

THE ENVIRONMENT DIRECTORATE GENERAL'S LEGAL ENFORCEMENT ACTIVITIES IN 2007

I. MAIN DEVELOPMENTS IN SECTORS

1. Nature Protection

The most important pieces of legislation in the nature sector are the Birds and Habitats Directives. Council Directive [79/409/EEC](#) of 2 April 1979 on the conservation of wild birds (the Birds Directive) sets out measures for the protection, management and control of all species of naturally occurring birds, as well as introducing rules to protect their habitats. Natural habitats and wild flora and fauna throughout the European Union are protected under the Council Directive [92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive). The Habitats Directive establishes a European ecological network known as "Natura 2000".

The high number of cases in the nature sector can be explained by several factors. On the one hand, the relevant legislation is particularly demanding, contains very substantive obligations and is frequently applied (e.g. the assessment procedure of Article 6(3)-(4) applies to thousands of projects every year affecting sites in the Natura 2000 network, which currently covers 17 % of the EU's territory). On the other hand, although the demand from the citizens, specialized and active NGOs and the European Parliament is high, the complaint and legal enforcement mechanisms for nature protection in the Member States are less developed and often not appropriate; the effectiveness of the Commission's infringement procedure and the active role played by the Commission in the implementation of these two nature Directives contribute to the high numbers of cases.

It should be stressed that, in November 2007, the Commission adopted updated Community lists of Sites of Community Importance for several biogeographical regions¹, which have significantly extended the Natura 2000 network. The total area of Natura 2000 is now 809 811 km² and includes 24 524 sites.

Main infringements in 2007

Non-conformity with the Birds and Habitats Directive

In 2007, the Commission followed infringements dealing with non-conformity of national transposing legislation with the Birds and Habitats Directives. In 2007, as regards the Birds Directive, final written warnings (reasoned opinions) were sent to two Member States. As regards the Habitats Directive, a final written warning was sent to one Member State, while the Commission decided to refer two Member States to the European Court of Justice.

In 2007, the European Court of Justice considered that Austria had failed to correctly transpose the Birds and Habitats Directives ([Case C-507/04](#) and [Case C-508/04](#)). It also ruled that Ireland had failed to do so ([Case C-418/04](#), *Commission v Ireland*).

¹ http://ec.europa.eu/environment/nature/natura2000/sites_hab/biogeog_regions/index_en.htm

Designation of Special Protection Areas

Under the Birds Directive, Member States are obliged to designate all of the most suitable sites as Special Protection Areas to conserve wild bird species. The designation must be based on objective, verifiable scientific criteria. To assess whether Member States have complied with their obligation, the Commission uses the best available ornithological information. Where the necessary scientific information provided by Member States is lacking, national inventories of Important Bird Areas (IBA) compiled by the non-governmental organisation Birdlife International, are used. While not legally binding, the IBA inventory is based on internationally-recognised scientific criteria. The Court of Justice has already acknowledged its scientific value, and in cases where no equivalent scientific evidence is available, the IBA inventory is a valid basis of reference in assessing whether Member States have classified a sufficient number and size of territories as Special Protection Areas.

- 27/06/07: Nature protection: Commission takes legal action against 11 Member States over protected bird areas [IP/07/938](#)
- 17/10/07: Nature protection: Commission takes legal action against Romania for infringement of biodiversity legislation [IP/07/1508](#)

In 2007, the Commission sent first written warnings (letters of formal notice) to Cyprus, the Czech Republic, Slovakia, Hungary, Latvia, Lithuania, Malta and Slovenia for failing to designate enough Special Protection Areas on their territory. The number and/or the size of protected areas selected by these eight Member States are insufficient compared with the list in the IBA inventory. Also in 2007, the Commission took Austria, Germany and Poland to the Court of Justice for failing to designate sufficient Special Protection Areas on their territory.

- 27/06/07: Austria: Commission takes Court action over violations of nature legislation [IP/07/937](#)

In 2007, the European Court of Justice declared that the SPA network in Spain, Greece and Ireland was insufficient ([Case C-235/04](#), Commission v Spain, [Case C-334/04](#), Commission v Greece and [Case C-418/04](#), Commission v Ireland).

Development in Rospuda Valley, Poland

In February 2007, the Polish authorities gave the green light to start construction work on bypasses in important nature sites in the Rospuda river valley (Puszcza Augustowska) and in Puszcza Knyszynska in north-eastern Poland. The sites concerned are a Special Protection Area designated under the Birds Directive and they should also benefit from protection under the Habitats Directive on account of their rare habitats. Concerning the damage that would be done to primeval woodland and other natural habitats of European importance as a result of the imminent construction of the Augustow bypass (a part of the Helsinki-Warsaw road corridor in the North-East Poland), the Commission accelerated an existing infringement procedure against Poland by sending Poland a final written warning. On the basis of an insufficient reply from Poland, the case was referred to the Court of Justice ([Case C-193/07](#)). The Commission used the instrument of an interim measure under Article 243 of the EC Treaty in its application to the Court in order to avoid irreversible damage to protected sites. The request for an interim measure was withdrawn when Poland agreed to halt the relevant works pending a Court of Justice judgment of the case.

- 28/02/2007: Poland: Commission takes urgent action to protect threatened wildlife habitats [IP/07/263](#)

- 21/03/07: European Commission takes Poland to court to protect threatened wildlife habitats [IP/07/369](#)

Illegal Bird Hunting

Hunting is regulated in the European Union by the Birds Directive. Although the Directive contains a general prohibition on the killing of wild birds, it does allow certain species to be hunted provided this does not take place during the breeding season or migration periods. Hunting periods are set at national levels, and vary according to species and geographical location. Exceptionally, Member States may allow the capture or killing of birds covered by the Directive outside of the normal hunting season for a limited number of reasons, although such derogations are only available when there is no alternative solution.

The European Commission sent a final written warning to Malta for allowing the hunting of certain species of birds in breach of EU legislation. Currently, laws in Malta allow the hunting of the birds during spring, a key period for migration and breeding. In taking this step, the Commission asked Malta to bring its rules on hunting into line with the Birds Directive. The final written warning to Malta, which followed the first written warning in July 2006, concerned the hunting of quails (*Coturnix coturnix*) and turtle doves (*Streptopelia turtur*) during spring.

Following the decision of Cyprus to grant a derogation allowing for the spring hunting of *Streptopelia turtur* (turtle dove) on 6 and 9 May 2007, the Commission sent a first written warning in June 2007. As the Cypriot authorities announced that the derogation allowing for the spring hunting of turtle doves would not be renewed, the Commission decided to close the case in October 2007.

In December 2007, the Commission has also closed an infringement case against Finland in relation to spring hunting.

- 17/10/07: Nature protection: Commission takes legal action over spring hunting in Malta, closes Cyprus case [IP/07/1509](#)

Species protection

In January 2007, the Court of Justice declared in [Case C-183/05](#) that Ireland had infringed Article 12(1) and 16 of the Habitats Directive by not taking all the requisite specific measures for the effective implementation of the required system of strict protection for, amongst others, bat and whale and dolphin species, and by also maintaining incompatible national legislation.

In June 2007, the Court of Justice declared in [Case C-342/05](#) that, by authorising wolf hunting on a preventive basis, without it being established that this hunting activity was necessary to prevent serious damage within the meaning of Article 16(1)(b) of the Habitats Directive, the Republic of Finland had failed to fulfil its obligations under Articles 12(1) and 16(1)(b) of that directive.

In 2007, it was possible to close two infringements under Article 228 against Greece. The infringements concerned with the protection of *Caretta caretta* ([Case C-103/00](#)) and *Milos Viper* ([Case C-518/04](#)). Greece has adopted and implemented an adequate legal framework to ensure the strict protection of these species in accordance with Article 12 of the Habitats Directive.

A guidance document on the implementation of Articles 12 and 16 of the Habitats Directive was published in 2007 (Guidance on Habitats Directive Articles 12 and 16)².

Judgments of the Court of Justice in 2007

The Court has delivered several rulings in relation to the implementation of Article 6(3)-(4) of the Habitats Directive ([Case C-388/05](#), [Case C-304/05](#), [Case C-179/06](#) and [Case C-418/04](#)). Those rulings are based on the Waddenzee case-law ([Case C-127/02](#)) and provide further clarification on the interpretation of Article 6(3)-(4), which is a key provision of the Habitats Directive.

As regards the **concept of a ‘plan’**, the Court clarified that it must be “*more than at the stage of preliminary administrative reflection and carry a degree of precision in the planning in question which calls for an environmental assessment of their effects*” ([Case C-179/06](#), paragraph 41).

As regards the **obligation for an assessment**, the Court recalled that “*the environmental protection mechanism provided for in Article 6(3) of the Directive requires that there be a probability or a risk that a plan or project will have significant effects on the site concerned*” (case C-179/06, paragraph 33). In this regard, the Court considers that “*under Article 6(3) of Directive 92/43, then, it is for the Commission to furnish the proof that, in the light of the characteristics and the specific environmental conditions of the site affected by a plan or project, that plan or project is likely to have a significant effect on that site, in the light of the conservation objectives fixed for the site*” ([Case C-179/06](#), paragraph 39).

Regarding the **content of an ‘appropriate assessment’**, in [Case C-304/05](#) (paragraphs 56-59), the Court recalls its previous case-law ([Case C-127/02](#) ‘Waddenzee’, paragraphs 34, 56-61, and [Case C-239/04](#) Commission v Portugal (‘Castro Verde’), paragraph 19-20 and 24):

- Article 6(3) provides for an assessment procedure intended to ensure, by means of a prior examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site.
- The assessment must be organised in such a manner that the competent national authorities can be certain that a plan or project will not have adverse effects on the integrity of the site concerned, given that, where doubt remains as to the absence of such effects, the competent authority will have to refuse authorisation.
- With regard to the factors on the basis of which the competent authorities may gain the necessary level of certainty, no reasonable scientific doubt may remain, those authorities having to rely on the best scientific knowledge in the field.

The Court further specified that an appropriate assessment must contain **complete, precise and definitive conclusions** capable of removing all reasonable scientific doubt as to the effects of the works proposed on the site concerned ([Case C-304/05](#), paragraphs 69-73).

Finally, the Court seems to accept an automatism between an infringement of Articles 6(3) and 6(4). According to the Court, “*Article 6(4) of Directive 92/43 can apply only after the implications of a plan or project have been studied in accordance with Article 6(3) of that directive. Knowledge of those implications in the light of the conservation objectives relating to the site in question is a necessary prerequisite for application of Article 6(4) since, in the*

² http://ec.europa.eu/environment/nature/conservation/species/guidance/index_en.htm

absence thereof, no condition for application of that derogating provision can be assessed. The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified” (Case C-304/05, paragraph 83).

2. Waste Management

Basic requirements for Member States regarding the management of waste and a definition of the term ‘waste’ are set out in the Waste Framework Directive³. More specifically, this Directive requires Member States to create and maintain an adequate network of waste disposal installations in order to enable the Community as a whole and the Member States individually to become self-sufficient in waste disposal. In order to achieve this objective, waste management plans have to be drawn up. The Landfill Directive⁴ establishes a set of detailed, technical rules landfills must comply with. The objective is to prevent or minimise the negative effects that landfills can have, such as pollution of water, soil and air, and also gas emissions, notably emissions of methane, which is a powerful greenhouse gas. The Landfill Directive also helps to promote the recovery and recycling of waste, in particular by banning whole used tyres from landfills and by requiring waste to be treated prior to landfilling.

Main infringements in 2007

Horizontal non-conformity case on transposition of the Landfill Directive

The European Commission carried out a check on EU-25 Member States' legislation to assess its conformity with the Landfill Directive and decided to start legal action against 14 Member States for inadequately transposition of the Directive on the landfilling of waste into their national law. Having sent first written warnings to seven Member States in December 2006, the Commission continued by also sending first written warnings to Cyprus, the Czech Republic, Denmark, Estonia, Finland, Hungary, Ireland, Lithuania, Malta, Poland, Slovakia, Slovenia, Spain, Sweden and the United Kingdom in 2007.

- 22/03/07: Environment: Commission starts legal action against 14 Member States over landfill directive [IP/07/387](#)

Horizontal non-conformity case on transposition of the WEEE and RoHS Directives

In 2007, the Commission sent a first written warning to eight Member States for their incorrect transposition of the WEEE Directive and RoHS Directive. The Commission considered that the three Baltic States (Estonia, Latvia and Lithuania) had not correctly transposed certain provisions of the Directive [2002/96/EC](#) of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (the WEEE Directive) and that six Member States (Belgium, Denmark, Lithuania, Malta, Finland and Sweden) had not correctly transposed Directive [2002/95/EC](#) of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (the RoHS Directive).

³ Directive [2006/12/EC](#) of the European Parliament and of the Council of 5 April 2006 on waste

⁴ Council Directive [1999/31/EC](#) of 26 April 1999 on the landfill of waste

- 17/10/07: Waste: Commission starts legal action against eight Member States over electronic waste and hazardous substances [IP/07/1513](#)

Horizontal cases related to illegal landfills

The Court of Justice declared on 29 March 2007 ([Case C-423/05](#), Commission v France) and 26 April 2007 ([Case C-135/05](#), Commission v Italy) that both countries have failed to ensure that waste is disposed of in landfills managed in accordance with the Waste Framework Directive and the Landfill Directive. Thousands of sites in France and Italy have been identified as illegal landfills in the Court of Justice case. France and Italy have to rapidly comply with the judgment. The Commission will monitor closely execution of these Court judgements.

The Commission sent a final written warning to Spain over its failure to comply with a 2005 European Court of Justice ruling ([Case C-157/04](#)) which found it had violated several EU directives on waste. The waste disposal site at Punta de Ávalos on the Canary island of La Gomera poses a serious risk to the surrounding environment and human health.

- 22/03/07: Spain: Commission pursues legal action over infringements of EU environment legislation [IP/07/389](#)

Waste crisis in the Campania Region, Italy

The Commission launched legal action against Italy over the chronic waste crisis affecting Naples and the rest of the Campania region. The Commission considered that the region's waste disposal installations are inadequate and pose serious problems for human health and the environment. This constitutes a violation of EU waste legislation. In June 2007, the Commission therefore sent Italy first written warning requesting information about the measures being taken to protect human health and the environment in the region. In parallel, the Commission was assessing government plans to open four new waste landfill sites in Campania to check their compliance with EU law and to establish if these would be sufficient to help resolve the region's waste problems.

- 27/06/07: Italy: Commission starts legal action over waste crisis in Campania region [IP/07/935](#)

Sofia waste case, Bulgaria

The Commission also decided to send a first written warning to Bulgaria for its failure to provide an adequate system for the disposal of household waste in Sofia. Although the Bulgarian situation is not as serious as the one in Naples, the Commission is determined to see a sustainable solution for the treatment of the waste generated in Sofia.

- 17/10/07: Waste: Commission opens infringement case against Bulgaria over inadequate waste infrastructure in Sofia [IP/07/1539](#)

Judgments of the Court of Justice in 2007

Judgments of the Court of Justice in the waste sector delivered in 2007 are: [Case C-139/06](#), Commission v United Kingdom, , [Case C-361/05](#), Commission v Spain, [Case C-82/06](#), Commission v Italy, [Case C-90/07](#), Commission v Belgium, [Case C-523/06](#), Commission v Finland, [Case C-106/07](#), Commission v France, [Case C-508/06](#), Commission v Malta, [Case](#)

[C-194/05](#), Commission v Italy, [Case C-195/05](#), Commission v Italy, [Case C-263/05](#), Commission v Italy.

3. Environmental Impact Assessment

The Strategic Environmental Assessment (SEA) Directive⁵ seeks to ensure that the environmental consequences of certain public plans and programmes that are likely to have significant environmental effects are identified and assessed while they are being prepared and before they are approved. The Environmental Impact Assessment (EIA) Directive⁶ obliges Member States to carry out environmental impact assessments before certain types of public and private projects which are likely to have a significant impact on the environment are authorised.

Main infringements in 2007

Non-conform transposition of EIA Directive

In 2007, the Commission moved forward infringement actions on with regard to the non-conform transposition of the EIA Directive. Final written warnings were sent to four Member States and an application to the Court of Justice was decided as regards two other Member States.

Infringement under Article 228 on transposition of SEA Directive in Belgium

Following an infringement procedure brought by the Commission, the Court of Justice ruled in December 2006 ([Case C-54/06](#)) that Belgium had not complied with its obligations because the Flemish Region had not transposed the SEA directive. The deadline for doing so was 21 July 2004. The Flemish government has taken steps towards transposing the directive since the judgment, but has not yet completed the process. In view of this continuing infringement, the Commission sent Belgium a first written warning under Article 228 in March 2007 and a final warning in June 2007 that Flanders must fully comply with the directive.

Press releases related to impact assessment infringements

- 27/06/07: Environment: Belgium and Italy receive final warning of possible fines over infringements of EU law [IP/07/933](#)
- 17/10/07: Ireland: Commission to bring environmental impact assessment case to the European Court of Justice [IP/07/1524](#)
- 17/10/07: United Kingdom: Commission takes legal action for non-compliance with Court decisions [IP/07/1531](#)

Judgments of the Court of Justice in 2007

The Court of Justice in a judgment of 5 July 2007 ([Case C-255/05](#)) declared, among other things, that, by not making the project to implement a ‘third line’ of the incinerator belonging to ASM Brescia SpA subject to the environmental impact assessment procedure, before consent was given for its construction, the Italian Republic has failed to fulfil its obligations under the EIA directive.

⁵ Directive [2001/42/EC](#) of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (SEA Directive)

⁶ Council Directive [85/337/EEC](#) of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (EIA Directive) as amended by Directive [2003/35/EC](#)

Further judgments of the Court of Justice in the environmental impact assessment sector in 2007 are: [Case C-199/04](#), Commission v United Kingdom, [Case C-376/06](#), Commission v Portugal, [Case C-255/05](#), Commission v Italy, [Case C-93/07](#), Commission v Belgium, [Case C-354/06](#), Commission v Luxembourg and [Case C-40/07](#), Commission v Italy.

4. Water Protection and Management

The Water Framework Directive⁷ establishes a strategic framework for the protection of all water bodies, i.e. rivers, lakes, coastal waters and groundwater, in the European Union. An important focus of the Commission's work in the domain of water is on making sure that the various deadlines of this directive are respected. The Urban Waste Water Directive⁸ is another key instrument for reducing water pollution: it addresses the waste water discharges of cities and towns and accounts for a significant number of infringements in this domain. The Nitrates Directive⁹ is also an important piece of legislation in this sector: it is designed to protect Community's waters against nitrates from agricultural sources, which are the main cause of water pollution from diffuse sources. The Drinking Water Directive¹⁰ is important for public health because it is aimed at ensuring that drinking water is free from contamination.

Main infringements in 2007

Infringement under Article 228

Following an infringement procedure brought by the Commission, the Court of Justice condemned Italy on 12 January 2006 for failing to transpose the Water Framework Directive ([Case C-85/05](#)). The deadline for doing so was 22 December 2003. In May 2006 Italy sent the Commission the text of a legislative decree. The Commission's view, however, was that the decree did not fully transpose the directive. Consequently, the Commission sent Italy a first written warning under Article 228 in 2006 and a final written warning in 2007. A final written warning was also sent to Luxembourg in 2007 for not complying with a similar ruling on the same directive delivered by the Court of Justice on 30 November 2006 ([Case C-32/05](#)).

During 2007, the Commission sent first written warnings to Belgium, Luxembourg, Spain and the United Kingdom for not fully complying with Court of Justice rulings concerning the Urban Waste Water Treatment Directive. The rulings in question are [Case C-27/03](#), *Commission v Belgium*, delivered on 8 July 2004 over the failure to sufficiently treat the waste water of many Belgian agglomerations; [Case C-452/05](#), *Commission v Luxembourg*, delivered on 23 November 2006 for failure to sufficiently treat the waste water of eleven agglomerations; [Case C-416/02](#), *Commission v Spain*, delivered on 8 September 2005 in relation to the lack of treatment of the waste water of the agglomeration of Vera; and [Case C-405/05](#), *Commission v United Kingdom*, delivered on 25 January 2007 for failure to adequately treat the waste water of thirteen agglomerations.

The Commission sent Ireland a final warning for failing to comply fully with a 2002 Court of Justice ruling requiring drinking water supplies to be kept free of E. coli bacteria in

⁷ Directive [2000/60/EC](#) of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

⁸ Council Directive [91/271/EEC](#) concerning urban waste-water treatment

⁹ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (*OJL 375, 31.12.1991*)

¹⁰ Directive [80/778/EEC](#) Repealed and replaced by Directive [98/83/EC](#) on the quality of water intended for human consumption

accordance with the Drinking Water Directive ([Case C-316/02](#)). Portugal also received a first written warning for failing to comply with a 2005 Court of Justice ruling concerning the same directive ([Case C-251/03](#)).

The Commission also sent Ireland a final written warning for its failing to comply with a ruling in [Case C-282/02](#) from 2005 requiring greater controls on polluting discharges to surface water by local authorities, in particular through the establishment of an authorisation system. Ireland subsequently notified legislation establishing such authorisation system.

Press releases on water-related infringements

- 21/03/07: France: La Commission décide de saisir la Cour avec sursis d'exécution dans l'affaire de la pollution par les nitrates des eaux de surface en Bretagne [IP/07/381](#)
- 22/03/07: Ireland: Commission takes action to secure clean drinking water and citizens' rights [IP/07/391](#)
- 22/03/07: Portugal: poursuite de procédures engagées par la Commission pour des infractions concernant la protection de l'environnement et de la santé humaine [IP/07/393](#)
- 27/06/07: Environment: Belgium and Italy receive final warning of possible fines over infringements of EU law [IP/07/933](#)
- 17/10/07: Waste water treatment: Commission gives Luxembourg final warning, seeks clarifications from Belgium [IP/07/1533](#)

Judgments of the Court of Justice in 2007

In 2007, the Court of Justice delivered several rulings in the water sector.

In [Case C-405/05](#) the Court declared that the United Kingdom had failed to fulfil its obligations under the urban waste water treatment directive by failing to take the measures necessary to ensure that adequate treatment was provided for urban waste waters from certain agglomerations by 31 December 2000 at the latest.

In [Case C-219/05](#), the Court ruled that Spain had failed to fulfil its obligations under the urban waste water directive by failing to ensure that certain coastal waste water discharges were subject to more stringent treatment by the required deadline of 31 December 1998.

In [Case C-440/06](#), *Commission v Greece*, the Court ruled that, for several agglomerations, there had been a failure to provide collecting systems and/or waste water treatment in accordance with the urban waste water treatment directive.

The Court ruled in [Case C-248/05](#) that Ireland failed to fulfil its obligations under Directive [80/68/EEC](#) on the protection of groundwater against pollution caused by certain dangerous substances with regard to a municipal landfill at Ballymurtagh (County Wicklow). In [Case C-148/05](#), it ruled that Ireland had failed to designate all shellfish waters requiring designation under Directive 79/923/EEC on the quality required of shellfish waters and that it had also failed to take all necessary measures to establish pollution reduction programmes for shellfish waters requiring designation.

In [Case C-85/07](#), the Court ruled that Italy had failed to complete and notify the analyses of certain Italian river basin districts as it was required to do under the Water Framework Directive.

5. Air Quality

The key directive in this sector is Council Directive [96/62/EC](#) of 27 September 1996 on ambient air quality assessment and management which defines the basic principles of a common strategy and establishes objectives for ambient air quality to avoid, to prevent or to reduce harmful effects on human health and the environment. It lists the pollutants for which air quality standards, objectives and limit values will be developed and specified in the subsequent legislation (daughter directives). The first daughter directive was Directive [1999/30/EC](#) relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air. The second daughter directive was Directive 2000/69/EC relating to limit values for benzene and carbon monoxide in ambient air. The third was Directive [2002/3/EC](#) relating to ozone in ambient air and the fourth was Directive [2004/107/EC](#) relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air.

Actions on SO₂ levels

The Commission started infringement procedures against France, Italy, Spain, Slovenia and the United Kingdom for exceeding EU limits on ambient concentrations of sulphur dioxide (SO₂), an air pollutant from industrial installations that can cause respiratory problems and aggravate cardiovascular disease. Directive [1999/30/EC](#) sets hourly and daily limit values for SO₂ concentrations which entered into force on 1 January 2005. The five Member States facing infringement procedures all reported exceeding the values in their territory during 2005.

Actions on PM10 levels

Under Directive 1999/30/EC, binding daily and annual limit values for airborne particles known as PM10 have been in force since 1 January 2005. In 2007, the Commission asked 23 Member States that had reported exceeding the levels of the PM10 values for 2005 to provide information on the measures they were taking to eliminate or reduce the levels to meet EU standards.

- 17/10/07: Air pollution: Commission takes action over levels of sulphur dioxide and PM10 in member states [IP/07/1537](#)
- 22/03/07: Greece: Commission pursues legal action over infringements of EU environmental legislation [IP/07/394](#)

6. Climate Change

Main infringements in 2007

The main aim of infringement procedures launched under the climate change legislation has to ensure that the European Union and its Member States meet their various obligations under the United Nations Climate Change Convention and the Kyoto Protocol, notably to ensure that the European Union's Emissions Trading Scheme (ETS) is fully operational and that the monitoring of greenhouse gas emissions is effective within the European Union. Infringements in 2007 related to the late notification of national allocation plans under the

Emissions Trading Directive¹¹, reporting under Article 3(1) and (2) of Decision [280/2004/EC](#)¹², the failure to prepare for international emissions trading according to Decision [2005/166/EC](#)¹³ and the failure to link national registries with the EU-wide registry system.

National Allocation Plans

It should be noted that in 2007 the Commission closed all the cases it had launched in 2006 against those Member States, which had failed, in violation of the Emissions Trading Directive to submit by 30 June 2006 their national allocation plans (“NAPs”) for the EU's second trading period (2008-2012) . The individual NAPs adopted by Member States fix the total number of emission allowances and set out the methodologies to allocate them to individual installations covered by the EU ETS. NAPs are crucial for the correct functioning of the EU ETS. All NAPs were notified to the Commission by the end of 2007.

It should also be noted that several Member States were opposed to the Commission's decisions rejecting some aspects of their NAP for the period 2008-2012. Most importantly, they claimed that the upper limit set by the Commission on the total quantity of allowances that they may allocate was too low. Consequently, those Member States have brought annulment actions on the basis of Article 230 EC before the European Court of Justice (pending cases). In addition, individual companies which were also opposed to certain Commission decisions rejecting NAPs have also referred these matters to the European Court of Justice on similar grounds. Some of these company cases have been declared inadmissible, whilst others are still pending.

Cases under Article 3 (1) and (2) of Decision 280/2004/EC

Under Article 3(1) and (2) of Decision [280/2004/EC](#) (read in conjunction with Decision [2005/166/EC](#)), Member States must submit to the Commission an annual report on national greenhouse gas (“GHG”) emissions (due by the 15 January of each year) and a bi-annual report on national policies and programmes aimed at reducing these emissions (due by the 15 March each year). Such reports are required by the Commission in order for it to draft its annual reports of the Community's actual and future predicted GHG emissions in compliance with the UN Framework Convention on Climate Change and the Kyoto Protocol.,.

In 2007, the Commission closed numerous cases against several Member States that had failed to submit 2006 annual and 2005 bi-annual reports. Those Member States have now provided the Commission with missing reports and information. For those that have still not communicated complete annual and bi-annual 2005 and 2006 reports, the Commission proceeded further in 2007 by addressing to concerned Member States a final written warning or by referring the matter to the Court of Justice.

¹¹ Directive [2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

¹² Decision No [280/2004/EC](#) of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol

¹³ Commission Decision [2005/166/EC](#) of 10 February 2005 laying down rules implementing Decision No [280/2004/EC](#) of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol

New cases were also opened in 2007 against several Member States on the ground that they had communicated to the Commission no or incomplete 2007 annual reports on GHG emissions and/or bi-annual reports.

Failure to prepare for international emissions trading under the Kyoto Protocol

Under Article 23 of Decision [2005/166/EC](#), Member States were required to submit to the Commission by 15 January 2006 (by 15 June 2006 for EU-10 Member States) the information necessary to determine the total amount they will be permitted to emit in line with their Kyoto target during 2008-2012, i.e. the “assigned amount”. The fixing of the assigned amount is a condition for a Member State's eligibility to participate in the flexible mechanisms of the Kyoto Protocol, including Emissions Trading, the Clean Development Mechanism and Joint Implementation.

In 2007, the Commission closed all existing cases that had been launched against several Member States on the basis of Article 23 of Decision [2005/166/EC](#) on the ground that they had finally communicated all missing information.

Failure to link national registries with the EU-wide registry system

Over 10,000 installations that are participating in the EU ETS are not given emission allowances in printed form, but these are held on accounts in electronic registries set up by Member States. These registries are linked via the Community Independent Transaction Log so that companies can directly trade with each other. In order to link up to the registries system, each Member State must establish a national registry in the form of a standardised electronic database as well as a communication link in compliance with Regulation (EC) No [2216/2004](#) of 21 December 2004 for a standardised and secured system of registries¹⁴. In 2006, the Commission initiated several infringement procedures for the failure to ensure compliance with Articles 3(1) and 6(1) of Regulation (EC) No [2216/2004](#). In 2007, the Commission closed the remaining cases opened under this Regulation on the ground that the Member States concerned had now set up compliant standardised electronic databases and the necessary communication link.

- 22/03/07: Climate change: Commission takes legal action against six Member States over missing information [IP/07/386](#)

7. Industrial emissions and protection of the Ozone layer

Follow-up work concerning permit procedures for existing IPPC installations

Directive [96/61/EC](#) of 24 September 1996 concerning integrated pollution prevention and control (IPPC directive), which was codified by Directive [2008/1/EC](#), sets out common rules for permitting industrial installations. Under the Directive existing IPPC installations had to obtain permits in accordance with the requirements set in that directive by 30 October 2007 at the latest. After the expiry of this deadline, the Commission requested that all Member States provide information on the number of permits issued for existing IPPC installations and the number of outstanding permits in order to obtain an updated picture of the situation and decide the kind of actions to be taken. The replies that were received showed that around 10.000 installations across the EU were not yet permitted in accordance with the Directive.

¹⁴ Commission Regulation (EC) No [2216/2004](#) of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council

Follow-up work concerning the LCP Directive

Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants (the LCP Directive) aims to reduce emissions of acidifying pollutants, particles, and ozone precursors. The control of emissions from large combustion plants - those whose rated thermal input is equal to or greater than 50 MW - plays an important role in the Community's efforts to combat acidification, eutrophication and ground-level ozone as part of the overall strategy to reduce air pollution. Under the LCP Directive, Member States had to submit the summary of their emission inventories for the years 2004, 2005 and 2006 to the Commission by 31 December 2007 at the latest. In October 2007, the Commission reminded all Member States to this obligation and requested Member States to submit also plant-by-plant emission data. The summary of emission inventories and the plant-by-plant data are essential pieces of information for the Commission in order to assess the actual implementation of the Directive and to prepare a summary of the comparison and evaluation of the national inventories within the timeframe set in the Directive.

Infringements concerning the Ozone regulation

The Regulation [2037/2000](#) sets out controls on production, importation, exportation, supply, use leakage and recovery and lays down phasing-out timetables in line with the requirements of the Montreal Protocol. Over the course of the last few years, the Commission has opened a number of infringement procedures based on different provisions of the Regulation. In 2007, the Commission launched further procedures against five Member States with regard to the non-decommissioning of halons used in the fire extinguishers of ships.

Judgments of the Court of Justice in 2007

The Court delivered a ruling concerning Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ([Case C-263/07](#), Commission v Luxembourg) concerning non-transposition of some Articles of this Directive.

8. Other sectors

Main infringements in 2007

Transposition of the Environmental Liability Directive

The Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive) establishes a framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying environmental damage. The Environmental Liability Directive was to be transposed by 30 April 2007 at the latest. However, only four Member States had notified complete transposition by this transposition deadline. Consequently, the Commission opened infringement procedures in June 2007 against those Member States which had failed to transpose the Directive on time. By the end of 2007, altogether eleven Member States had notified complete transposition of the Environmental Liability Directive: Italy, Lithuania, Latvia, Hungary, Germany, Romania, Slovakia, Sweden, Spain, Estonia and Cyprus.

Non-conformity with the SEVESO II Directive

The Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances¹⁵ (SEVESO II Directive) is aimed at the prevention of major accidents which involve dangerous substances, and the limitation of their consequences for man and the environment, with a view to ensuring high levels of protection throughout the Community in a consistent and effective manner. In 2007, the Commission checked the conformity of legislation for EU-10 Member States and launched a legal action against nine Member States.

Non-conformity with the Directive on Contained Use of genetically modified micro-organisms

A horizontal case dealing with non-conform transposition of Directive on Contained Use of genetically modified micro-organisms¹⁶ was opened in 2007. This Directive lays down common measures for the contained use of genetically modified micro-organisms with a view to protecting human health and the environment. In 2007, a first written warning was sent to twelve Member States.

External Emergency Plans

In 2007, the European Commission had sent a final written warning to 12 EU Member States for failing to set up emergency plans for areas surrounding industrial installations where dangerous substances are handled. The plans are a requirement of the Seveso II Directive, the key piece of EU legislation to prevent major industrial accidents and mitigate their effects.

- 17/10/07: Major industrial accidents: Commission continues infringement proceedings against 12 Member States over failure to adopt emergency plans for chemical plants [IP/07/1534](#)

¹⁵ OJ L 10, 14.1.1997, p. 13–33

¹⁶ Council Directive [90/219/EEC](#) of 23 April 1990 on the contained use of genetically modified micro-organisms as amended by Council Directive [98/81/EC](#)

Follow-up work concerning the Environmental Noise Directive

Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise is aimed at monitoring noise perceived by people in built-up areas, in public parks or other quiet areas in an agglomeration, in quiet areas in the open countryside, near schools, hospitals and other noise-sensitive buildings and areas. It requires Member States to draw up "strategic noise maps" in order to monitor the extent of noise pollution, to inform and consult the public about noise exposure, its effects, and the measures considered necessary to address noise. It also addresses local noise issues by requiring competent authorities to draw up action plans to reduce noise where necessary. Under the Directive, Member States had to send to the Commission by 30 December 2007 information from the strategic noise maps which had to be drawn up by 30 June 2007. In 2007, the Commission finalised guidance and electronic templates (so-called 'electronic reporting mechanisms') designed to support and assist the Member States in fulfilling their reporting requirements.

Judgments of the Court of Justice in 2007

The Court of Justice delivered two rulings concerning Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (Case C-391/06, Commission v Ireland and Case C-340/06, Commission v Austria) declaring that these Member States have failed to fulfil its obligations under Directive 2003/4/EC by failing to adopt the laws, regulations and administrative provisions necessary to comply with the Directive within the period prescribed.

II. COMPLEMENTARY INSTRUMENTS FOR BETTER ENFORCEMENT AND IMPLEMENTATION

Petitions and Complaints

Petitions to the European Parliament and complaints to the Commission represent a valuable source of information in detecting violations of Community law. This is of particular importance since the Commission does not have any “inspection” powers. Facts brought to the attention of the Commission through both petitions and complaints allow it to verify compliance on the ground. After examination of those facts and, in most cases, after checking with the authorities concerned, the Commission verifies whether the Member States have correctly applied European Community Law. Sometimes, the Commission's intervention helps to resolve potential infringements before they occur. However, some of these complaints and petitions lead to the opening of an infringement procedure.

This preventive role, in terms of the Commission's handling of complaints and petitions, provides fruitful results and helps to ensure better implementation. However, it is particularly important that the petitioners/complainants provide a clear identification of potential breaches of community law, with supporting data, in order to facilitate the handling of files. In 2007, the Commission received 146 petitions related to the field of environment which is around one third of the petitions sent by the European Parliament to the Secretariat General of the Commission and up from 25 % in 2006.

Implementation sessions with the European Parliament

The implementation sessions are organised by the Committee on Environment, Public Health and Food Safety of the European Parliament. Four sessions were organised in 2007. The issues that were mainly dealt with were nature and water protection, waste, and climate change.

The last session held in November 2007 introduced a new format for the implementation session. The new format aims to concentrate the questions on one environmental directive at a time and in that way make the session more informative and ensure a possibility for a more focused dialogue between the Commission and the Parliament on these issues. The new format for the session includes a technical presentation of the Directive and the challenges in implementing it, a presentation of the infringement procedures that the Commission has started for ensuring correct implementation as well as replies to the questions asked followed by a discussion. The first directive dealt with in the new format was Directive 91/271/EEC concerning urban waste water treatment.

Role of Non-Governmental Organisations

An important role when identifying breaches of EU Environmental legislation, mainly through the instrument of a complaint, is played by environmental non-governmental organisations (NGOs). NGOs contribute to promoting good implementation of environmental legislation and public awareness. The Environment Directorate General is pro-active in keeping open a regular dialogue with NGOs. A practice of meeting representatives of NGOs back to back with package meetings in the Member States has recently been developed and is proving to be a fruitful innovation.