spirit behind the Commission's second referral of Greece to the Court of Justice in 1998 (C-387/97), asking the Court to impose a daily fine of € 24 600 on Greece, on the basis of Article 228 of the Treaty, for failure to give effect to the Court's judgment in Case C-45/91 (7 April 1992). This case concerns the existence and the functioning of an illegal solid waste dump in Kouroupitos in the region of Chania where domestic waste, limited quantities of dangerous waste (for example, waste oils and batteries) and of different kind of commercial and industrial waste were illegally dumped. In line with the Advocate-General's conclusions of 28 September 1999, the Court declared in its judgment of 4 July 2000 that by failing to take the necessary measures to ensure that in the area of Chania waste is disposed of without endangering human health and without harming the environment in conformity with Articles 4 and 6 of Directive 75/442/EEC on waste and Article 12 of Directive 78/319/EEC on toxic and dangerous waste, Greece has not taken measures to comply with the judgment of 7 April 1992 and has failed to fulfil its obligations under Article 171 (now 228) of the Treaty. The Court decided to impose a financial penalty of € 20.000 per day on Greece for non-compliance. In December 2000 the Greek Government has paid the sum of 1.760.000 € covering the daily penalty from July to September 2000. The Commission has requested Greece to carry out payments on a monthly basis.

As previously stated, this is the first time that the European Court of Justice has taken a decision to fine a Member State under Article 228 of the Treaty. This constitutes a significant milestone for the European Union in terms of enforcement of Community environmental law *vis-à-vis* the Member States.

In a judgment of 9 November 1999 (Case C-365/97), the Court had found against Italy for failing to take measures necessary to dispose of the waste discharged into the watercourse running through the San Rocco valley without endangering human health or the environment, and for failing to take measures to ensure that the waste collected in an illegal tip is handed over to a private or public waste collector or a waste disposal company. The Commission is examining the measures to comply with the judgment that Italy communicated to the Commission during 2000.

The Commission decided to refer Austria to the Court for the failure to transpose correctly the Community definition waste into Austrian law (for providing for exceptions which are not covered by the Community definition, and for failure to transpose certain Annexes under Directives 75/442/EEC and 91/689/EEC). A reasoned opinion was issued to Belgium because of the Walloon Region's failure to provide a correct definition of waste in its implementation legislation. The Commission also sent a reasoned opinion to Luxembourg, and subsequently decided to refer this Member State to the Court, for incorrect transposition of the waste catalogue under Commission Decision 94/3/EC based on Directive 75/442/EEC.

Problems with the actual application of Directive 75/442/EEC were also identified during 2000. Thus, the Commission referred Greece to the Court concerning uncontrolled waste dumping in the Peloponnese and decided to bring a court action against Spain for several illegal landfills. A court action was brought against Italy for lack of communication of the report under Directive 75/439/EEC (waste oils) and Directive 75/442/EEC (Case C-376/00).

In 2000 the Commission brought a court action against Italy (Case C-65/00) for Italian legislation on hazardous waste not being in conformity with EC legislation as for the exemption from the permit requirement imposed by Directives 91/156/EEC and 91/689/EEC to undertakings carrying out hazardous waste recovery.

Given that planning is such an important part of waste management - a point illustrated by the examples above - the Commission decided in October 1997 to start infringement proceedings against all Member States except Austria, the only State to have established a planning system for waste management. These proceedings cover a range of failings, relating variously to plans as required by Article 7 of the framework Directive, plans for management of dangerous waste as required by Article 6 of Directive 91/689/EEC, and special plans for packaging waste, as required by Article 14 of Directive 94/62/EC.

In 2000 the Commission continued court actions against France (Case C-292/99), Ireland (Case C-461/99) and Italy (Case C-466/99) in respect of all three categories of plans, and brought court actions also against Greece (Case C-132/00), Luxembourg (C-401/00) and the United Kingdom (Case C-35/00). The Commission decided to press ahead with the court action against Spain.

On the other hand, proceedings opened earlier against Sweden and Portugal were dropped in 2000. Having received a notification of a plan for non-dangerous waste and waste packaging from Niedersachsen (Lower Saxony), the only *Land* not previously to have had such a plan, the Commission was able to close also this procedure.

As regards Directive 91/689/EEC on hazardous waste, the Commission had commenced infringement proceedings in 1998 against a number of Member States which had failed to provide the Commission with particular information required in relation to establishments or undertakings carrying out disposal and/or recovery of hazardous waste. In 2000 Greece was referred to the Court on this point. The Commission was able to drop proceedings against Portugal and the United Kingdom, having received the required information after sending a reasoned opinion to these Member States. The Commission continued to proceed against France for still incomplete information submitted under the Directive.

Regarding the implementation of the Directives on batteries and accumulators containing certain dangerous substances (91/157/EEC and 93/86/EEC), the Commission is pursuing infringement proceedings against those Member States which have not yet established the programmes called for by Article 6 of the Directive. The year 2000 has seen some progress in this respect. Following a reasoned opinion under Article 228 to Spain in order to implement the Court's judgment against Spain of 28 May 1998 (Case C-298/97) the Commission decided to drop the proceedings having received notification of compliance measures from Spain. For similar reasons the Commission decided to close Article 228 proceedings against Greece for failure to give effect to the Court's judgment of 8 July 1999 (Case C-215/98) and draw up a battery waste plan, an obligation it has been required to fulfil since September 1992. Court action against Portugal was also dropped after examining the measures implemented by that Member State. The Commission is examining the sufficiency of the measures taken by Austria after the reasoned opinion.

Commission Directive 98/101/EC of 22 December 1998 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances[84] was due for transposition by 1 January 2000. During 2000 the Commission was able to close the proceedings for non-communication of transposition measures for this directive against Belgium, Denmark and Spain. By the end of the year 2000, non-communication proceedings had been opened against seven Member States : Germany, Ireland, Italy, Portugal, the United Kingdom, Greece and the Netherlands.

In its judgment of 13 April 2000 (Case C-123/99), the Court held that Greece has failed to adopt the laws, regulations and administrative provisions necessary to comply with Directive 94/62 on packaging and packaging waste. The Commission sent a reasoned opinion to the Netherlands for several issues where the Dutch law is not in conformity with the Directive. On the other hand, proceedings against the United Kingdom (Case C-455/99) for their failure to provide notification of measures transposing the Directive were dropped after the latter provided notification of its measures[85]. Proceedings were continuing against Germany concerning its packaging Regulation (commonly referred to as the 'Töpfer' regulation), which promote the re-use of packaging materials. The Commission decided to issue a reasoned opinion to Germany since the reuse quota as set up by the German Regulation leads to a barrier to trade and indirect discrimination of imported natural mineral waters to be filled at source.

Not only must transposition measures be notified to the Commission, they must also conform with the relevant Community legislation. The Commission considers that this is not the case in Denmark, and thus the Commission is continuing proceedings before the Court of Justice (Case C-246/99) in relation to Denmark's ban on metal cans for drinks and other types of non-reusable packaging.

The Commission brought a court action against Germany (Case C-228/00) for setting up different criteria to distinguish waste for recovery from waste for disposal and to raise accordingly objections against shipment of waste which contravene Regulation 259/93/EEC on the supervision and control of shipments of waste within, into and out of the European Community. Proceedings were also brought against Luxembourg as a consequence of its failure to comply with Regulation 259/93/EEC in refusing to allow waste to be transported to French incinerators equipped for energy purposes.

Infringement proceedings were commenced in 1999 against various Member States for failure to submit the annual reports required by Article 41 of Regulation 259/93/EEC. The proceedings against Greece, Italy and Ireland were dropped in view of the satisfactory responses received from these countries. The Commission sent a reasoned opinion to the Netherlands concerning shipments of waste from the Netherlands to other countries.

Regarding Directive 75/439/EEC on the disposal of waste oils, the Commission started proceedings under Article 228 against Germany for not complying with the ruling of the Court of Justice of 9 September 1999 (Case C-102/97), concerning

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84 OJ L 1, 5.1.1999, p. 1.

85 The Producer Responsibility Obligations (Packaging Waste)(Amendment) Regulations (Northern Ireland) 1999 S.R N.I. No. 496.

Germany's failure to take the measures necessary to give priority to the processing of waste oils by regeneration, notwithstanding that technical, economic and organisational constraints so allowed. The Commission also continued the Court action against Portugal for incorrect transposition of the Directive (Case C-392/99).

With regard to the disposal of PCBs and PCTs, two particularly dangerous products, Directive 96/59/EC, which supersedes Directive 76/403/EEC, was due to be transposed by the Member States by 16 March 1998. During the year 2000, the Commission was able to close proceedings against all Member States who had not notified their transposition measures by the above deadline, including proceedings in the Court of Justice against Greece (Case C-464/99) and the United Kingdom (Case C-468/99). The Directive stipulates that Member States shall draw up, within three years of its adoption, namely by 16 September 1999, plans for the decontamination and/or disposal of inventoried equipment and PCBs contained therein and outlines for the collection and subsequent disposal of certain equipment under Article 11 of the Directive, as well as inventories under Article 4(1) of the Directive. However, many Member States have still not communicated to the Commission the necessary measures. Thus, in the course of the year 2000 the Commission sent a reasoned opinion to the United Kingdom, Denmark, Germany, Sweden, Portugal, Greece, France, Spain, Italy, Ireland and Luxembourg. It also decided subsequently to bring court action against the six last mentioned Member States.

Finally, in relation to the sewage sludge Directive 86/278/EEC, the Commission decided to send letters of formal notice to Sweden, Belgium, Ireland, Italy and Portugal for non-compliance with the information and monitoring obligations established under the Directive. According to Article 10 of the Directive, Member States have to ensure that up to date records are kept which register the quantities of sludge produced and the quantities supplied for the use in agriculture, the composition and properties of sludge and the type of treatment carried out. This is necessary to verify that the use of sewage sludge in agriculture does not compromise food production and long term soil quality.

2.8.9. Environment and industry

It should be mentioned first that the procedure against Italy for non-compliance with the Court's judgment of 17 June 1999 (Case C-336/97) was dropped by the end of the year 2000 after Italy had corrected its failure to organise emergency plans, inspections, and control measures as required by the Directive 82/501/EEC – "the Seveso Directive".

Directive 96/82/EC (« Seveso II »), replacing Directive 82/501/EEC from 3 February 2001 («Seveso I»), was due to be transposed by no later than 3 February 1999. In the absence of notifications of their transposition measures, the Commission decided to refer the following five Member States to the Court : Austria, Belgium, Germany, Ireland and Portugal. On the other hand, non-communication proceedings opened earlier against Luxembourg, the United Kingdom and Greece could be dropped.

The Commission decided to refer Ireland to the Court for non-conformity of their measures implementing Directive 87/217/EEC (prevention and reduction of environmental pollution by asbestos). New legislation later made it possible to withdraw this case. Also similar proceedings opened earlier against Belgium could be closed during 2000.

Regarding the two Directives on the prevention of air pollution from municipal waste incineration plants, namely 89/369/EEC (new plants) and 89/429/EEC (existing plants), the Commission was able to withdraw the court action against Belgium for non-conformity of its transposing legislation (Case C-287/99). On the other hand, the Commission brought court action (Case C-2000/139) against Spain for permitting the Canary Islands to operate incinerators not complying with Directive 89/369/EEC, and decided to bring court action against France for allowing numerous incinerators to operate in contravention of Community legislation, with substantial dioxin emissions.

Directive 94/67/EC on the incineration of hazardous waste fell due for transposition on 31 December 1996. Court proceedings against Belgium (Case C-338/99) and Italy (Case C-421/99) for failure to notify transposition measures could be dropped in the course of the year 2000, as the Member States at issue had adopted the necessary measures and notified the Commission thereof. The Commission decided to send a reasoned opinion to Austria for incorrect transposition of the Directive.

Directive 96/61/EC concerning integrated pollution prevention and control (IPPC), adopted on 24 September 1996, was due to be implemented by 30 October 1999. Proceedings for non-communication of the transposition measures to the Commission were continued against Spain, Greece, the United Kingdom (as far as Northern Ireland and Gibraltar are concerned), Luxembourg, Germany, Finland (as far as the Province of Åland is concerned) and Belgium. Non-communication proceedings opened earlier against Austria and Portugal were closed during 2000, as the necessary transposition measures were notified to the Commission by those Member States.

The Commission continued the court action against Belgium with regard to the use of the tacit authorisation scheme mentioned in last year's report, since Belgium's responses to the reasoned opinion offered no evidence that the national legislation had been brought into line with the Directive.

2.8.10. Radiation protection

The Community legislation on radiation protection is based on Chapter 3 "Health and Safety" of the Euratom Treaty. It covers all aspects of the protection of the health of workers and the general public against the dangers arising from ionising radiation, not only those related to nuclear energy. In fact, people are mostly exposed to radiation by its medical use. Furthermore, it protects indirectly the air, water and soil of the Community from the impacts of radiation. The Commission controls the implementation of the radiation protection legislation on the basis of Article 124 and according to the procedure of Articles 141 and 143 of the Euratom Treaty, which correspond to Article 211 and respectively to Articles 226 and 228 of the EC Treaty.

The primary legislation, the Euratom Treaty itself sets in Articles 33-37 certain obligations to the Member States, for example relating to the training and education, environmental monitoring and disposal of radioactive waste. In addition, there are five main directives and three regulations currently in force concerning radiation protection.

The speciality of the Euratom based legislation is that the Commission examines the conformity of the national transposing measures before those measures are adopted

in a final way. According to Article 33 of the Euratom Treaty, the Member States shall communicate to the Commission any draft provisions, which it has made to ensure compliance with the basic standards in the area of radiation protection. The Commission shall make appropriate recommendations for harmonising these measures. These recommendations are similar to conformity checks in the other areas of Community environmental law which may lead to a letter of formal notice. In 2000, the number of submissions of national draft legislation under Article 33 of the Euratom Treaty increased highly, because the deadline for transposition of two main radiation protection directives 96/29/Euratom and 97/43/Euratom was in May 2000. The Commission received 20 submissions (compared to 11 in 1999) under Article 33 of the Euratom Treaty, which have been examined and commented on, although no formal recommendation was issued during 2000. Even if the recommendations issued under Article 33 are not binding, the Member States follow them usually very well. Therefore, there is less need for infringement cases concerning non-conformity in the area of radiation protection.

Article 35 of the Euratom Treaty provides that each Member State shall establish the facilities necessary to carry out continuous monitoring of the level of radioactivity in the air, water and soil and to ensure compliance with basic standards. The Commission can verify the operation and efficiency of such facilities. During 2000, the Commission carried out two verifications under Article 35.

Under Article 36 of the Treaty, Member States provide information on the measured levels of radioactivity in the environment. This allows the Commission to judge whether the basic standards are complied with. The Commission adopted in 2000 Recommendation 2000/476/Euratom on the application of Article 36 of the Euratom Treaty concerning the monitoring of the levels of radioactivity in the environment for the purpose of assessing the exposure of the population as a whole (OJ L 191, 27.7.2000, p. 37).

According to Article 37 of the Euratom Treaty, Member States must provide the Commission with general data relating to any plan for the disposal of radioactive waste. The Commission assesses the data in order to determine whether the implementation of the plan could cause radioactive contamination of the environment of another Member State. The Commission issues an opinion on the subject, which the Member State has to take into account when granting an authorisation for the project. Article 37 aims to forestall any possibility of radioactive contamination of the environment in another Member State, thereby protecting the general public against the dangers arising from ionising radiation. The Commission issued 12 opinions under Article 37 of the Euratom Treaty in 2000. There was one infringement case pending relating to Article 37 in 2000: the Commission considered that the United Kingdom had failed to fulfil its obligations under Article 37, because it had not submitted the general data related to dismantling of Windscale Pile I nuclear reactor. Thus the Commission decided to refer the UK to the Court. The Windscale Number 1 Pile reactor was built and operated within the current Sellafield site as an experimental and production facility for the UK weapon programme. According to the information available to the Commission, its dismantling was being prepared. Because dismantling operations are considered as ‘a plan for disposal of radioactive waste’, the UK authorities should have submitted the general data related to dismantling plans to the Commission. However, the United Kingdom argued in principle that the Euratom Treaty does not apply to the use of nuclear energy for military purposes. Therefore, the UK considered first that Article 37 was not

applicable to the plans concerning Windscale Pile 1. The Commission does not share this opinion but is of the view that the provisions (including Article 37) of Chapter 3 "Health and Safety" of the Euratom Treaty apply to activities in both civil and military spheres. The protection of the health and the safety of general public in the field of radiation protection is an indivisible objective and extends to all dangers arising from ionising radiation, irrespective of their source. The UK authorities then accepted that the proposed operations to dispose of the waste from within the reactor were not related to the national defence programme and indicated their willingness to submit the data, once a plan for disposal is ready. The case was closed.

As mentioned above, the deadline for transposition of two main directives in the area of radiation protection, Council Directive 96/29/Euratom laying down basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation (OJ L 159, 29.6.1996, p. 1) and Council Directive 97/43/Euratom on health protection of individuals against dangers of ionising radiation in relation to medical exposure (OJ L 180, 9.7.1997, p. 22), expired on 13 May 2000. By the same date, all the old basic safety standards directives (adopted since 1959) were repealed.

Directive 96/29/Euratom on the Basic Safety Standards introduced a new dosimetric concept in order to protect the health of workers and general public soundly and comprehensively. For this purpose, the Directive reduced the dose limits, set new requirements for the justification for all practices involving ionising radiation and introduced an extended ALARA-principle, according to which doses must be kept As Low As Reasonable Achievable. The Directive covers practices, work activities and intervention situations. It also introduces the new concept of clearance and exemption for materials containing radioactivity. Besides man-made radiation, it also regulates natural radiation in the work place. Finally, the Directive includes new requirements for the assessment of population dose.

Only two Member States had notified a complete set of national transposing measures as regards Directive 96/29/Euratom on the Basic Safety Standards to the Commission within the deadline set by the Directive. Therefore, the Commission opened infringement cases against Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Luxembourg, Netherlands, Portugal, Spain, Sweden and United Kingdom in summer 2000 because of failure to communicate the final transposing measures. However, Austria later communicated the national measures, and the Commission was able to close this infringement case before the end of 2000.

Directive 96/29/Euratom on the Basic Safety Standards repealed the previous Directive 80/836/Euratom on the Basic Safety Standards as from 13 May 2000. The only pending infringement case in relation to Directive 80/836/Euratom was against the Netherlands for failure to comply with basic standards concerning e.g. nursing mothers, internal exposure and received doses. This was closed in 2000 because the definitive correction of these infringements can be ensured in the framework of the case opened against the Netherlands under Directive 96/29/Euratom (see above).

Directive 97/43/Euratom on Medical Exposures improves the level of radiological protection for patients and medical staff. It takes into account the new developments in medical procedures and equipment. It is built onto the experience gained from the operational implementation of former directives and supplements Directive 96/29/Euratom on the Basic Safety Standards. The new Directive lays down a more

precise description for the justification principle, regulates the distribution of responsibilities and sets requirements for qualified experts in the medical area.

As regards this Directive, three Member States had notified a complete set of national transposing measures to the Commission within the deadline set by the Directive. Therefore, the Commission opened infringement cases against Belgium, Denmark, France, Germany, Greece, Ireland, Luxembourg, Netherlands, Portugal, Spain, Sweden and United Kingdom in summer 2000 because of failure to communicate the final transposing measures. However, Sweden later communicated the national measures, and the Commission was able to close this infringement case before the end of 2000.

The previous Directive 84/466/Euratom on Medical Exposures was repealed by the new Directive 97/43/Euratom. The infringement case C-96/21 against Spain related to Directive 84/466/Euratom was closed, when Spain communicated to the Commission new, published transposing measures. Another case pending was that against Belgium. The Belgian legislation as notified did not fully meet the requirements of Directive 84/466/Euratom concerning e.g. training, qualified experts and acceptability and surveillance of radiological installations. This was closed because the definitive correction of these infringements can be ensured in the framework of the new case opened against Belgium under Directive 97/43/Euratom (see above).

Directive 89/618/Euratom on Informing the Public includes requirements on informing the general public about health protection measures to be applied and steps to be taken in the event of radiological emergency. Sweden had failed to communicate transposing measures for several provisions of Directive 89/618/Euratom, such as on informing the public in emergency and on procedures for circulation of information. In 2000, the Commission received notification concerning the new Swedish transposing measures and the case was closed. The conformity check of the French legislation had revealed that it fails to fully comply with the Directive as regards definitions, prior information to the public and information to the public in the event of emergency and as regards information to the emergency staff. On this basis, the Commission sent a reasoned opinion to France in 2000. Proceedings against Germany are going on, because the German legislation does not ensure that if a radiological emergency occurs, the population affected is informed without delay on the facts of the emergency and of the steps to be taken. Furthermore, the German legislation does not fully transpose the requirements concerning information for rescue workers. Lastly, the procedures for circulating necessary information are not arranged as required by the Directive. It appears that Germany is preparing new legislation, which would solve these problems. However, the Commission has not received notification concerning new adopted legislation and the infringement subsists. Therefore, the Commission has decided to refer Germany to the Court.

The infringement case against France for failure to comply with Directive 90/641/Euratom on the operation protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas was closed in 2000, because the assessment of the new measures received in 1999 proved them satisfactory. This Directive provides outside workers with operational radiation protection equivalent to that offered to the operator's established workers. Outside workers are workers employed by undertaking other than the operator of a facility

licensed under the radiation protection legislation, who are exposed to the risk of radiation. Outside workers can work in several facilities in succession in one or more Member States. They are thus liable to be exposed to radiation in several controlled areas (where exposures are significant). These specific working conditions require a specific radiological monitoring system, important to their health protection. According to the analysis of the Commission, Belgium has failed to establish a uniform system, which fully complies with the Directive. Therefore it decided to refer Belgium to the Court in 2000.

2.9. FISHERIES

The Commission continued to monitor the resource conservation and management measures put in place by the Member States in areas covered by the common fisheries policy.

The Commission continued its systematic scrutiny of national fisheries and aquaculture legislation. These are the measures analysed under Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy,[86], Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms[87] and Council Regulation (EC) No 1626/94 of 27 June 1994 laying down certain technical measures for the conservation of fishery resources in the Mediterranean.[88] The Commission has identified no cases of national measures incompatible with Community rules warranting infringement proceedings.

2.9.1. Resources

In the course of the infringement proceedings for failure to inspect, given the excesses over certain quotas in Denmark in 1988, 1990, 1991, 1992, 1994, 1995 and 1996, the Commission sent the Danish Government a reasoned opinion on 15 May. In the course of the infringement proceedings against the United Kingdom for excesses over certain quotas in 1991, 1992, 1993, 1994, 1995 and 1996, the Commission commenced an action in the Court of Justice on 10 April. On 10 November the Commission commenced two actions in the Court against France for excesses over certain quotas in 1991, 1992, 1993, 1994, 1995 and 1996.

A supplementary reasoned opinion was addressed to France on 6 June 2000 in the course of the proceedings for failure to comply with Community fisheries and marketing rules governing the minimum sizes for certain species.

The proceedings against France, Ireland and the United Kingdom concerning the reduction in the number of fishing vessels using drifting gill nets were terminated as the initial complaints were unfounded.

The proceedings against France concerning compliance with time-limits for introducing satellite-based surveillance of fishing vessels were terminated when the system was set up.

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86 OJ L 261, 20.10.1993, p. 1.
87 OJ L 125, 27.4.1998, p. 1.
88 OJ L 171, 6.7.1994, p. 1.

In addition, the proceedings against France concerning the conditions for the exercise of fishing activities in relation to species for which national quotas had been allocated were terminated when the French authorities took measures to bring those conditions into line with Community law.

2.9.2. Grant of flag rights and fishing licences

In 2000 the Commission continued to scrutinise national legislation on the granting of flag rights to fishing vessels for compatibility with Community law.

The infringement proceedings against Greece and Portugal in connection with the granting of flag rights were terminated following the enactment of national legislation compatible with Community law.

2.9.3. Markets

The infringement proceedings against Germany concerning the common rules for the marketing of preserved sardines were terminated when measures application them properly were enacted.

2.10. INTERNAL MARKET

2.10.1. General strategy for the internal market

On 3 May the Commission presented a communication entitled "*2000 Review of the Internal Market Strategy*",[89] which, on the basis of an initial document published in November 1999, identifies the priority areas of action regarded as having the heaviest and most immediate impact on endeavours to improve the operation of the internal market. The review also meets the wish expressed by the Lisbon European Council for modernisation and simplification of the internal market so that the European Union can be the world's most competitive and most dynamic knowledge-based economy.

In May and November the Commission published updates to the "*Single Market Scoreboard*", which takes stock of progress made by the Member States in the application and implementation of single-market legislation. In November, the scoreboard[90] showed that the efforts made by Member States in recent years to give priority to the transposal of the internal-market directives are bearing fruit: the average rate of failure to transpose has been halved in three years. Even so, one directive in eight is untransposed in at least one Member State, which means that nearly 13% of internal-market legislation is not fully effective throughout the Union. It is more and more obvious that the Member States' authorities can catch up on the backlog only if their efforts are backed up by political support at the very highest level.

Simpler and better-quality legislation are still among the most important political priorities. The SLIM initiative (Simpler Legislation for the Internal Market) is vital here. Small teams of civil servants from the Member States and users of legislation

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89 COM (2000) 257 final; Bull. 5-2000, point 1.3.26.

90 Single-market scoreboard No 7, dated November 2000, can be consulted on the Internal Market Directorate-General website at http://europa.eu.int/comm/internal_market/.

are working of practical proposal for simplifying Community legislation is specific areas. Fourteen sectors have been reviewed since 1996. In 2000, the Commission published the results of the fourth phase of the SLIM exercise,[91] with a set of recommendations for simplifying legislation in three areas – company law, dangerous substances and pre-packing.

In a communication dated 28 February entitled "*Review of SLIM: Simpler Legislation for the Internal Market*",[92] the Commission, on the basis of the first three phases of the SLIM exercise, defined ways of improving transparency and proposed principles for selecting sectors to be covered. It called for parallel efforts by the Member States to simply their rules in the relevant sectors and hoped that the European Parliament and the Council would adopt, at the earliest opportunity, such proposals as were extensively based on SLIM recommendations.

The Commission and the Member States also agreed on three new legislative sectors to be included in the fifth phase of SLIM: transfers of radioactive substances (Directive 92/3/Euratom,[93] Regulation (Euratom) No 134/93,[94]) trade in cosmetics (Directive 76/768/EEC[95]) and pesticide residues (Directives 76/895/EEC,[96] 86/362/EEC,[97] 86/363/EEC[98] and 90/642/CEE[99]). The Commission will issue a working paper on the fifth phase in April 2001, and the SLIM teams will examine the relevant legislation and present their recommendations in September.

In its dialogue with citizens and firms, the Commission introduced a new guide to exercising rights in the single market and launched a mechanism for feedback from firms so that their practical experience could be better reflected in decision-making processes.[100]

And to improve the application of internal market legislation, and in particular top help citizens and firms solve their problems in exercising their rights, the Commission worked with the Member States on improvements to the operation of the network of internal market coordination centres and contact points set up in all the Member States.[101]

2.10.2. Free movement of goods

2.10.2.1. Application of Articles 28 et seq. EC (ex Articles 30 et seq. of the EC Treaty)

There was a slight downward trend in the volume of trade-barrier cases in 2000. In 2000, 151 new cases were commenced (there were 257 in 1999, but a good quarter of

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91 COM (2000) 56 final, 4.2.2000.
92 COM (2000) 104 final.
93 OJ L 35, 12.2.1992, p. 24.
94 OJ L 148, 19 Jun 1993, p. 1.
95 OJ L 262, 27 September 1976, p. 169.
96 OJ L 340, 9 December 1976, p. 26.
97 OJ L 221, 7 Aug 1986, p. 37.
98 OJ L 221, 7 Aug 1986, p. 43.
99 OJ L 350, 14 December 1990, p. 71.
100 Visit the following Europa sites: http://europa.eu.int/citizens and http://europa.eu.int/business.
101 Visit http://europa.eu.int/comm/internal_market/, and go to Contact points for citizens and Contact points for business.0

the 1999 cases were linked to the dioxin crisis, which rather hampers comparisons). As at 31 December 2000, there were 345 infringement cases pending, up from 318 in 1999.

The trend for fee movement of goods cases to become more complex was confirmed. The Commission departments responsible for proceedings here continued as throughout recent years to give priority to dialogue with the national authorities and commenced infringement proceedings only where there was still real disagreement with them.

Package meetings were again organised with most of the Member States (except Belgium, Finland, Germany and Luxembourg). They proved once again how useful and effective they are, since 56 of the 138 cases discussed were settled and only 18 can be considered to be conflictual. Practical seminaries on the application of the principle of mutual recognition were also organised in five Member States on the fringes of these package meetings. Given their acknowledged success and usefulness, other seminars will probably be organised in 2001 to improve the familiarity of Member States' authorities with mutual recognition. A fresh meeting of chairmen of package meetings was organised in February 2000.

In addition to the package meetings, the Commission agreed with the Member States to test a new method for the rapid settlement of problems met by Community citizens by entrusting to the network of contact points set up under the Internal Market Advisory Committee a series of cases concerning the registration of motor vehicles. The new mechanism places responsibility for finding either a justification or a solution within three months with the contact point of the Member State in which a registration problem arises, if necessary in conjunction with the contact point in the citizen's country of origin. The Commission will take the case over for handling by the usual infringement procedure only after that period has expired and if the network fails to solve the problem. There will be a first stock-taking of the new mechanism, which will begin to run on an experimental basis in 2000, in 2001. If the outcome is positive, the functions of the network could be extended to other types of problems connected with the free movement of goods.

\ As regards the sectors where the Commission was most frequently called on to act in 2000, there is a tendency for the subject-matter of complaints to diversify. The food and motor industries still make frequent appearances, but the pharmaceutical and phyto-pharmaceutical sectors are also regularly cited, especially in terms of parallel imports.

The Commission's success stories in 2000 include the liberalisation of trade in radio scanners in Belgium, the establishment of simplified rules governing parallel imports of medicines in Spain and simplified rules governing parallel imports of phyto-sanitary products in Greece.

In 2000, the Commission referred to the Court of Justice an infringement proceeding against the Netherlands concerning the rules relating to the addition of nutritional ingredients to foodstuffs (prohibition in the absence of prior authorisation). These rules prohibit as a general rule the addition of certain ingredients, such as vitamins A and D and folic acid to foodstuffs, except for certain specific products. The only possibility for operators to obtain an exception is the prior authorisation procedure for individual products.

This year the Commission sent 17 reasoned opinions to Austria (imports of medicines), Belgium (medical devices for disabled persons, reimbursement of cost of medical devices), Denmark (vitamin drinks), Spain (legislation on fairs and exhibitions, registration of motor-cycles with trailers, liquid bleach), Finland (vitamin food supplements), France (imports of medicines, imports of camping cars), Ireland (parallel imports of medicines), Italy (imports of ships' fittings, components and characteristics of agricultural trailers), Greece (price of medicines, marketing of hemp-based products), the Netherlands (parallel imports of plant-health products) and Sweden (parallel imports of medicines).

In 2000, the Court of Justice gave judgment in the Commission infringement proceedings against Member States in the following cases:

– Case C-23/99 *Commission v France* (judgment given on 29 September 2000), in which the Court held that France was not entitled to implement procedures for withholding by customs authorities in relation to goods lawfully manufactured in a Member State and intended for transit via France and marketing in another Member State where it was lawful to market them;

– Case C-217/99 *Commission v Belgium* (judgment given on 16 November 2000), in which the Court held that Article 28 EC was violated by Belgian rules whereby the labels of foodstuffs containing added ingredients must bear a notification number (procedure laid down for this type of foodstuffs);

– Case C-55/99 *Commission v France* (judgment given on 14 December 2000), in which the Court held that Article 28 EC was violated by French rules whereby the outside packaging of medical reagents of must bear the registration number, and the registration must be mentioned on the Notice; the Court rejected the Commission's application regarding the reference to a registration procedure valid for all reagents.

As regards judgments of the Court of Justice, a number of preliminary rulings tying in with cases of infringement being dealt with the Commission should be mentioned:

– Case C-254/98 *Schutzverband* (judgment given on 13 January 2000), in which the Court confirmed that a discriminatory national measure could not be regarded as a term of sale and was accordingly caught by Article 28 CE. The case concerned an Austrian measure requiring fixed premises in Austria for the ambulant sale of bakery products;

– Case C-366/98 *Geffroy* (judgment given on 12 September 2000), in which the Court again held that Article 28 of the EC Treaty and Article 14 of Directive 79/112/EEC on the labelling of foodstuffs (as amended)[102] precluded national rules imposing the use of a specific language for the labelling of foodstuffs, without allowing another language that was easy for consumers to understand to be used or for consumers to be provided with information by other means;

– Case C-3/99 *Cidrerie Ruwet* (judgment given on 12 October 2000), in which the Court held that Article 28 precludes a Member States from prohibiting the marketing of pre-packaging of a nominal volume not included within the

[102] OJ L33, 8 February 1979, p. 1.

Community range (Directive 75/106/EEC as amended[103]), lawfully manufactured and marketed in another Member State, unless the purpose of the prohibition was to protect the consumer, was necessary and was in proportion to that objective;

– Case C-448/98 *Guimont* (judgment given on 5 December 2000), in which the Court held that Article 28 precludes the application to products from other Member States of rules whereby only cheeses with a rind may be marketed as "emmenthal".

The Commission also boosted its action in favour of transparency and the application of Parliament and Council Decision 3052/95/EC,[104] pursuant to which the Member States are required to notify the Commission of the national measures constituting exceptions to the principle of the free movement of goods. Although the number of notifications received more than doubled over the 1999 figure (65 over 26), it is still insufficient. The Commission report on the application of the decision in 1997 and 1998, published on 7 April 2000, highlights this point, along with a set of proposals for improvements.

As for the arrangements for rapid action on serious barriers to the free movement of goods, the early warning system provided for by Article 3 of Council Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States [105] was activated 18 times in 2000. This was the case, for instance, at the time of the protests against the 35-hour week in France and the protests against oil price rises in several Member States.

2.10.2.2. Measures to accompany the abolition of internal borders on 1 January 1993

Having been notified in 2000 of all the national measures transposing Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State[106] and Directive 96/100/EEC[107] amending the Annex to Directive 93/7/EEC, the Commission commenced an investigation into the conformity of the measures taken by Germany and France.

2.10.2.3. Liability for defective products (Directive 85/374/EEC,[108] as amended

The Commission brought infringement proceedings in the Court of Justice against France and Greece for non-conformity of national measures transposing the Directive.

Directive 99/34/EC[109] aims to extend the rules on liability without fault to agricultural primary products. The Member States were to introduce the laws, regulations and administrative provisions necessary to comply with the Directive by 4 December 2000 at the latest. The national rules of certain Member States (Greece,

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103 OJ L42, 15 February 1975, p. 1.
104 OJ L321, 30 December 1995, p. 1.
105 OJ L337, 12 December 1998, p. 8.
106 OJ L74, 27 Mar 1993, p. 74.
107 OJ L60, 1.3.1997, p. 59.
108 OJ L 210, 7.8.1995, p. 29.
109 OJ L141, 4.6.1999, p. 20.

France, Luxembourg, Austria, Finland and Sweden) already applied to agricultural products and required no adaptation. Denmark notified transposal measures.

Two referrals to the Court for preliminary rulings relate to the interpretation of Directive 85/374/EEC. Case C-203/99 is concerned with the liability of the public authorities running a hospital in Denmark in which a patient was unable to have an organ for transplant because it had been damaged. Case C-183/00 concerns the interpretation of Article 13 of the Directive.

2.10.3. Free movement of services and right of establishment

2.10.3.1. Articles 43 et seq. and Articles 49 et seq.

The Commission issued a reasoned opinion to Belgium regarding its legislation on trade practices and consumer information and protection. The legislation prohibits bonus-based customer fidelity schemes where either they are not organised by the seller of the goods or services or they do not offer the consumer benefits of the same nature as the goods or services purchased. Such conditions constitute restrictions on freedom to provide services within the meaning of Article 49 of the EC Treaty; the discriminatory effects of the Belgian legislation in practice contradict the need for such restrictions for the purposes of consumer protection and fair competition.

Under Austrian legislation on hospitals, foreigners not domiciled in Austria nor affiliated to a social security scheme there are charged higher rates for a hospital stay than Austrian nationals in the same situation. This nationality condition is a form of discrimination contrary to Articles 12, 39, 43 and 49 of the EC Treaty, and the Austrian authorities were accordingly sent a reasoned opinion.

Under Irish, Italian, Luxembourg and Portuguese rules, only accredited patent agents may represent clients before the national patent office. One of the conditions for exercising this representation activity is to have a domicile or professional establishment in the Member State. Such conditions raise problems of compatibility with the principle of freedom to provide services laid down by Article 49 of the EC Treaty and the principle of freedom of establishment laid down by Article 43, and the Commission accordingly sent reasoned opinions to the relevant Member States.

On 8 June 2000 the Court of Justice gave judgment in Case C-99/264 concerning an Italian Act laying down lists of licences for forwarding agents, requiring all natural or legal persons engaging in that business to be entered in a specific register at the local chamber of commerce; it held, as argued by the Commission, that this condition for registration impeded the exercise of his business by an operator not established in Italy and wishing to do occasional business there as entitled by Article 49 of the EC Treaty.

The Court also upheld the Commission’s argument when it held that the obligation imposed by Italian law on a firm in the cleaning business to be entered in a national or regional register was contrary to the principle of freedom to provide services, not justified by considerations of the general interest (Case C-98/358, judgment given on 9 March 2000).

Following the Commission's decision to refer a case to the Court of Justice, the Portuguese authorities removed the nationality discrimination from rules governing aerial photography services, and the Commission withdrew its action.

On 9 March 2000 the Court of Justice gave judgment in Case C-98/355 concerning private security services, holding that the requirement under Belgian rules for an operational headquarters in Belgium was not compatible with Articles 43 and 49 of the EC Treaty, again accepting the Commission's argument. In relation to the same line of business, the Commission sent Portugal a reasoned opinion as only firms with a large share capital and having an establishment in the country can be issued with the requisite licence, which not only restricts a number of firms but also excludes natural persons.

2.10.3.2. Financial services

Dialogue with the national authorities

In an effort to consolidate administrative cooperation and find rapid solutions to the problems encountered, the Commission has maintained regular contacts with the national authorities in 2000, through institutional committees (Banking Advisory Committee, Insurance Committee, the UCITS - Undertakings for Collective Investment in Transferable Securities - Contact Committee), ad hoc interpretation groups (group of national experts on payment systems, the banking directives group, the insurance group and the "capital adequacy" Directive group, etc.) and high-level working parties (HLSSC - High-Level Security Supervisors Committee for negotiable securities).

National implementing measures

Three banking directives came into force in 2000 – Parliament and Council Directive 98/31/EC of 22 June 1998 amending Council Directive 93/6/EEC on the capital adequacy of investments firms and credit institutions,[110] Directive 98/32/EC of the European Parliament and of the Council of 22 June 1998 amending, as regards in particular mortgages, Council Directive 89/647/EEC on a solvency ratio for credit institutions[111] and Directive 98/33/EC of the European Parliament and of the Council of 22 June 1998 amending Article 12 of Council Directive 77/780/EEC on the taking up and pursuit of the business of credit institutions, Articles 2, 5, 6, 7, 8 of and Annexes II and III to Council Directive 89/647/EEC on a solvency ratio for credit institutions and Article 2 of and Annex II to Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions.[112]

Letters of formal notice were sent to France and Greece for failure to notify measures for these three directives. Portugal was given notice for failure to notify measures relating to Directives 98/31/EC and 98/32/EC, and Spain was given notice for failure to transpose Directive 98/32/EC.

Turning to insurance, the Commission sent reasoned opinions to the nine Member States (Austria, Belgium, Finland, France, Greece, Italy, Luxembourg, Portugal and

110 OJ L 204, 21 July 1998, p. 13.
111 OJ L 204, 21 July 1998, p. 26.
112 OJ L 204, 21 July 1998, p. 29.

the United Kingdom) that have not yet transposed Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group.[113] The Directive should have been transposed by 5 June 2000 and its principles applied to the financial year beginning on 1 January 2001 or during that financial year. As for the Member States that already adopted, published and notified the measures transposing the Directive (Ireland, the Netherlands and Spain before the final date for transposal; Denmark and Sweden after a letter of formal notice; Germany, which also received a letter of formal notice but is apparently on the point of enacting legislation), the Commission is scrutinising the text of which it was notified.

In the securities sector, the Commission terminated the proceedings commenced in 1998 against Austria, France and Portugal for failure to transpose Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes.[114] It suspended its decision to refer to the Court of Justice its case concerning the same Directive against Luxembourg, which notified its transposal Act, but commenced proceedings against the United Kingdom, deciding in December 2000 to send a reasoned opinion for failure to transpose it in Gibraltar.

As regards payment systems, two directives were due to be transposed in 1999: Directive 97/5/EC on cross-border credit transfers[115] and Directive 98/26/EC on settlement finality in payment and securities settlement systems.[116]

Directive 97/5/EC aims to speed up and reduce the cost of low-value cross-border transfers (up to € 50 000), and obliges banks to observe transparency rules prior and subsequent to transfers; it also lays down conditions for transfers (time-limit, ban on double-charging, refund in the event of sums transferred failing to reach the beneficiary). The directive was to be transposed by 14 August 1999. All the Member States that had not notified implementing measures in 1999 did so in 2000. The infringement proceedings were accordingly terminated.

The purpose of Directive 98/26/EC is to limit the systemic risk in payment and securities settlement systems. Reducing this risk is essential for the smooth operation of systems and boosting their efficiency. The Directive lays down rules governing compensation and guarantees. It determines what bankruptcy law applies to rights and obligations in a system and provides that insolvency proceedings may not have retroactive effects.

Directive 98/26/EC was to be transposed by 11 December 1999. By 31 December 2000, all the Member States except Luxembourg, France and Italy had notified the Commission of implementing measures. Infringement proceedings were launched against these three Member States on 13 July 2000, when formal letters of notice were sent out.

Cases of non-conformity

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113 OJ L 330, 5 December 1998, p. 1.
114 OJ L 84, 26 Mar 1997, p. 22.
115 OJ L 43, 14 February 1997, p. 25.
116 OJ L 166, 11 June 1998, p. 45.

In banking the Court of Justice gave judgment in the Ambry case[117] on 1 December 1998. French law requires a financial guarantee that can be mobilised on first demand for the issuance of an administrative licence (to exercise the occupation of travel agent). But it provides that if the establishment giving the guarantee is in a Member States other than France, the establishment must have an agreement with a banking establishment or insurance company established in France. The Court held that this constitutes an unwarranted restriction on the principle of freedom to provide services. Since the French authorities did not react to a letter of formal notice, a reasoned opinion was sent. France then took the requisite measures to come into the line with the judgment and the Commission terminated the case.

The Court gave judgment in two cases concerning incorrect transposal of insurance directives in 2000. In the first it held that Belgium had not correctly transposed the third non-life directive,[118] by excluding from the scope of the transposal Act all insurance funds and companies covering occupational accidents, even where they pursued a gainful object on their own risk;[119] Belgium responded to a letter of formal notice issued under Article 228 EC by adding a Bill adapting insurance against occupational accident, which should bring Belgian law into line with the Directive. In the second judgment, given against France,[120] the Court held that the obligation to systematically notify the general and special terms of insurance policies that a firm proposes to use in its territory in relations with insured parties is a requirement contrary to the freedom to sell insurance products in the Community that the third insurance directives aim to secure;[121] the French authorities were then sent a letter of formal notice under Article 228, and they confirmed that they intended to comply with the judgment ("fiches signalétiques" are no longer required by the relevant institutions in practice).

In the case against France for failure to notify measures to adapt the Code of Mutual Societies to Community law,[122] the French authorities stated in reply to the Article 228 reasoned opinion that once the Government had had the requisite powers conferred on it, it would need no more than four months to adopt the new legislation applicable to mutual societies, which should be done early in 2001.

When the Italian Government adopted Decree-Law No 70/2000 on 28 March 2000 (it was subsequently converted into an Act of Parliament by Conversion Act No 137 on 26 May 2000), freezing the scales of charges for automobile third-party liability insurance contracts, the Commission immediately responded with proceedings to restore the freedom to sell insurance products provided for by the third non-life Directive (92/49/EEC), which gives effect to freedom of establishment and freedom to provide services. The Commission considered that the price freeze was out of

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117 Case C-410/96, rec. 1998, p. I-7875.

118 Council Directive 92/49/EEC of 18 June 1992 Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) – OJ L 228, 11.8.1992, p. 1.

119 Case C-206/98 *Commission v Belgium* (Judgment given on 18 May 2000, not yet reported).

120 Case C-296/98 *Commission v France* (Judgment given on 11 May 2000, not yet reported).

121 Council Directive 92/49/EEC and Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 79/267/EEC and 90/619/EEC (third non-life insurance Directive) – OJ L 360, 9.12.1992, p. 1.

122 Judgment of 16 December 1999 in Case C-239/98 *Commission v France* [1999] ECR. I-8935.

place in a general price controls system and was not justified by considerations of the general interest.

Luxembourg responded to infringement proceedings concerning the rules of the motor insurance bureau and guarantee fund – which required that at the beginning of each business year non-reimbursable flat-rate contributions be paid by all member insurers, whether established in Luxembourg or operating there as service providers from other Member States – by amending the rules in line with Directive 90/618/EEC,[123] the calculation now being based on actual premium income or risks covered in Luxembourg. The proceedings were accordingly dropped. Another proceeding against the United Kingdom, concerning the obligation to have third-party liability insurance, was terminated on account of changes to the legislation.

In the insurance sector, proceedings continue against Spain concerning the requirement - in contravention of the EC Treaty's provisions on freedom to provide services(Article 49) - that prior authorisation be obtained by professionals wishing to work in Spain as insurance brokers. But on 20 September the Commission presented a proposal for a Directive on insurance intermediaries to replace the Directive that has been in force since 1976.[124]

Incorrect application

There were four cases of incorrect application of the banking legislation in 2000.

Two cases involved Italy. The first involved apparent discrimination on grounds of nationality in the refunding of tax credits to banks established in Italy. A reasoned opinion was sent to Italy enquiring about the criteria used to draw up the list on the basis of which the credits were refunded. The second case concerned withholding tax on interest income from loans. The Commission investigated the matter in order to determine whether Italian legislation discriminates according to whether the credit institution is based in Italy or another Member State. A letter was sent to the Italian authorities requesting further information. No reply has been received to date.

After sending a letter of formal notice to the Greek authorities in 1999, the Commission wrote asking for further information in 2000. in connection with State guarantees for loans to firms in certain disadvantaged regions of the country. It emerged from information provided to the Commission that such guarantees are only issued to credit institutions established in Greece. Loans granted by institutions based in other EU Member States on the basis of the freedom to provide services are not eligible for such guarantees. The reply is currently being scrutinised.

Lastly, there is a suspected infringement concerning France. The Commission sent a letter requesting information because it appears that Frances does not allow French credit institutions - or branches of foreign institutions - to pay interest on current accounts. No reply has been received to date.

A reasoned opinion was sent to Greece to draw the attention of the Greek authorities to the application of the rules relating to the supply of breakdown insurance in

123 OJ L 330, 29 November 1990, p. 44.
124 COM (2000) 511 final.

Greece by insurers in other Member States. The rules impede the smooth operation of the internal market in insurance and are contrary not only to the insurance directives but also to EC Treaty provisions on freedom of establishment and freedom to provide services. Proceedings are also still under way against Germany concerning the ban on combining sickness insurance with other forms of insurance, which is deemed to be incompatible with the third Directive on insurance other than life assurance.

Finally, the Champalimaud case, in which proceedings were commenced against Portugal in response to the Portuguese authorities' refusal to accept an agreement under which a Spanish banking group was to acquire a qualifying holding in this Portuguese group, was settled and closed.

The Commission terminated the proceedings commenced in 1998 against Italy (Articles 49 and 56) and France (Articles 43, 49 and 56) for tax measures that had the effect of putting home-based securities exchanges at an advantage over exchanges elsewhere in the European Union. At the beginning of 2000 the two Member States responded to the reasoned opinions sent to them simultaneously in October 1999 by notifying the Commission of amending legislation enacted in December 1999. In another case dating from 1999, involving broadly comparable principles (Articles 49 and 56), the Commission sent Austria a reasoned opinion.[125] The relevant provisions were for forms of tax exemptions and relief available only to investment funds based in Austria and not those in other Member States.

2.10.3.3. Postal services

The infringement proceedings against Ireland and Luxembourg for failure to transpose Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service are terminated.[126] All the Member States have now transposed the directive and notified their national implementing measures.

2.10.3.4. Commercial communications

The Commission also continued its examination of ongoing infringement proceedings. It has started top-level discussions with the French authorities on the interpretation of the Evin Act prohibiting television advertising of alcoholic drinks in the particular case of sporting events held abroad but broadcast in France. A reasoned opinion on this matter was sent in 1997.

The Commission sent Germany a reasoned opinion concerning its legislation on premiums and discounts. The Commission was subsequently informed of a Bill which would end the provisions justifying the reasoned opinion.. It is following events closely.

The Commission responded to a complaint on 24 July 2000 by sending France a reasoned opinion concerning the French legislation on the distribution of auction catalogues. It considered that the legislation favoured auctions held in France, contrary to Articles 49 et seq. of the Treaty.

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125 IP/00/1203, 24 October 2000.

126 OJ L 15, 21.1.1998, p. 14.

2.10.3.5.The media

The Commission observed that following the reasoned opinion sent to Belgium concerning barriers to the free provision of services resulting from the imposition of taxes on dish aerials by many local authorities, most local authorities abolished the tax. The question of reimbursement of taxes already paid arises in some areas.

2.10.4. The business environment

2.10.4.1.Public procurement

To ensure that the internal market operates properly as regards public procurement, it is essential that the rules be applied and complied with uniformly in all Member States. In its Communication on public procurement,[127], the Commission announced a series of measures to enforce Community law.

Among these measures, the Commission recognised the need to follow a more systematic, horizontal approach in handling cases of infringement of the public procurement rules rather than just reacting case-by-case to complaints received. The Commission has accordingly approached Member States to have infringements prevented, for example when they are preparing major events (Olympic Games, major exhibitions and cultural events, etc.) or are planning large-scale infrastructure projects with special interest in public-procurement terms. When particularly serious infringements come to its notice by whatever means, the Commission now commences the Article 226 procedure. And if a specific case that is brought to its attention raises a general problem of application, the Commission checks the position in all Member States to ascertain which of them are in a similar situation. Having had to deal with the problem of motorways in Italy and France, the Commission has decided to study the question of motorway construction and management in all the Member States. In the course of this horizontal survey the Commission asked the Member States for information on the basis of which it could decide whether there were infringements of Community law.

In its Communication the Commission also asked the Member States to designate independent authorities specialising in public procurement to serve as a reference point for the rapid and informal resolution of problems of market access. Certain Member States, Italy for instance, have done so. The Commission would encourage the other Member States to follow this example. The Commission is keen to fully exercise its function as watchdog of the treaties, but it does not have the human and material resources it needs to solve all the problems that arise. The aim of decentralising the handling of cases to the national level is to relieve the Commission of part of its current litigation workload. It could then concentrate on its role of preparing legislative proposals and handling cases that have a genuine European impact or raise important questions of interpretation, and complainants would look to the national authorities for a solution to their disputes. With this same objective the Commission is supporting and actively participating in a pilot coordination and cooperation project between Member States' government departments, set up on the initiative of Denmark in 1998.

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[127] Communication from the Commission: Public procurement in the European Union (COM(98)143, 11.3.1998), point 2.2.

Lastly, in its Communication on public procurement, the Commission also recognised the need to clarify the rules and make them easier to apply. In one area that is very important for the internal market – concessions – the Commission published an interpretative Communication[128] spelling out the rules and principles applicable here. There had been extensive prior consultation of all the major political and economic players on this communication.

The Article 226 infringement procedure is a vital instrument whereby the Commission can enforce Community law. The main measures taken by the Commission with this instrument in 2000 are summarised below.

Completion of the internal market in a key area of the European economy such as public procurement first and foremost necessitates correct transposal of the relevant Community directives. However, a number of directives adopted in the field of public procurement had still not been transposed by 2000, Infringement proceedings continued against Austria, France, Greece and the United Kingdom concerning failure to transpose Directives 97/52/EC and 98/04/EC, which cover traditional areas[129] and special sectors[130] respectively and incorporate certain provisions of the Agreement on government procurement.

An examination of the national measures that have been notified has led to 12 proceedings for failure to comply with Community law, including eight which are at least at the reasoned opinion stage. Some of these cases involve questions of principle which could undermine the liberalisation of public contracts awarded in the Member States concerned.

Even where legislation has been transposed, it is necessary to ensure that the provisions are actually applied. The Commission accordingly continued its monitoring of the application of Community law in the procedures for awarding private contracts, by following up complaints and investigating and checking cases on its own initiative.

During the year it dealt with 333 cases, including 140 new ones. It was able to close 74 cases, mostly as a result of action by the awarding authorities or their supervisory bodies to remedy irregularities. The dialogue and consultation procedure ("package meetings"), set up to help Member States find and reach agreement on solutions to outstanding disputes which conform to Community law, undoubtedly helped in this respect.

A few examples:

Following Commission action, several awarding authorities annulled procurement procedures. In France, for instance, a contract for high-frequency masts was annulled. The Commission had commenced proceedings on the grounds that the awarding authority had demanded that a European Union firm produce French

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128 Commission interpretative communication on concessions under Community law of 24 April 2000: OJ C 121, 29.4.2000.

129 Directives 93/36/EEC, 93/37/EEC and 92/50/EEC concerning, respectively, procedures for the award of public supply contracts, public works contracts and public services contracts.

130 Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

certificates in support of its tender. Another French contract was annulled in part: the French authorities accepted the Commission's view that ADEME (Agence de l'environnement et de la maîtrise de l'énergie) was an awarding authority subject to the rules in the Community directives on public procurement.

The Commission also received a complaint against the city of Vienna on the grounds that it does not publicise the insurance services contracts for apartments it owns but has awarded them to the same firm for years. Following Commission action, notably following a package meeting, the Austrian authorities undertook to see that the relevant contracts are opened up to competitive tendering from 2001.

Another Austrian case concerning a contract that had never been put out to tender but awarded to the same firm since 1945 was settled following action by the Commission. This contract, which is for a services concession, is not subject to the public procurement directives but to the Treaty rules. The Austrian authorities agreed on the need for transparency and published a call for tenders in the Official Journal of the European Communities.

Following a Commission reasoned opinion in response to a complaint against the German Federal Office for Military Technology and Procurement (Bundesamt für Wehrtechnik und Beschaffung), the German authorities acknowledged that Community law was being violated. They informed the Commission that the awarding authority had been instructed to apply the public procurement rules most strictly, and in particular to indicate the product equivalence clause systematically in tendering documents.

The Commission decided to send Italy a reasoned opinion concerning a public services contract awarded by the expedited negotiated procedure with prior publication, launched by the Ministry for the Treasury and Economic Planning for technical and administrative assistance services for the preparation of "territorial pacts". That procedure infringed Directive 92/50/CEE in a number of respects. The Italian authorities responded to action by the Commission by putting an end to the infringements of Community law and suspending the authorisation given to pact promoters to use companies conventionnées.

Other cases have been referred to the Court of Justice.

For example, the Commission decided to take France to Court for incomplete transposal of Directives 97/52/EC and 98/4/EC amending the public procurement directives in response to the Agreement on Government Procurement (AGP). Judgment was given against France in a case concerning electrification and public lighting in the département of Vendée. The awarding authority had split the various contracts and thereby taken much of the work out of the tendering obligations provide for by Directive 93/38/EEC.

The Commission also decided to take Germany to court over two contracts for services awarded without prior publication by the City of Brunswick and the district of Bockhorn. Germany acknowledged the infringement of the directives, but the Commission decided to go ahead with its action since the infringement subsisted and was still producing its effects, as the contracts were for 30 years.

The Commission also decided to refer to the Court a case against Belgium, where a public contract for coastal photography services was awarded without prior publication.

2.10.4.2. Data protection

Parliament and Council Directives 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[131] and 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector[132] were due for transposal by 25 October 1999.

Eleven Member States notified national measures implementing Directive 95/46/EC. These measures will be scrutinised to ascertain whether transposal is full and correct. The Commission decided to take action before the Court of Justice against all Member States which had not notified national implementing measures – Germany, France, Ireland and Luxembourg.

As regards Directive 97/66/EC, see section 2.7. Information society.

2.10.4.3. Intellectual property

Industrial property

There are currently three Directives in force in the field of industrial property: Council Directive 89/104/EEC on trade marks,[133] Parliament and Council Directive 98/44/EC on the legal protection of biotechnological inventions[134] and Parliament and Council Directive 98/71/EC on the legal protection of designs.[135]

Under the trade marks Directive, the registration of a trade mark confers on its owner exclusive rights allowing him to prohibit third-party use for commercial purposes without his consent. The harmonisation of Member States' legislation on national trade marks is not comprehensive, but confined to aspects which most directly affect the functioning of the internal market. Outside these harmonised fields, the Member States retain complete freedom to lay down arrangements best suited to their traditions, particularly as regards procedural aspects. All Member States have notified the Commission of national legislation transposing this Directive.

Since the uncoordinated development of national laws on the legal protection of biotechnological inventions in the Community could be detrimental to the industrial development of such inventions and the smooth operation of the internal market, Community legislation in this field was seen as essential. However, it was felt there was no need to create a separate body of law in place of national patent law. The Community framework can be confined to laying down certain principles designed to determine the difference between inventions and discoveries with regard to the patentability of certain elements of human origin, the scope of protection conferred

131 OJ L 281, 23 November 1995, p. 31.
132 OJ L 24, 30 January 1998, p. 1.
133 OJ L 40, 11 February 1989, p. 1.
134 OJ L 213, 30 July 1998, p. 13.
135 OJ L 289, 28 October 1998, p. 28.

by a patent on a biotechnological invention, the right to use a deposit mechanism in addition to written descriptions, and the option of obtaining non-exclusive compulsory licences in respect of interdependence between plant varieties and inventions. The Member States are required to transpose Directive 98/44/EC by 30 July 2000. Three Member States (Denmark, Finland and Ireland) have so far notified measures transposing it.

As is the case with legislation on national trade marks, the harmonisation of the Member States' legislation on designs is not complete, but is confined to aspects which most directly affect the functioning of the internal market, namely identical conditions for obtaining a registered design right, a unitary definition of the notion of design and of the requirements as to novelty and individual character with which registered design rights must comply, and equivalent protection in all Member States. Outside these harmonised fields, Member States retain complete freedom to lay down arrangements best suited to their traditions. The Member States must introduce legislation to comply with the Directive by 28 October 2001.

Copyright and related rights

Six directives are in force in the field of copyright and related rights (87/54/EEC topographies of semi-conductor products,[136] 91/250/EEC computer programmes,[137] 92/100/EEC rental and lending rights,[138] 93/83/EC cable and satellite,[139] 93/98/EC duration[140] and 96/9/EC databases.[141])

National implementing measures

All the Member States have now notified measures implementing the first five of these directives, except Ireland, against which two judgments were given at the end of 1999 for failure to notify measures implementing Directives 92/100/EEC (Case C-213/98[142]) and 93/83/EEC (Case C-212/98[143]).

However, only 13 Member States have notified national measures implementing the Directive on databases, which should have been transposed by 1 January 1998. Infringement proceedings for failure to notify have reached the Court referral stage as regards Greece, Ireland, Luxembourg and Portugal. Greece and Portugal notified national implementing measures during the reference period, thus complying with Community law. The infringement proceedings against them were accordingly terminated. But the Court gave judgment against Luxembourg (Case C-348/99[144]) on 13 April 2000. The Commission has so far received no reply from the Luxembourg authorities and the Article 228 infringement proceedings continue. Case C-370/99 against Ireland is still before the Court.

136 OJ L 24, 27 January 1987, p. 36.
137 OJ L 122, 17 May 1991, p. 42.
138 OJ L 346, 27 November 1992, p. 61.
139 OJ L 248, 6 October 1993, p. 15.
140 OJ L 290, 24 November 1993, p. 9.
141 OJ L 77, 27 Mar 1996, p. 20.
142 Judgment given on 12 October 1999, [1999] ECR I-6973.
143 Judgment given on 25 November 1999, [1999] ECR I-8571.
144 [2000] ECR I-2917.

It was also decided to take Ireland to the Court of Justice for failing to ratify the Berne Convention (Paris Act of 1971). The case (C-13/2000) is still pending, and Ireland has still not notified an instrument of accession to the Convention.

Cases of failure to comply

Two infringement proceedings are at the reasoned opinion stage, one against Italy for failing to comply with Council Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights and the other against the United Kingdom for failing to comply with Directive 92/100/EC. Infringement proceedings against Denmark for discrimination against foreign management companies are at the formal notice stage.

2.10.4.4. Company law and financial information

On 5 July 2000 the Commission terminated infringement proceedings after scrutinising the measures adopted by the United Kingdom in October 1999 to apply Directives 78/660/EEC,[145] 83/349/EEC,[146] 90/604/EEC[147] and 90/605/EEC[148] to Gibraltar. On the same date, the Commission terminated a complaint against Italy concerning the accreditation of persons responsible for the legal verification of accounting documents.

Following the Court of Justice's judgment of 29 September 1998 (Case C-191/95[149]) that Germany had failed to fulfil its obligations under Council Directives 68/151/EEC (commercial register)[150] and 78/660/EEC (annual accounts), the German authorities enacted and promulgated the Kapitalgesellschaften und Co-Richtlinie-Gesetz (KapCoRiLiG) on 24 February 2000. (BGBl I-154). The Commission scrutinised the Act and on 21 December 2000 terminated the infringement proceedings against Germany concerning the transposal of Directives 68/151/EEC, 78/660/EEC and 90/605/EEC (annual accounts and consolidated accounts).

2.10.5. Regulated professions (qualifications)

Court of Justice decisions

regarding the recognition of professional qualifications awarded in non-member countries and already recognised by a Member State, there was an important preliminary ruling in Case C-238/98 *Hocsman.*[151] The Court held that, in a mutual recognition situation to which the directive does not apply, Article 43 requires the host Member State, in response to an application from a Community national for authorisation to exercise a regulated profession, to take into consideration all the applicant's diplomas, certificates and other qualifications and relevant professional experience, comparing the applicant's expertise as attested by these qualifications and experience with the knowledge and expertise required by national legislation.

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145 OJ L 222, 14 Aug 1978, p. 11.
146 OJ L 193, 18 July 1983, p. 1.
147 OJ L 317, 16 November 1990, p. 57.
148 OJ L 317, 16.11.1990, p. 60.
149 [1998] ECR I-5449.
150 OJ L 65, 14.3.1968, p. 8.
151 Judgment of 14 September 2000, not yet reported.

In Case C-421/98 *Commission v Spain*[152] the Court held that Spain had failed to comply with its obligations under Council Directive 85/384/EEC[153] (mutual recognition of architecture qualifications) by confining migrant architects to exercising only the skills allowed in their country of origin and refusing to allow them to exercise the different skills that architects trained in Spain can exercise.

Non-compliance with judgments of the Court

The Commission withdrew its second referral to the Court, with a request for a financial penalty, of the case concerning Greece's failure to notify measures transposing Council Directive 89/48/EEC (first general system for the recognition of higher-education diplomas)[154] (cf. Court judgment of 23 March 1995 in Case C-365/93),[155] and terminated the infringement proceedings as Greece notified measures adopted on 23 June 2000.

- Following the judgment given against Spain on 22 March 1994 concerning the freedom of tourist guides to provide services (Case C-375/92[156]), the scrutiny of the new decrees on the exercise of that profession adopted by the Autonomous Communities continued, jointly with the Spanish authorities. Most of the instruments are amended and adopted; the others are expected to follow shortly.

Cases pending before the Court of Justice:

The Commission has referred the following cases to the Court:

– against Belgium concerning the conditions imposed on freedom to provide services by architects, which are contrary to Council Directive 85/384/EEC (mutual recognition of architects' qualifications);

– against France for failure to take measures to transpose Council Directive 89/48/EEC on the general system of recognition of qualifications, as regards psychologists.

National implementing measures

The Commission terminated its proceedings against Greece for its failure to give notification of measures to implement Commission Directive 97/38/EC[157] amending Council Directive 92/51/EEC supplementing the general system of recognition of qualifications.[158]

The proceedings commenced in 1999 for failure to notify measures transposing Commission Directives 98/21/EC[159] and 98/63/EC[160] updating the lists of medical specialisms and Council Directive 93/16/EEC free movement of doctors and the

152 Judgment of 23 November 2000, not yet reported.
153 OJ L 223, 21 Aug 1985, p. 15.
154 OJ L 19, 24 January 1989, p. 16.
155 [1995] ECR I-0499.
156 [1994] ECR I-01923.
157 OJ L 184, 12 July 1997, p. 31.
158 OJ L 209, 24 July 1992, p. 25.
159 OJ L 119, 22 April 1998, p. 15.
160 OJ L 253, 15 September 1998, p. 24.

mutual recognition of their qualifications have all been terminated (against Ireland, the Netherlands and Portugal for Directive 98/21/EC; and against Spain, Ireland, the Netherlands and Portugal for Directive 98/63/CE).

In 2000, proceedings were commenced for failure to notify measures transposing Commission Directive 1999/46/EC[161] amending the list of medical specialisms in Council Directive 93/16/EEC against France, Spain, Germany, Ireland, the Netherlands and Portugal. These proceedings were all terminated, except those against Portugal, when transposal measures were notified.

Proceedings were commenced against Belgium, Denmark, Spain, France, Italy, Ireland, Luxembourg, the Netherlands and Portugal for failure to notify measures implementing European Parliament and Council Directive 98/5/EC[162] to facilitate the practice of lawyers. Only the proceedings against Denmark were terminated.

Incorrect transposal and incorrect application of directives

In 2000 the Commission received around 20 complaints concerning restrictions in breach of Articles 43 and 49 of the EC Treaty and directives on the mutual recognition of professional qualifications. Some of these complaints gave rise to infringement proceedings, while others were shelved as unfounded.

A number of proceedings already in motion against Member States for incorrect transposal or incorrect application of directives were continued.

The Commission sent a reasoned opinion to Portugal concerning the occupation of "odontologista": the Portuguese authorities has used this title to regularise the situation of persons practising dentistry on a basis that was illegal but tolerated in Portugal. The Commission is of the opinion that the regularisation is contrary to Council Directives 78/686/EEC[163] and 78/687/EEC[164] on dentists: those concerned are allowed to practice on a virtually identical basis to Portuguese dentists covered by the directives though they have by no means the same training as is provided for by Directive 78/687/EEC.

The Commission sent Greece a reasoned opinion for incorrect transposal of Council Directive 85/384/EEC on the mutual recognition of architects' qualifications. The transposing legislation provided among other things for excessive cumbersome rules on the provision of services and presumes that migrants will not have proper expertise in seismic protection.

In the proceedings against Austria relating to the conditions for allocating posts of doctors attached to social security schemes (discrimination in the system of bonus points given by the Länder in favour of nationals born in the relevant Land and their descendants), the reply by the Austrian authorities to the reasoned opinion is under scrutiny.

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161 OJ L 139, 2 Jun 1999, p. 25.
162 OJ L 77, 14 Mar 1998, p. 36.
163 OJ L 233, 24 Aug 1978, p. 1.
164 OJ L 233, 24 Aug 1978, p. 10.

Finally, with respect to the case against Spain concerning the conditions of recognition of dentists' diplomas obtained in Latin America (proceedings mentioned in previous reports), referral to the Court of Justice is still suspended. Certain international agreements have already been amended. The renegotiations initiated by the Spanish authorities with a view to amending the clauses of other agreements on recognition of higher-education qualifications are still going on.

Lastly, the proceedings regarding the period of training undergone by nurses in general care in Spain have been terminated. Council Directive 77/453/EEC[165] provides that training must last three years or a total of 4600 hours. Failure to comply with the number of hours was the point in issue in this case. After considering the Spanish authorities' reply to its reasoned opinion, the Commission concluded that compliance with one of the two criteria (three years) and the fact that the training was given in universities meant that the difference between the two criteria was not such as to jeopardise the automatic recognition of qualifications.

Dialogue with the national authorities

The Commission pursued its regular contacts with the national authorities, in particular the experts on the relevant working parties and committees, to seek quicker solutions to certain problems.

Independent commercial agents

In its preliminary ruling in Case C-381/98 *Ingmar*,[166], the Court confirmed the mandatory status of Articles 17 and 18 of Council Directive 86/653/EEC,[167] securing commercial agents' rights to compensation after the termination of their agency contract. Proceeding on the basis of the objective of the Directive and of Article 19, which prohibits parties to the contract from agreeing on exceptions from Articles 17 and 18 to the detriment of the commercial agent, the Court held that these Articles are applicable if the commercial agent has exercised his activity in a Member State, even if the principal is in a non-member country and the contract is provided to be governed by the law of that country.

2.11. REGIONAL POLICY

2.11.1. Type of Infringements

Regional policy is governed primarily by *regulations*. These instruments are directly applicable in the Member States. Therefore infringement cases related to regional policy legislation do not concern the failure of transposition or bad transposition (as it is the case with regard to *directives*), but rather its bad application.

Another type of infringement cases in the field of regional policy are triggered by "irregularities"[168]. Such cases concern firstly issues related to financial provisions.

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165 OJ L 176, 15 .7.1977, p. 8.

166 Judgment of 9.11.2000, not yet reported.

167 OJ L 382, 31 December 1986, p. 17.

168 According to Regulation (EC, EURATOM) No 2988/95 Art. 1 (2) an "irregularity" shall mean "any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or

The main regulations on regional policy[169] as well as specific regulations related to financial control set up strict rules in this respect. The Commission plays a crucial role to monitor and control that Member States and their authorities respect fully their duties imposed on them.

Given its wide definition, "irregularities" also concern the infringement of provisions of other Community legislation. The inter-relationship between measures related to regional policy and the respect of any other Community law is also emphasised by the explicit obligation that operations financed by the Funds or receiving assistance from the EIB or from another financial instrument shall be in conformity with the provisions of the Treaty, with instruments adopted under it and with Community policies and actions.[170]

2.11.2. Actions undertaken by the Commission

The Commission may firstly trigger procedures under Art. 226 of the EC Treaty. These procedures concern in particular cases related to an infringement of provisions of the Structural Funds Regulations. Such cases are rare and concern, example given, the obligation on paying authorities to ensure that final beneficiaries receive payment of their contribution from the Funds as quickly as possible and in full.

With regard to "irregularities" the Commission may trigger specific procedures with a view to suspend, reduce or cancel assistance from the Funds[171].

According to the jurisprudence[172], such procedures as covered by Art. 24 of Regulation (EEC) No 4253/88 are independent of the procedures under Art. 226 EC Treaty. They do not automatically entail the suspension or reduction of Community financial assistance and a decision to discontinue a procedure for failure to fulfil obligations does not in any way prevent the Commission from suspending or reducing Community assistance, even after completion of the work, particularly where one or more of the conditions under which assistance has been granted have not been satisfied.

It follows from there that the Commission is rather obliged to initiate, as the case may be, a distinct procedure as described above.

With regard to Regulation (EEC) No 1260/1999, the situation is slightly different with regard to interim payments: According to Art. 32 (3) such payments shall be subject to, inter alia, the condition that no decision has been taken by the Commission to embark on an infringement procedure within the meaning of Article 226 of the EC Treaty concerning the measure(s) that is or are the subject of the application in question.

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budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure."

169 Regulation (EEC) No 4253/88 (as amended by Regulation (EEC) No 2082/93) and Regulation (EC) No 1260/1999

170 Art. 7 of Regulation (EEC) No 2052/88, Art. 8 (1) of Regulation (EC) No 1164/94 and Art. 12 of Regulation (EEC) No 1260/1999.

171 In particular Art. 24 of Regulation (EEC) No 4253/88 (as amended by Regulation (EEC) No 2082/93) and Art. 38 (5), 39 of Regulation (EC) No 1260/1999).

172 Court of First Instance, decision of 23 September 1993 (Case T-461/93).

In any case, the Commission has to assess the seriousness of any irregularity before it takes a decision to suspend, reduce or cancel assistance. These cases may relate to bad financial management. In 2000 the Commission started to investigate on several cases in this respect.

Furthermore the Commission has suspended assistance from the Funds with a view to cases related to the infringement of other Community legislation such as on environmental protection and public procurement. A classical case in this respect is the suspension of payments of the Cohesion Fund to a Spanish railway project with a view to the failure to submit the project to an environmental impact assessment in accordance with Directive 85/337/EEC.

2.12. TAXATION AND CUSTOMS UNION

2.12.1. Customs union

The customs union is a vital component of the integrated single market and of the common commercial policy. The function of DG TAXUD is to preserve and protect the customs union by ensuring that rules of nomenclature and origin are applied uniformly. It accordingly manages and enforces the Customs Code and operates a strategy to have the Code implemented by the national customs administrations as if they were a single administration.

Cases of *incorrect application* of Community rules by the Member States are actively followed up. This year the Commission was obliged to commence two new infringement proceedings:

– Greece: When pharmaceuticals are imported in Greece, national rules impose a levy for quality and safety control by the National Medicines Organisation (EOF). This levy charged to the importer constitutes a charge having equivalent effect to a customs duty, prohibited by Articles 23 and 25 of the Treaty. In trade with non-member countries, an identical levy is charged for the authentification of import invoices. Ever since the introduction of the Common Customs Tariff, the introduction of such a charge, having equivalent effect to a customs duty and unilaterally imposed by a Member State on products imported direct from non-member countries has also been prohibited.

– Spain: For the a posteriori charging of customs duties, the Spanish rules provide for a period exceeding the two days' limit set by Article 220(1) of the Community Customs Code. In other words, instead of charging them as soon as they are aware of an abnormal situation, the Spanish authorities send the taxable person an inspection report with a proposal for settlement, and charge the duties only after a supplementary period that varies depending whether the proposal is accepted.

The Commission decided to refer to the Court of Justice a case against Germany for infringement of Articles 23 and 25 of the EC Treaty, which prohibit charges having equivalent effect to an export duty.[173] The German Waste Transfers Act of 30.9.1994 introduced an obligation for exporters of waste to contribute to a solidarity fund. The purpose of contributions to the solidarity fund paid by those who export waste to another Member State is to cover guarantees for waste export operations that fail and in which they are not actually involved (it helps to finance the repatriation of such waste). This is a compulsory solidarity scheme for exporters whereas the financing of such a guarantee ought to be borne by the State. Imposing such a charge on waste exporters to preserve Germany's financial interests is tantamount to a charge having equivalent effect to an export duty, which is prohibited by the Treaty.

The proceedings against Greece concerning the organisation of ports in free zones were terminated after national procedures were amended in line with Community law. The same applies to the infringement proceedings against Spain concerning the simplified procedure for declarations for home use as Swedish legislation now provides for the scheme.

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173 Case C-389/00.

2.12.2. Direct taxation

Regarding direct taxation, DG TAXUD is particularly keen to develop a strategy of coherence between the Member States in tax matters so as to limit the distortions that flow from different tax systems. It focuses especially on business and capital-gains taxation. Monitoring the proper *application of Treaty provisions* is of fundamental strategic importance.

The Commission also commenced proceedings against Spain concerning the tax treatment of foreign shareholders which is incompatible with the freedom of establishment and free movement of capital under Articles 43 and 56 of the EC Treaty. Section 103(3) of the Spanish Corporate Income Tax Act provides that where a company is taken over in whole or in part (by purchase of its shares, which then lapse and are cancelled), and the new holding company has a substantial holding, the difference between the value of the shares purchased and the value of the assets received from the company taken over is to be immobilised and entered in the balance sheet as an asset but written down at an annual rate of no more than 10%. But the difference is depreciable only if the acquiring company has acquired the shares from Spanish residents. For shareholders who are Spanish residents, capital gains are taxable in Spain. Where shares are acquired from persons not residing in Spain, the difference between the value of the shares purchased and the value of the assets received from the company taken over is also to be immobilised but is not depreciable, even if the shareholder's capital gain is taxable in is country of residence; where shares are acquired from persons residing in another EU Member State, this refusal to allow depreciation is an additional burden on the terms of sale of the company that is taken over or transfers part of its business or assets. The rules therefore operate as a disincentive to nationals of other Member States who are subject to capital gains tax to invest in companies based in Spain as they will not be able to sell their shares to Spanish companies on the same terms as Spanish residents. The rules also have a restrictive effect on companies established in Spain since they raise a barrier to raising capital or acquiring shares from residents of other Member States who are subject to capital gains tax. Articles 43 and 56 of the EC Treaty require that depreciation of goodwill be available also to shares acquired from such shareholders, being residents of another Member State, where the relevant capital gains are taxable in that State.

Proceedings were also commenced against Belgium for the reduction on personal income tax based on amounts paid to finance the depreciation or constitution of a mortgage loan for the construction, acquisition or conversion of a dwelling in Belgium, provided the loan is secured by an endowment life assurance policy contracted in Belgium. The Commission considers that the fact that the mortgage relief is given only if the life assurance is contracted with an institution established in Belgium prevents individuals from freely choosing between financial institutions in the Union and prevents firms established in other Member States from supplying services to taxable persons in Belgium. It concluded that the Belgian rules affected the freedom to provide services provided for by Article 49 of the EC Treaty. Belgium has amended its legislation and the Commission has terminated the proceedings.

Belgium also received a reasoned opinion for infringing Article 11 of Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital.[174] The fact was that Belgium charged a tax on stock-exchange operations and a tax on issues of bearer shares in circumstances where no taxes should have been charged under the Directive, especially where new shares were concerned.

Since Greece did not react to the reasoned opinion issued in 1999, the case concerning the discriminatory tax treatment of non-Greek European citizens who acquire real estate and pay in foreign currencies was referred to the Court.[175]

Two proceedings after the Member States amended their legislation in response to Commission comments. The first concerned Belgium (tax deductibility of interest paid to a foreign credit establishment), and the second concerned Germany, which cleared up a major aspect of the tax discrimination against investments in non-resident companies, but other aspects (under-capitalisation and consolidation of losses) are still under Commission scrutiny.

2.12.3. Value-added tax

The Commission issued several new reasoned opinions for *incorrect application* of the Sixth VAT Directive – uniform basis of assessment (77/388/EEC):[176]

– Germany: there are two rates of VAT for soloists, the reduced rate being paid by those who organise their own concerts and the standard rate if the concert is in the hands of an organiser. But there is no such difference of treatment for musical ensembles, which are always taxed at the reduced rate. The German measures are thus incompatible with the principle that the same rate of tax must apply to the same types of operation and have the effect of distorting competition. A second objection addressed to Germany concerns the fact that it applies VAT to royalties paid to the author of a graphic or plastic work or to his successors in title in the event of a sale of the work by a person other than the author. Bt such royalties do not correspond to a supply of services and are not taxable. Another reasoned opinion was addressed to Germany concerning certain limitations on the right to deduct. By legislation in force from 1.4.1999, Germany provided for total exclusion of the right to deduct VAT on food and lodging expenses of businessmen travelling on business. Such an exclusion, after the date of entry into force of the Sixth VAT Directive, is prohibited by Article 17(6), which allows only pre-existing rights to deduct to be preserved. This exclusion is therefore contrary to Article 17(2), which provides for the exercise of a right to deduct expenditure incurred for the purposes of taxable transactions;

Spain: two proceedings were commenced concerning reduced VAT rates. The first concerns a provision of Spanish legislation providing for educed VAT rates on deliveries, intra-Community acquisitions and imports of two- or three-wheeled vehicles with an engine capacity of less than 50cc that are within the statutory definition of motor-cycle. This is contrary to Article 12 (as amended) of the Sixth VAT Directive, which allows the reduced rate to be applied to supplies of goods or services listed in Annex H. Motor-cycles are not among them. The second proceeding concerns the reduced rate applied to supplies, intra-Community

174 OJ L 249, 3.10.1969, p. 25.
175 Case C-249/00.
176 OJ L 145, 13.6.1977, p. 1.

acquisitions and imports of bottled liquefied petroleum gas, also contrary to Article 12, which allows the reduced rate to be applied to supplies of gas only in the form of natural gas and only if the Member State discharges certain formalities and there are no distortions of competition. Spain applies the reduced rate to supplies of liquefied petroleum gas, which is not a natural gas, and does not apply it to natural gas.

– France: By applying to the same supply of gas and electricity by public networks two rates of VAT – a reduced rate of 5.5% on the fixed portion of the energy price (subscription) and a normal rate of 19.6% on the variable component (depending on the kilowatts consumed), France is also infringing Article 12 of the Sixth Directive, which establishes the principle of a single rate applicable to the same type of provision.

– United Kingdom: UK legislation applies the reduced rate set for imports of works of art, antiques and collectors' items to subsequent sales by auctioneers. The special scheme for works of art, antiques and collectors' items introduced by Directive 94/5/CE amending the Sixth VAT Directive[177] provides for the application of a rate of at least 5% to such imports. The UK had been authorised to maintain a special rate of 2.5%. Since the Directive came into force, the UK extended it to auctioneers' commissions. Auction sales are treated by Article 26a of the Sixth Directive as supplies of goods within the country taxable on the basis of the auctioneer's profit margin. This downstream transaction is therefore not eligible for the reduced rate (5% since 30.6.1999), which is reserved for import operations and affects the value of the goods themselves, but must be taxed at the normal domestic rate (17.5%). Auctioneers in several Member States have complained about this infringement, as it distorts competition and deflects the European art market towards the United Kingdom.

Other incorrect application cases have been referred to the Court of Justice. They concern:

– Germany: VAT exemption of the turnover of State schools in the exercise of their research activities, contrary to Article 2(1) of the Sixth Directive;[178]

– Finland: VAT exemption for sales of works of art by the authors or their agents, and imports of works of art purchased direct from the authors, which is not provided for by the Act of Accession to the European Union or by the exemption in Article 13(A)(n) of the Sixth Directive;[179]

– France: Abolition of the part (50%) right to deduct VAT on diesel fuel used in taxable activities by vehicles excluded from the right to deduct, contrary to Article 17(6) of the Sixth Directive;[180]

– Italy: Impossibility for Italian taxable persons who in 1992 imported from other Member States an amount exceeding 10% of their turnover and who that year had a tax credit, to deduct VAT – this is an infringement of Article 18(4) of the Sixth

177 OJ L 60, 3.3.1994, p. 16.
178 Case C-287/00.
179 Case C-169/00.
180 Case C-40/00.

Directive.[181] Another case concerned Italian provisions relating to the reimbursement of taxes charged in violation of Community law, as interpreted by the national courts, which are incompatible with the principles laid down by the Court of Justice.[182]

The decision to refer cases to the Court of Justice was also taken as regards the failure of Germany, Spain, Finland, Italy, Portugal and Sweden to tax subsidies paid by the European Union to processing firms producing dried fodder. But proceedings against the United Kingdom on the same grounds were withdrawn when the legislation was amended to provide for taxation.

The Commission terminated the proceedings against Belgium for dual taxation of travel agencies when the Belgian authorities took measures to comply with the Directive. The proceedings against France concerning goods purchased with vouchers at reduced prices were also terminated when the rules were changed.[183] The same applies to Greece, which amended its legislation on the regularisation of deductions where goods are destroyed, lost or stolen, in line with Article 20(1)(b) of the Sixth Directive. The Commission withdrew its Court action against Germany regarding the exemption of certain transactions in gold[184] after the Council adopted the new Directive 98/80/EC concerning investment gold.[185]

On 12.9.2000 the Court of Justice gave judgment in the actions commenced by the Commission in 1997 for declarations that France, the Netherlands, Greece, Ireland and the United Kingdom were acting contrary to Community law by not charging VAT on road and motorway tolls.[186] The Court, considering that these rules apply very broadly regardless of the purposes and results of the business activity concerned, held that motorway operators were in a business activity for the purpose of Community regulations, since they provided users with a motorway infrastructure against remuneration. These operators, whether private or public, accordingly supplied services against payment. The Court thus acknowledged the existence of a direct link between the services supplied – provision of road infrastructure – and the financial consideration for them – tolls. It went on to consider whether the five Member States were eligible for the exemption whereby public bodies are not considered to be taxable persons in relation to the operations they carry out as public authorities, holding that two cumulative conditions must be satisfied for that exemption, namely whether the tolls must be exploited direct by public operators and whether this was in fact done on terms differing from those applying to private-sector operators. It held that in France, Ireland and the United Kingdom, the business of supplying users with road infrastructure against payment of a toll was engaged in partly by private operators. The exemption from VAT was accordingly not applicable. Having found that there was an infringement of Community law, the Court also decided that the three Member States should reimburse several years' worth of VAT that should have been paid so that the Community would not be financially at a loss. VAT is one of the Community's own resources, and the rules provide for the payment of interest on late payments. Judgment was not given against

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181 Case C-78/00.

182 Case C-129/00.

183 Case C-156/99, removed from the Register on 10.5.00.

184 Case C-432/97.

185 OJ L 281, 17.10.1998, p. 31.

186 Cases C-260/98, C-276/97, C-358/97, C-359/97 and C-408/97. The situation in Portugal (C-276/98) and Spain (C-83/99) is still pending before the Court.

the Netherlands and Greece as the charging of motorway tolls is and remains reserved for public bodies there (Wejschap Tunel Dordtse Kil in the Netherlands, and National Motorway Construction Fund in Greece), and the Commission had not shown that their business was exercised on terms identical to those of a private-sector operator.

Regarding *failure to notify measures implementing* Directive 98/80/EC,[187] which should n-have been implemented by 1.1.2000, letters of formal notice were sent to Austria, Ireland, Greece and the United Kingdom. Measures have since been notified and the proceedings have been terminated.

2.12.4. Other indirect taxes

A considerable proportion of the proceedings here concerns the taxation of **motor vehicles**, where the Commission is receiving a growing number of complaints. Two proceedings were commenced this year on the basis of complaint and of several petitions to Parliament; they concerned incorrect application of Community law in the following circumstances:

– Austria: The tax on the registration of motor vehicles (*Normverbrauchsabgabe*) is calculated on different criteria depending on the origin of the vehicles. For domestic vehicles, the basis of assessment is the price actually paid for the vehicle, whereas for new foreign vehicles imported into Austria, the catalogue price is used. Second-hand vehicles imported into Austria must pay a tax calculated on the average second-hand price determined by the trade. The Commission considers that the Austrian system, proceeding from a theoretical rather than a factual basis, is contrary to Article 90 of the Treaty and Article 3 of Directive 92/12/CE.[188]

– Greece: Greece does not properly apply Directive 83/182/EEC on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another.[189] The system is similar to a customs scheme, which is not acceptable in the single market: demand for immediate payment of registration charges as if the vehicle was used in Greece definitively, with fines in amounts that are both colossal and disproportionate; regular seizures, confiscations and auction sales of vehicles; prosecutions for smuggling and severe penalties; presumption – extremely difficult to rebut, especially for a non-resident of Greek origin – that the normal residence is in Greece, so that the vehicle will be subject to Greek taxes (even if he changed residence several years ago); no consultation with the administrations of the other Member States to solve any problems of jurisdiction and check whether there may be fraud.

Again in relation to motor vehicles, a reasoned opinion was sent to Greece as the authorities failed to comply with the judgment given by the Court of Justice on 23.10.1997, holding that "by determining, for the application of the special consumer tax and the flat-rate added special duty, the taxable value of imported used cars by reducing the price of equivalent new cars by 5% for each year of age of the vehicles concerned, with, as a rule, a maximum reduction of 20%, and by excluding anti-pollution technology imported used cars from the benefit of the reduced rates of

187 *Ibid*.
188 OJ L 76, 23.3.1992, p. 1.
189 OJ L 105, 23.4.1983, p. 59.

the special consumer tax applicable to that type of vehicle, the Hellenic Republic has failed to fulfil its obligations under Article 95 of the Treaty".[190]

Turning to excise duties on **manufactured tobacco**, a reasoned opinion was sent to Belgium for *incorrect application* of Directive 92/12/EC governing movements of products subject to excise duties.[191] Articles 8 and 9 of the Directive allow travellers to enjoy the benefit of the internal market and buy excisable products in other Member States, even where the quantity of cigarettes they carry with them exceeds 800, provided they are entirely for personal consumption. The Belgian administrative practice of applying a tax-free allowance of 800 cigarettes to individuals returning from other Member States deprives them , where they acquire goods for their personal use, of the proper application of the tax rules. On the same products, a case was referred to the Court of Justice concerning the infringement proceedings against France on the differential taxation of blond tobacco.[192]

Regarding excise duties on **petroleum products**, the Commission issued a reasoned opinion to Germany concerning the exemption from duties for heating fuel (*Mineralölsteuergesetz*), which constitutes an *incorrect application* of Directive 92/81/EEC on the harmonisation of structure of excise duties on mineral oils.[193] The Commission also brought an action in the Court against Finland concerning the use of red fuel oil subject to reduced-rate excise duty and reserved for heating as a vehicle fuel, contrary to Article 8(3) of that Directive and Article 5(1) of Directive 92/82/EEC concerning the harmonisation of excise duties on the same products.[194]

Proceedings were commenced for *incorrect application* of Community provisions as regards the **rendering tax** and the collection of slaughterhouse waste in France. The French rendering service - slaughtering and cutting up animals unfit for consumption as foodstuffs and the collection and disposal of animal carcasses and slaughterhouse waste, has for three years been financed principally from the yield of a parafiscal charge imposed for the purpose on meat. Following several complaints from firms making intra-Community purchases and meat traders in France, the Commission realised that the rules governing the basis of assessment to the charge discriminated against meat from other Member States contrary to Article 90 of the Treaty. Although the charge is levied both on French meat and on meat from other Member States, the former have the benefit of the public rendering service and thus receive a consideration for the tax burden it bears, whereas meat from other Member States is unlikely to be concerned by the service as it will have been prepared for sale before being imported from the other country into France.

Lastly, the Commission terminated the proceedings against Belgium regarding the excise duties on **non-alcoholic beverages**, as national legislation was amended in response to a reasoned opinion. It also terminated the case on the **differential taxation of wine and beer** in Ireland and the case on **local taxes on alcoholic beverages** in Austria. The proceedings against France concerning the **social security**

190 Case C-375/95 [1997] ECR I-5981.
191 *Ibid*.
192 Case C-302/00.
193 OJ L 102, 31.10.1992, p. 12.
194 OJ L 102, 31.10.1992, p. 19.

contribution on spirits were terminated when the Court held that the contribution was compatible with Community law.[195]

2.13. EDUCATION, AUDIOVISUAL MEDIA AND CULTURE

2.13.1. Education and culture

At the moment, Articles 149 and 150 of the EC Treaty make each Member State responsible for the content of teaching and the organisation of its own education system. However, as regards conditions of access to education and vocational training, Article 12 of the EC Treaty requires Member States to abstain from any discrimination on grounds of nationality.

As there are no provisions of secondary legislation here, students and persons receiving training still encounter barriers to academic mobility. These difficulties are not caused by rules contrary to the Treaty. Some of the individual cases brought to the Commission's attention do not reveal actual nationality discrimination but rather concern slow procedures, absence of redress procedures the administrative charges for academic recognition procedures.

As stated in earlier reports, many of the individual cases drawn to the Commission's attention can be resolved by providing the parties concerned with clear information about their rights and the scope of Community law in this field. In certain cases, national redress procedures offer the only possibility for having administrative decisions rectified or annulled.

But it must be stated that the number of complaints about suspected infringements of Articles 12, 149 and 150 of the Treaty is continuing to rise.

2.13.2. Broadcasting

Directives 97/36/EC of 30 June 1997 and 89/552/EEC of 3 October 1989 (Television without frontiers)

2.13.2.1. Progress in transposing the revised Directive

The Commission's first priority as guardian of the Treaties is to ensure that Directive 97/36/EC of 30 June 1997, amending the 1989 Directive, is properly transposed. The date for transposal of the directive was 30 December 1998. At the time of writing twelve Member States (Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Austria, Portugal, Finland, Sweden ad the United Kingdom) had notified national measures implementing Directive 97/36/EC. Transposal is in progress in the other three (Italy, Luxembourg and the Netherlands). The Commission has referred them to the Court of Justice.[196]

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195 Case C-434/97.

196 Case C-2000/207 *Commission v Italy*; Case C-2000/119 *Commission v Luxembourg*; Case C-2000/145 *Commission v Netherlands.*

2.13.2.2. Application of the Directive

The revised Directive establishes a solid legal framework for television broadcasters to develop their activities in the European Union. The main objective is to create the conditions for the free movement of television programmes. The revised Directive clarifies a number of provisions, including the principle of regulation by the broadcaster's country of origin and the criteria for connecting broadcasters to a particular country's jurisdiction. The Commission enforced these principles during the report period. The Commission has been informed of the decision by the Dutch authorities (*Commissariaat voor de Media*) to prohibit the distribution of RTL 4 and RTL 5 in the Netherlands unless RTL/Veronica De Holland Media Groep SA obtained Dutch licences for these channels. It is following the case closely.

Article 3a(1) of the Directive provides the Member States with a legal basis for taking *national measures* to protect a number of events regarded as being of major importance to society. Measures based on Article 3a(1) were taken by Denmark (OJ C 14, 19.1.1999), Italy (OJ C 277, 30.9.1999), Germany (OJ C 277, 29.9.2000) and the United Kingdom (OJ C 328, 18.11.2000). Austria, the Netherlands, Belgium and France have stated that they are planning to notify the Commission of draft measures shortly.

The Commission adopted a fourth communication to the Council and the European Parliament on the implementation of Articles 4 and 5 of Directive 89/552/EEC, as amended by Directive 97/36/EC, in 1997 and 1998 (promotion of the distribution and production of television programmes).[197] The Commission can state that the objectives of Articles 4 and 5 have generally been attained. The activities of television channels regarding the distribution of European and independent productions comply with the Directive to a broadly satisfactory degree, the Directive's objectives have generally been attained.

The Directive also lays down rules on the quantity of advertising authorised. The Commission received several complaints about alleged failures to comply with the advertising and sponsorship rules in the Member States. Problems arose in particular with the practices of certain broadcasters in Greece, Spain, Italy and Portugal. The Commission is gathering the facts it needs in order to evaluate whether the alleged excesses might constitute infringements by the relevant Member States and take corrective measures if appropriate. The Commission decided to send Spain a reasoned opinion on 21 December 2000.

By way of exception from the general rule of freedom to receive and retransmit, Article 2a(2) of the Directive allows the Member States, subject to a specific procedure, to take measures against broadcasters under the jurisdiction of another Member State who "manifestly, seriously and gravely" infringe Article 22. The aim is to protect minors against programmes "likely to impair [their] physical, mental or moral development" and to "ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality". The Commission considers that Article 2a(2) was satisfactorily applied during the report period. The general interest was safeguarded with a minimum of restriction on freedom to provide services. In Case T 69/99 *Danish Satellite TV (DSTV) A/S (Eurotica Rendez-Vous*

197 COM(2000) 442 final.

Television) v Commission, the Court of First Instance gave judgment on 13 December 2000, holding that an action challenging a Commission decision declaring measures notified by the United Kingdom compatible with Community law was inadmissible.

2.13.2.3. Enlargement-related questions

Since 1997, most of the applicant countries have endeavoured to align their law on the Directive, and eight of them have enacted new legislation for the purpose.[198] Legislative procedures are in motion in six applicant countries.[199] The alignment process advanced in 2000 as five applicant countries[200] have already reached an excellent level.

2.14. HEALTH AND CONSUMER PROTECTION

When reorganising certain departments in October 1999, the Commission transferred the veterinary and plant-health units of the Directorate-General for Agriculture and the public-health units of the Directorate-General for Social Affairs to the Directorate-General for Health and Consumer Protection. In March 2000, it transferred its food law unit from the Directorate-General for Enterprise to the same Directorate-General.

This report now covers not only trends in the application of Community law on consumer protection but virtually all Community provisions relating to health.

2.14.1. Veterinary legislation

Regarding the *notification of national implementing measures*, four directives fell due for transposal in 2000:

Directive 1999/89/EEC on animal health conditions governing intra-Community trade in and imports from third countries of fresh poultrymeat;

Directive 1999/90/EEC on animal health conditions governing intra-Community trade in and imports from third countries of poultry and hatching eggs;

Directive 2000/15/EC on animal health conditions governing intra-Community trade in cattle and pigs; and

Directive 2000/27/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases;

and most of the Member States have still to transpose these directives.

There are no infringement proceedings against Belgium for failure to notify implementing measures.

France has made an effort to catch up with transposal delays. In response to a reasoned opinion under Article 228, it gave effect to the Court's judgment of 9

198 Bulgaria, Cyprus, Estonia, Latvia, Lithuania, Malta, Poland and the Slovak Republic.

199 Czech Republic, Hungary, Latvia, Poland, Romania and Slovenia.

200 Bulgaria, Cyprus, Estonia, Lithuania and the Slovak Republic.

February 1999 in Case C-357/97 concerning failure to transpose Directive 94/28/EC laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos. But proceedings commenced in 1999 still remain to be cleared up.

There are major transposal delays in Greece. The Commission was obliged to continue two infringement proceedings under Article 228 for failure to comply with Court judgments (Cases C-385/97 and C-137/99) given against Greece for failure to transpose Directives 93/118/EC and 96/43/EC on the financing of health inspections and controls of fresh meat and poultrymeat.

On 8 June 2000 the Court gave judgment in Case C-190/99, holding that Ireland had failed to notify the Commission of measures transposing Directive 96/43/EC on the financing of veterinary inspections and controls on live animals and certain animal products. On 7 December 2000 it gave judgment against Italy (Case C-395/99) concerning the transposal of Directive 96/93/EC on the certification of animals and animal products. But two other Member States have come into line with judgments given against them.

Enforcing the hygiene legislation continues to be a Commission priority.

Checks by the Food and Veterinary Office in Ireland and Luxembourg revealed that these Member States have put an end to the serious hygiene and structure violations observed in certain slaughterhouses. Pending the results of the last inspection in France, the infringement proceedings there continue to run.

The most outstanding event of the year in the enforcement of veterinary law was the reference to the Court of Justice on 4 January 2000 of the infringement proceedings against France for failure to allow the marketing of British beef meeting the requirements of Community law, despite Decisions 98/256/EC and 99/514/EC.

The information sent to the Commission by the British authorities shows that there has been satisfactory progress in recruiting veterinary surgeons to handle the i-official inspection of slaughterhouses required by Directives 64/433/EEC and 89/662/EEC and Decision 96/239/EC. If the British authorities abide by their commitments, the current infringement proceedings will be settled in 2001.

The Commission sent the British authorities a reasoned opinion on the ground that they authorised the use of hyperchlorinated water for disinfecting poultry carcasses, which is not allowed by Community law.

The Court of Justice twice held that Greece was not properly applying the legislation on the financing of veterinary inspections. On 5 June 2000, in Case C-470/98, it held that by failing, except as regards fresh meat and poultrymeat, to adopt within the prescribed period the necessary measures to ensure that the costs of the veterinary and administrative checks in respect of products of agricultural origin from third countries, required by Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries, are met by the consignor, the consignee or their agent without reimbursement by the State, the Greece had failed to fulfil its obligations under that directive. On 16.11.2000, in Case C-214/98, it held that by failing to mention certain poultrymeat among the meat to which the fees fixed by

Council Directive 93/118/EEC apply, and by not explicitly mentioning poultrymeat for the purposes of the application of the fee for the cutting of fresh meat fixed by that directive, Greece failed to fulfil its obligations under that Directive.

In December 2000, having received a reasoned opinion for failing to transmit by 30 April 1998 a report on controls in 1996 and 1997 for the proper application of the minimum standards for the protection of calves and pigs, Ireland supplied the requisite information and thus cleared up the infringement of Directives 91/629/EEC and 91/630/EEC.

2.14.2. Plant health legislation

Regarding Member States' *notification of national implementing measures*, Belgium and Italy notified measures transposing all the directives in this area.

Greece still has major transposal backlogs. The Commission referred to the Court of Justice the delay in transposing Directive 97/41/EC relating to the fixing of maximum levels for pesticide residues in and on, respectively, fruit and vegetables, cereals, foodstuffs of animal origin, and certain products of plant origin, including fruit and vegetables and Directive 98/100/EC recognising protected zones exposed to particular plant health risks in the Community. The Commission decided to take Germany to the Court for failing to transpose Directive 98/57/EC on the control of Ralstonia solanacearum (Smith) Yabuuchi et al.

The Commission sent Italy a reasoned opinion as its legislation governing the transport of plant health products that may not be used in Italy but are exported to other Member States or non-member countries was too restrictive. The Italian authorities have undertaken to amend the offending legislation by means of the Community Act 2000; the Commission's information is that this is still in the process of enactment.

2.14.3. Legislation on seeds and plants

In this area, all proceedings in hand in 2000 relate to notification of measures transposing recent directives falling due in 1999 or 2000.

No infringement proceedings are in motion against Denmark or Spain.

The Commission decided to refer to the Court its proceedings against Germany, France, Luxembourg and Austria for failure to transpose Directive 98/56/EC on the marketing of propagating material of ornamental plants.

As regards other directives:

Directive 98/95/EC on the marketing of beet seed, fodder plant seed, cereal seed, seed potatoes, seed of oil and fibre plants and vegetable seed and on the common catalogue of varieties of agricultural plant species;

Directive 98/96/EC on the marketing of beet seed, fodder plant seed, cereal seed, seed potatoes, seed of oil and fibre plants and vegetable seed and on the common catalogue of varieties of agricultural plant species;

Directive 99/54/EC on the marketing of cereal seed;

Directive 99/66/EC setting out requirements as to the label or other document made out by the supplier pursuant to Council Directive 98/56/EC;

infringement proceedings have reached the reasoned opinion stage for most of the Member States.

2.14.4. Food legislation

No major developments have occurred since 1999 in the notification by Member States of measures implementing environmental legislation.

But Greece has given effect to the Court's judgment in Case C-391/98, given on 21 December 1999, concerning its failure to notify measures transposing Directive 93/43/EC on the hygiene of foodstuffs.

The Commission decided to refer to the Court its proceedings against Ireland for failure to notify measures transposing Directive 98/66/EC down specific purity criteria concerning sweeteners and Directive 98/86/EC laying down specific criteria of purity on food additives other than colours and sweeteners for use in foodstuffs.

As for incorrect application cases, Spain responded to a reasoned opinion noting that Spanish legislation providing for an obligation to record the size of table olives on their labels was incompatible with Directive 79/112/EEC by announcing that the offending Royal Decree would be amended.

2.14.5. Animal feedingstuffs legislation

Regarding the *notification of national measures implementing* directives, the only directive falling due for transposal in 2000 was Directive 2000/45/EC establishing Community methods of analysis for the determination of vitamin A, vitamin E and tryptophan in feedingstuffs. Most of the Member States have not yet notified measures.

France settled a large number of infringement proceedings concerning failure to transpose directives here.

Greece and the United Kingdom have the largest transposal backlogs, and the proceedings date back in some cases to 1998, in particular as regards Directive 96/24/EC on the marketing of compound feedingstuffs and Directive 96/25/EC on the circulation of feed materials.

Directive 96/51/EC concerning additives in feedingstuffs has still to be transposed by France, Greece, Italy and the United Kingdom.

2.14.6. Contaminants

Directive 98/53/EC laying down the sampling methods of analysis and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs was due for transposal at the end of 2000. None of the Member States has notified transposal measures.

2.14.7. Notification of technical standards and rules

Directive 98/34/EC requires the Member States and the EFTA countries to notify each other and the Commission prior to the adoption of all drafts of instruments laying down technical standards or rules so as to avoid new barriers being raised in the internal market.

The number of instruments notified in health in 2000 (115), many of them by the emergency procedure (17), illustrates the growing importance of national legislatures in this respect, especially in relation to foodstuffs. Scrutiny of the draft instruments notified generated Commission observations (15), intermediate comments (6) and substantiated opinions (3) requesting adjustment in line with Community law (for fuller information on the notification procedure, see Chapter 2.2.1 (Preventive rules provided for by Directive 98/34/EC (formerly 83/189/EEC)).

2.14.8. Consumer protection

Four directives were up for transposal in 2000. But they were not transposed in all the Member States, and the Commission was obliged to commence infringement proceedings.

The situation at the end of 2000 was as follows:

Directive 97/7/EC (distance contracts; deadline for transposal: 4 June 2000) has not been transposed in Greece, Spain, France, Ireland, Luxembourg, the Netherlands, Portugal or Finland.

Directive 97/55/EC (comparative advertising; deadline for transposal: 23 April 2000) has not been transposed in Greece, Spain, France, Luxembourg, the Netherlands or Finland.

Directive 98/6/EC (indication of prices; deadline for transposal: 18 March 2000) has not been transposed in Greece, Spain, Ireland or Luxembourg. Directive 98/7/EC (consumer credit; deadline for transposal: 21 April 2000) has not been transposed in Greece, Spain, France, Ireland or Luxembourg.

All the other directives in this sector have been transposed by all Member States, but there are several infringement proceedings in progress concerning non-compliance of national implementing measures. These proceedings concern Directives 93/13/EC (unfair contract terms) and 94/47/EC (timeshare). The Commission referred two cases to the Court of Justice concerning the incorrect transposal of Directive 93/13/EC by Italy and Sweden.

To achieve better and more uniform application, the Commission published a detailed report on the implementation of Directive 93/13/EC.[201] The two reports son Directives 90/314/EEC (package travel)[202] and 94/47/EC (timeshare),[203] published at the end of 1999, aroused extensive reactions in the industry, consumer associations and Member States' governments.

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201 COM (2000) 248 final.
202 SEC (1999) 1800.
203 SEC (1999) 1795.

Finally, it is worth mentioning that the Court of Justice has received a large number of requests for preliminary rulings in consumer protection matters. Two of these cases concern Directive 93/13/EC (unfair terms), in particular the question of direct applicability in the absence of transposal by a Member State (C-21/00) and the jurisdiction of the courts in the Member States in actions for injunctions against firms headquartered in another Member State (C-167/00). A third case concerns the interpretation of the word "damage" in Article 5 of Directive 90/314/CEE (C-168/00).

2.15. JUSTICE AND HOME AFFAIRS

2.15.1. Communitisation of the Schengen acquis

Following the entry into force of the Amsterdam Treaty, the Schengen acquis has been brought within the Union framework and is now applicable via the Union's legal and institutional set-up in compliance with the relevant provisions of the EC and Union Treaties. By Decision 1999/436/EC of 20 May 1999 (OJ L 176, 10.7.1999), the Council, in accordance with Article 2(1) of the Protocol integrating the Schengen acquis into the framework of the European Union, determined the legal basis for each of the provisions or decisions which constitute the Schengen acquis (distribution between the first and third pillars). Provisions allocated to the first pillar (such as those relating to short-stay visas, the removal of internal border controls, external border controls and the conditions for movement of foreigners) are monitored in accordance with the principles of relevant Community law, and the Commission acts in, its capacity as guardian of the Treaties in relation to these aspects of the Schengen acquis. The Commission has received many complaints concerning refusals to issue visas on the grounds of records in the Schengen Information System (SIS). Some of these concerned third-country nationals being family members of Union citizens.

2.15.2. Entry and residence

In Commission infringement proceedings against Italy, the Court of Justice gave judgment on 25 May 2000 (not yet reported) in Case C-424/98, holding that Italy had gone beyond the limits set by Community law,

(a) by restricting the forms of evidence available to beneficiaries of Council Directives 90/364/EEC of 28 June 1990 on the right of residence (OJ L 180, p. 26) and 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (JO L 180, p. 28), and by providing that certain documents must be issued or countersigned by the authority of another Member State; and

(b) first by requiring students, being nationals of other Member States, who apply for recognition of their right of residence for themselves and their families in Italy under Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students (OJ L 317, p. 59) to guarantee the Italian authorities that they have resources of a specified amount, and then, as regards the means of doing so, by not leaving the student with a clear choice between making a statement and any other equivalent form, and lastly, by not allowing a statement to be made where the student is accompanied by family members.

While the case was proceeding Italy adopt Legislative Decree No 358 of 2 August 1999, amending Decree No 470 of 26 November 1992 (*Gazzetta Ufficiale della Repubblica Italiana*, 19.10.2000, General Series No 246, p. 3), to give proper effect to its obligations under Directives 90/364, 90/365 and 93/96.

In July 2000, following a large number of expulsion decisions by the German authorities on public policy grounds against Union citizens convicted of offences, the Commission sent Germany a reasoned opinion for violation of Community rules governing the conditions as to form and content that must be respected when a Member State decides to expel a Union citizen on public policy grounds. The Commission's main objections concerned the automatic or virtually automatic link between certain offences and expulsion measures, he fact that individual conduct is not taken into consideration, the inadequate reasons stated and the violation of the principle of proportionality and the principle of protection of family life.

2.15.3. Right to vote and stand in elections

The two directives concerning the vote and stand in elections in the Member State of residence – Directive 93/109/EC (European Parliament) and Directive 94/80/EC (municipal elections) have been transposed in all the Member States.

On 30 July 1999, the Commission decided to close its proceedings against Germany regarding its failure to properly transpose Directive 93/109/EC. Germany notified the Commission of the second Act to amend the General Domicile Act and the Regulation of 28 August 2000 amending the Electoral Code for European elections and the Electoral Code for federal elections.

Since then, Union citizens who are not German nationals have been entered automatically on the electoral roll able for each European election if they applied for entry at a previous election, provide they still meet the conditions. The Commission considers the German legislation to be in conformity with Directive 93/109/EC.

On 30 July 1999, the Commission decided to close its proceedings against Germany regarding its failure to properly transpose Directive 94/80/EC in the Land of Saxony.

Germany notified the Commission of an Act dated 15 March 2000, amending the Act governing municipal elections in the Land of Saxony. Since then, Union citizens have been entered automatically on the electoral roll able for each municipal election.

The Commission also decided to close its proceedings against Germany regarding its failure to properly transpose Directive 94/80/EC in the Land of Bavaria.

Germany notified the Commission of an Act dated 27 December 1999 amending the Electoral Code. Since then, Union citizens have been entered automatically on the electoral roll able for each municipal election.

The Commission considers the German legislation concerning municipal elections in Saxony and Bavaria to be in conformity with Directive 94/80/EC.

2.16. BUDGET

2.16.1. General

Under Article 8(1) of Decision 94/728/EC, Euratom on the system of the Community's own resources, the Member States collect traditional own resources on behalf of the Communities. As in previous years, the number of infringement cases has risen again, and the Commission has referred some of them to the Court.

But the Commission is delighted to report that Community law relating to the VAT and GNP resources is applied with no major problems.

2.16.2. Incorrect application

2.16.2.1. Previously initiated proceedings

The Commission referred to the Court the proceedings against Italy for deducting, without sufficient grounds, amounts from its own-resources payments relating to customs duties on imports bound for San Marino (C-2000/010).

The Commission also referred another case against Italy to the Court (late entry of own resources of LIT 1 484 936 000 000, Case C- 2000/363).

On 15 June 2000, the Court of Justice gave judgment in Case C-1997/348 relating to Germany – imports via the German Democratic Republic of goods on which refunds had been paid on export from the Netherlands. It held that Germany had failed to collect and make available a levy corresponding to the Community price as required by Regulation (EEC) No 2252/90.

2.16.2.2. New proceedings

The decision was taken to refer to the Court a Community transit case in which the Netherlands refused to pay interest due on late payments under Article 11 of Council Regulation No 1552/89 where recovery is late and the corresponding own resources are made available late also.

In two other cases involving late establishments, the Commission also decided to go to the Court. One concerns Germany, where Community external transit documents were not cleared with the regulation periods. The other concerns Spain, where own resources are not established within the regulation periods.

A reasoned opinion was sent to Germany for not correctly clearing certain transit documents in the Community transit scheme and waiving certain securities without prior consultation with the Commission.

2.17. PERSONNEL AND ADMINISTRATION

The infringement proceedings initiated in this field concern the Member States' failure to comply with the Protocol on Privileges and Immunities of the European Communities and to implement national provisions required for the correct application of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities.

The case concerning Spain's delay in adopting internal measures to allow Spanish officials and servants of the European Communities to transfer their pension rights in accordance with Article 11(2) of Annex VIII to the Staff Regulations) was terminated.

Consequently, there are currently no infringement proceedings in this area.

2.18. COMMUNITY STATISTICS

The obligations of the Member States in statistical matters consist of supplying the Commission with data relating to specific matters at predetermined intervals and by predetermined procedures. There are no problems with the application of statistical methods or with timing. But a complaint has been received about a Member State's alleged infringement of Community law, in particular Council Regulation (EEC) No 3330/91 on the statistics relating to the trading of goods between Member States (Intrastat) and Council Decision 96/715/EC on inter- administration telematic networks for statistics relating to the trading of goods between Member States (Edicom).

Following an analysis of the content by the Commission, in the light of its usual rules and priorities, the case is now being terminated without action.