



EUROPEISKA KOMMISSIONEN

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RAPPORT FRÅN KOMMISSIONEN
UTVÄRDERINGSRAPPORT FÖR PROJEKTET ”EU PILOT”

{SEK(2010) 182}

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1. INLEDNING

Enligt fördragen är det först och främst medlemsstaterna som ansvarar för tillämpningen av Europeiska unionens lagstiftning, medan kommissionen – i sin roll som fördragets väktare – har befogenheten och ansvaret för att se till att den tillämpas korrekt. Med tanke på EU-rättens räckvidd och den stora befolkning som omfattas av den är det många frågor och problem som tas upp av enskilda medborgare, företag och intressegrupper inom det civila samhället. För att lagen ska kunna förstås och tillämpas korrekt är det viktigt att dessa frågor och problemställningar besvaras och att alla problem som kan dyka upp vid tolkningen av EU:s bestämmelser korrigeras så snabbt och ändamålsenligt som möjligt.

Att se till att bestämmelserna uppfattas och tillämpas som det är tänkt har alltid krävt gemensamma insatser av kommissionens avdelningar och medlemsstaternas myndigheter (nedan *kommissionen* respektive *medlemsstaterna*). Det kan handla om att definiera de problem som tas upp, klargöra rättsläget och faktabakgrunden, svara på frågor och finna lösningar. Genom åren har ett antal olika former för kontakter och kommunikation använts för dessa ändamål. Däremot har det saknats en övergripande struktur och ett klart och tydligt åtagande, och det har inte heller funnits metoder för att mäta framstegen och effektiviteten i arbetet.

I meddelandet *En Europeisk union som bygger på resultat – tillämpningen av gemenskapsrätten*¹ föreslog kommissionen ett projekt för att pröva möjligheterna till stärkt engagemang, samarbete och partnerskap mellan kommissionen och medlemsstaterna inom området. Man föreslog således att kommissionen och medlemsstaterna på försöksbasis skulle ingå ett gemensamt åtagande att besvara medborgarnas frågor snabbare, effektivare och mer samordnat. Tanken med detta initiativ var att i möjligaste mån kunna korrigera överträdelser av EU-rätten utan att behöva inleda överträdelseförfaranden. Projektet var således inte avsett för att behandla ärenden i vilka en formell underrättelse redan sänts ut och ett överträdelseförfarande inletts enligt artikel 258 i fördraget om Europeiska unionens funktionssätt (EUF-fördraget, tidigare artikel 226 i EG-fördraget). Det är inte heller avsett för att följa upp överträdelseärenden där domstolen redan träffat ett avgörande.

En databas för säker och insynsskyddad kommunikation mellan kommissionen och medlemsstaterna inrättades för ändamålet. För att sköta driften av systemet, se till att de dokument som matas in når rätt mottagare, övervaka framstegen och främja en effektiv och konstruktiv användning av systemet har ett särskilt kontaktnätverk skapats. Syftet var att klargöra och bekräfta alla aspekter på rättsläget och den faktiska situationen på EU-nivå och medlemsstatsnivå, så att det skulle gå att dra korrekta slutsatser, ge fullgod information till medborgare och företag och hitta lämpliga lösningar på de problem som tas upp, och på så sätt underlätta efterlevnaden av EU-rätten.

¹ KOM(2007) 502, avsnitt 2.2 ”Bättre arbetsmetoder”, s. 8.

Projektet, som fick namnet *EU pilot* (även kallat *pilotprojektet*) har varit igång sedan mitten av april 2008 med 15 deltagande medlemsstater: Österrike, Tjeckien, Danmark, Tyskland, Finland, Ungern, Irland, Italien, Litauen, Nederländerna, Portugal, Slovenien, Sverige, Spanien och Förenade kungariket (Storbritannien och Nordirland).

Kommissionen föreslog att en resultatutvärdering skulle ske när projektet varit i gång i ett år. Detta dokument innehåller således en rapport om systemets funktionssätt fram till början av februari 2010.

2. HUR PILOTPROJEKTET FUNGERAT I PRAKTIKEN

Fram till början av februari 2010 hade sammanlagt 723 ärenden kommit in, varav 424 färdigbehandlats inom ramen för projektet. Detta anses vara ett tillräckligt underlag för en utvärdering.

Över 60 % av ärendena består av klagomål och drygt 20 % av förfrågningar. Närmare 20 % är ärenden som kommissionen inleder på eget initiativ. Av klagomålen och förfrågningarna kommer sammanlagt 43 % av ärendena från enskilda medborgare och 36 % från företag eller intressegrupper inom det civila samhället. Innehållet i de ärenden som kommer in motsvarar ungefär tidigare erfarenheter av antalet frågor eller problem inom respektive sektor av EU-lagstiftningen: 36 % gällde miljöfrågor, 21 % den inre marknaden, 8 % beskattning, 7 % sysselsättning, arbetsrätt och social trygghet, 6 % området rättvisa, frihet och säkerhet, 4 % hälsa och konsumentskydd och 4 % jordbruk.

Det är tydligt att fler ärenden kommer in i de större medlemsstaterna, eftersom de har fler invånare, företag och sociala intressegrupper. Några medlemsstater har hittills bara behövt behandla ett mindre antal ärenden. Hittills har reaktionerna från medlemsstaterna varit övervägande positiva. Man har särskilt betonat att pilotprojektet bidragit till en bättre kommunikation med kommissionen, vilket i sin tur har lett till snabbare och bättre svar på de frågor och klagomål som kommit utifrån. Samtidigt har medlemsstaterna påpekat vikten av att förbättra systemets funktion i praktiken (t.ex. genom att klargöra vilka funktioner systemet ska omfatta och vilka regler som gäller för kommissionens handläggning av ärendena).

Generellt sett bedömer kommissionen att det stora flertalet ärenden gäller relevanta frågor som förtjänar att besvaras, och inledningsvis har en stor andel av ärendena kunnat behandlas på ett tillfredsställande sätt. Kommissionen beräknar att medlemsstaternas svar godtagits i 85 % av fallen, dvs. ärendena i fråga har kunnat avslutas. Vissa ärenden har ändå fått behandlas som överträdelse: i 40 av de ärenden som handlagts inom pilotprojektet hade ett överträdelseförfarande antingen inletts eller var under förberedelse i början av februari 2010. Det är bara i mycket få fall (3 %) som medlemsstaterna har avböjt att behandla ärenden, och då oftast på grund av otillräcklig information från avsändaren. Nästan 67 % av ärendena behandlades av den berörda medlemsstaten inom tio veckor, med ett genomsnitt på 73 dagar. För kommissionens uppföljning av medlemsstaternas svar hade ingen bestämd tidsfrist satts, men ungefär 40 % av ärendena kunde avslutas inom ytterligare tio veckor, med ett genomsnitt på 109 dagar.

Även kommissionen anser att pilotprojektet som helhet och behandlingen av de flesta ärenden har fungerat bra. Projektet har börjat ge ett konkret och positivt bidrag till samarbetet mellan kommissionen och medlemsstaterna i strävan att inom rimlig tid lösa frågor om tillämpningen av EU-rätten. Samtidigt kan det konstateras att systemets effektivitet bör kunna

vidareutvecklas genom bättre kommunikation och samarbete i de enskilda ärendena, och genom insatser för att korta ner behandlingstiderna.

3. ANALYS OCH VIDAREUTVECKLING AV PROJEKTET

Både kommissionen och medlemsstaterna har utvecklat det kunnande om den tekniska plattformen som behövs för att hantera systemet effektivt. Det finns aspekter som bör klargöras och förbättras för att underlätta användningen av systemet, och många sådana insatser är redan planerade.

Innehållet i de ärenden som sänds in till pilotprojektet är i allmänhet relevant, faller inom projektets tillämpningsområde och ger upphov till frågor som är värda att uppmärksamma. Inledningsvis var några av medlemsstaterna inte på det klara med att projektet också skulle omfatta ärenden som tas upp på kommissionens eget initiativ, eftersom tanken främst var att hantera frågor från enskilda medborgare, företag och intressegrupper inom det civila samhället. Denna fråga har emellertid tagits upp till diskussion, och många är nu ense om fördelarna med att använda systemet för all kommunikation mellan kommissionen och medlemsstaterna i denna typ av frågor. I särskilt komplicerade ärenden kan arbetet inom pilotprojektet också kompletteras med expertmöten.

Man har också kunnat bekräfta värdet av en mer konsekvent användning av EU Pilot från kommissionens sida. Utan att detta påverkar de övriga mekanismer som införts genom EU-rätten bör därför alla ärenden sändas in till projektet, så att materiella och rättsliga omständigheter kan klargöras. Undantag från denna regel bör medges om brådska eller andra tungt vägande skäl gör att ett överträdelseförfarande behöver inledas direkt. Generellt bör den nya praxisen leda till att man kan svara på frågor och lösa problem snabbare inom pilotprojektet än vad som skulle vara fallet i ett överträdelseförfarande. En behandling via projektet förbättrar också informationsutbytet och gör det lättare att spåra enskilda ärenden. Om kommissionen – som är fallet i dagsläget – ser en fördel i att skicka ut en administrativ skrivelse innan den vidtar några officiella åtgärder, kan detta ske genom ett formulär som fylls i inom ramen för pilotprojektet och fungerar som enda kommunikationskanal i det skedet. En sådan praxis skulle ersätta de administrativa skrivelser som kommissionen idag skickar ut, och på det sättet medverka till en mer generell och konsekvent användning av *EU Pilot*. Dessutom skulle den ge utrymme för ett kort samråd där medlemsstaternas myndigheter får chans att hitta en konstruktiv lösning på ett snabbare och smidigare sätt än via ett överträdelseförfarande. Att ett ärende behandlas inom projektet utesluter inte att man kan ta ytterligare kontakter för att följa upp de frågor som behandlats. Däremot garanterar det att medlemsstaterna konsekvent informeras om att ett överträdelseförfarande kan komma att inledas, utan att detta informationsutbyte på något sätt försenar ett sådant förfarande. Denna rutin bör således alltid följas – med undantag för de brådskande fall där ett formellt agerande måste inledas direkt – och torde bidra till att alla parter samverkar för att lösa problemen i ett så tidigt skede som möjligt, och på så sätt säkra en korrekt tillämpning av EU-rätten. Den skulle också ge fördelar för enskilda medborgare och bidra till en mer konsekvent och effektiv organisation av arbetet både inom medlemsstaternas myndigheter och kommissionens avdelningar.

Kommissionen försöker också se till att de frågor som behandlas inom projektet alltid åtföljs av tydligaste möjliga förklaring, och signalerar på så sätt sitt intresse för de ärenden som tas upp av tredje man och lägger sin auktoritet bakom dem. Detta hjälper också medlemsstaterna i

deras strävan att ge tydliga förklaringar och lösningar och koncentrera sina svar på kärnfrågorna i varje ärende. Medlemsstaterna strävar alltid efter att deras svar ska behandla de frågor som tagits upp på ett riktat och konkret sätt.

Man har diskuterat frågan om vilka språk som ska användas i kommunikationen med medlemsstater, företag, enskilda och intressegrupper inom det civila samhället. Det står klart att vissa texter kan behöva översättas i något skede i processen. Det är kommissionens föresats att processen ska fungera så effektivt som möjligt, med hänsyn tagen till regler och förfaranden och de språkbestämmelser som gäller i olika förvaltningar. Kommissionen kommer att översätta för eget behov och bistå medlemsstaterna där så krävs.

Inom pilotprojektet kan svaren från medlemsstaterna där så är lämpligt gå direkt till slutmottagaren. Detta förenklar normalt proceduren och kortar ner behandlingstiden, med förbehåll för sammanhanget och de specifika frågor som tas upp. Vissa medlemsstater anser att om frågorna ursprungligen är riktade till kommissionen bör den också sammanställa svaren. Detta har fördelen att mottagaren får del av ett samlat och komplett svar som innehåller både kommissionens och medlemsstatens bidrag. Därför kan meddelandet till slutmottagaren också skickas via kommissionen, såvida inte medlemsstaten anser att det är lämpligare att svara direkt. Kommissionen låter i varje fall alltid slutmottagaren ta del av sina synpunkter på svaret från den nationella myndigheten.

I samband med denna första utvärdering av pilotprojektet har man också försökt kategorisera ärenden efter deras innehåll, för att utreda om olika sorters ärenden behöver behandlas på olika sätt och för att se om det skulle gå att utveckla en standardmetod för att bedöma lämplig tidsåtgång för varje typ av ärende. Dessa frågor kommer att undersökas vidare inom ramen för själva projektet. Enligt den ungefärliga uppdelning av ärenden som gjorts bedöms det att 60 % av ärendena avsåg praktiska svårigheter som enskilda eller företag upplevt i samband med tillämpning av EU-lagstiftningen, 25 % gällde frågor om eventuella brott mot denna lagstiftning, 15 % avsåg frågor kring problem vid utövandet av rättigheter enligt densamma medan 2 % helt enkelt utgjordes av förfrågningar om information eller förklaringar.

Riktmärket för behandlingstid inom pilotprojektet (tio veckor) ska ses som en allmän vägledning för medlemsstaternas behandling av ärenden. Typen av frågor och de åtgärder som behövs för att besvara dem kan ju variera mycket, vilket också bekräftas av de stora skillnaderna i behandlingstid för de ärenden som redan gått genom systemet. Många frågor bör kunna besvaras på mycket kortare tid än tio veckor, medan andra kan ta längre tid. Kommissionen begär ibland svar snabbare än inom tio veckor, vilket i så fall motiveras i begäran. Riktmärket tio veckor används dock för den allmänna bedömningen av systemet. Den tid kommissionen tar på sig för att utvärdera svaren och meddela mottagaren sina slutsatser är naturligtvis också en viktig faktor för den samlade behandlingstiden, i synnerhet om det är kommissionen som meddelar medlemsstatens svar och sin egen utvärdering direkt till mottagaren. Man har enats om att tio veckor bör ses som ett generellt riktmärke för kommissionens utvärdering av medlemsstaternas svar. Grunderna för denna slutsats är desamma som för medlemsstaternas handläggning (se ovan). Om de föreslagna riktmärkena respekteras kommer det första formella steget i behandlingen av dessa ärenden – dvs. att en formell underrättelse sänds ut eller att ärendet avslutas – ofta att kunna tas inom sex månader. Detta kan jämföras med de tolv månader som hittills har gällt som målsättning för behandlingen från inledande klagomål till formell underrättelse eller avslutning av ärendet.

Det allmänna intrycket är att både medlemsstaternas myndigheter och kommissionens avdelningar har gjort stora ansträngningar för att få igång pilotprojektet. Samarbetet mellan kommissionen och medlemsstaterna har fungerat utmärkt både vid bilaterala kontakter och i mer kollektiv form. En viktig del av arbetet har bestått i att bevaka framstegen med de olika ärendena och hur systemet fungerar som helhet. Denna arbetsmetod har ett brett stöd och kommer att vidareutvecklas, och det finns också ett intresse av att involvera fler medlemsstater.

4. ALLMÄNNA SLUTSATSER

Kommissionens utvärdering av pilotprojektets genomförande så här långt har visat följande:

- Inledningsfasen för *EU Pilot* har fullbordats och projektet har börjat få positiv inverkan på samarbetet mellan kommissionen och de deltagande medlemsstaterna när det gäller att besvara frågor och lösa problem som lagts fram av enskilda medborgare, företag och organisationer inom det civila samhället.
- En viktig effekt av projektet är att det har bildats ett aktivt nätverk av kontaktpersoner och kontaktpunkter inom kommissionen och vid medlemsstaternas myndigheter. Detta ger en förbättrad översikt över handläggningen av förfrågningar och klagomål, och stärker samordningen och samarbetet mellan kommissionen och medlemsstaterna.
- Kommissionens avdelningar och medlemsstaternas myndigheter har bedrivit ett öppet och konstruktivt samarbete under utformningen av projektet och under det inledande arbetet.
- Även om systemet börjat visa positiva resultat finns det fortfarande många aspekter som kan vidareutvecklas för att förbättra funktionen, öka förståelsen mellan kommissionen och de deltagande medlemsstaterna, påskynda handläggningen av ärendena och öka kvaliteten på resultaten.
- Kommissionen och de deltagande medlemsstaterna är fast beslutna att fortsätta förbättra handläggningen av ärenden inom projektet och de arbetsmetoder som används.
- Projektet bör fortsätta att genomföras och vidareutvecklas. Ju bredare deltagande från medlemsstaterna, desto effektivare blir systemet och desto större blir spridningen.

Kommissionen kommer därför att uppmana de medlemsstater som ännu inte deltar i projektet att ansluta sig, så att systemet får en bredare tillämpning och en ökad verkan samtidigt som potentialen för vidareutveckling stärks.

En ny utvärdering av pilotprojektet planeras äga rum 2011.



EUROPEAN COMMISSION

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COMMISSION STAFF WORKING DOCUMENT

Facts on the functioning of the system up to beginning of February 2010

Accompanying document to the

REPORT FROM THE COMMISSION

EU PILOT EVALUATION REPORT

{COM(2010) 70 final}

1. ORGANISATION IN THE NATIONAL AUTHORITIES AND IN THE COMMISSION

1.1. Organisation in the National Authorities

Each of the fifteen participating Member States has appointed a Central Contact Point responsible for the overall management of the process. The main task of this person or team is to attribute files coming in from the Commission services to the responsible Member State authority, to monitor the functioning of the system with a view to ensuring its quick, effective and constructive operation, communicating solutions to problems or answers to questions where possible directly to the citizens or businesses concerned, in conformity with EU law.

A specific EU Pilot Expert Group, composed of all Central Contact Points, has been set up by the Commission for the exchange of views on the functioning of the system. It has met four times since the launch of the new system. It provides the Central Contact Points the opportunity to exchange experiences and agree together with the Commission how best to overcome any operational or technical problem they would face.

As regards the appointment of the Central Contact Point, the organisation varies:

Austria – The Contact Point is to be found in the Federal Chancellery which attributes the files submitted in EU Pilot to the individual department responsible.

Czech Republic – The Czech Contact Point is located in the EU Law Department of the Foreign Affairs Ministry. The same department is in charge of the infringement proceedings; however, there is shared responsibility among the Ministry of Foreign Affairs and the competent Ministry.

Denmark – The Contact Point belongs to the Ministry of Foreign Affairs. EU Pilot files are treated by a special committee for Legal Affairs, chaired by the Ministry of Justice. Files are forwarded to all Ministries concerned and discussed in the committee.

Finland – The Contact Point has been set up in the Ministry for Foreign Affairs Unit for EU Litigation which is also responsible for the preparation of EU court cases and infringement matters. The Contact Point attributes the cases covered by the Pilot project to the contact officer in the Ministry in charge and forwards the Ministry's response to the Commission through the Pilot's IT system. The Contact Point does not take part in the preparation of the answer. If the case falls within the sphere of authority of several ministries, they take care, as a rule, of the coordination of the matter among themselves. The same procedure is applied if the response requires the participation of the Åland Islands in the consideration of the case.

Germany – The Contact Point belongs to the Federal Ministry of Economics and Technology (BMWi) and fulfils an overall monitoring and coordination function. All correspondence from the Commission and vice versa is channelled via BMWi. The unit in charge for the EU-Pilot is also in charge for infringement cases within the Federal Government. Although BMWi checks all messages to the COM and as appropriate gives juridical advice, the political responsibility remains with the line ministry or the German Länder – in line with their political competence.

Hungary – The Contact Point is in the Ministry of Foreign Affairs. The EU pilot cases are dealt with according to the same rules and by the same team as the infringement cases. The reply in each case is discussed and formulated in a working group which involves the relevant ministries and is approved by the Inter-ministerial Committee for European Affairs.

Ireland – The Contact Point is located in the Ministry of Foreign Affairs which asks the responsible Departments to treat the files raising issues falling under their area of responsibility in the system. The Departments upload themselves the answers in the system.

Italy – A Contact Point has been set up in the EU Policy Department (*Dipartimento per le Politiche Comunitarie*) within the Italian Prime Minister's Office. The Department reports to the Minister for European Policies. The same team deals with infringement cases. The files are dealt with by coordinators who consult every concerned Ministry, setting a deadline for preliminary responses allowing sufficient time for the work required for any finalisation, as necessary. The Ministries work together on given cases, which helps afterwards if the file becomes an infringement.

Lithuania – Lithuania has opted for centralized management of EU Pilot. The Contact Point belongs to the European Law Department under the Ministry of Justice, which coordinates and monitors all the European law infringement procedures in Lithuania. European Law Department sends the documents received through EU Pilot to the responsible institution. With regard to complaints or other documents delivered through EU Pilot, the State institution that is in charge of the transposition or implementation of the relevant EU legal act drafts a reply and submits it for coordination to the European Law Department. The European Law Department provides conclusions on the draft reply. Then the responsible State institution sends the final reply to the European Law Department, which submits the answer to the European Commission through the EU Pilot.

The Netherlands – The Contact Point is part of the European Law Division of the Legal Department of the Ministry of Foreign Affairs. This division is also responsible for (the coordination of) infringement cases and administrative letters. The Contact Point attributes the files to the departments concerned, uploads the answers into the system and monitors the overall operation of the EU Pilot. When asked by the responsible Department, the Contact Point can also play a more substantial role.

Portugal – The Contact Point is placed in the Ministry of Foreign Affairs and the same legal experts deal with EU Pilot and infringements files. They ensure coordination if several Ministries are involved. Short deadlines are set. There is one Contact Point for infringement cases, and thus EU Pilot files, in each Ministry.

Slovenia – The Contact Point belongs to the Government Office for Development and European Affairs. The Contact Point identifies the relevant Ministries and contacts the Contact Point in each Ministry. Meetings are held to find solutions and it is the Government Office for Development and European Affairs that checks the answer and uploads it into the system.

Spain – The Contact Point belongs to the Ministry of Foreign Affairs and Cooperation. The treatment of EU Pilot files follows the same system as for infringement cases. The Ministry of Foreign Affairs and Cooperation identifies which administration is responsible and it is the administration that will prepare the answer and send it to the Ministry that ensures the coordination function.

Sweden – The Contact Point is located in the Ministry of Foreign Affairs which forwards the files to the legal secretariats of the competent Ministries. The Ministries enter responses directly into the IT application. The Contact Point monitors the overall operation of the system.

United Kingdom – The Contact Point belongs to the EU Section of the Cabinet Office which coordinates the work on EU Pilot and infringement cases. It fulfils a general role monitoring problems of application of EU Law. The files are sent to the lead Departments and policy and legal experts draft the response and send it to the Cabinet Office that ensures the coordination function.

1.2. Organisation in the European Commission services

The system is centrally managed by the Secretariat General of the Commission, acting as central Contact Point for the Member States. The Secretariat General is responsible for the overall management of the system, monitoring its functioning, developing the application and responding to questions and providing guidance on its operation.

Each Commission service controlling the application of EU Law has put a team of Contact Points in place. They include from 1 to 6 people. The Contact Points in the services create the files and ensure the coherence of the system in the Directorate General. They attribute the files to the file handlers and are responsible for contacts with the Member States.

The file handlers in each Directorate General of the Commission introduce the questions to be put to Member States into the system, assess the responses provided by the Member States and propose any appropriate follow-up.

2. PRACTICAL OPERATION OF THE SYSTEM

2.1. IT application

The Commission services and the Member State authorities communicate using a newly developed information and communication system (the "EU Pilot IT application") which provides for the entry of issues in the system, secure communication between the Commission and Member State authorities and the recording of the time taken to manage issues and the results achieved.

2.2. Scope

EU Pilot covers issues raising questions concerning the correct application of EU law or the conformity of Member State legislation with EU law. The Commission services can lodge enquiries and complaints received from citizens and businesses as well as own-initiative files in the system. These issues either require further factual or legal information for a full understanding or are put into the system to see if the question could be answered or problem resolved through Commission-Member State collaboration. Some issues come in directly to the Commission without any previous contact having been taken with the Member State authority concerned, while others are referred to the Commission following contact with the responsible authority in the Member State. The Commission often has all the information necessary to respond directly and fully on the issues, in which case no further investigation in

EU Pilot may be necessary. The readiness of Member States to resolve issues raised in the system more quickly than through recourse to infringement proceedings can usefully be tested even where factual and legal position seems reasonably clear. However, sometimes further factual or legal information is required on the issue before it can be fully understood.

Apart from the treatment of cross-frontier issues in the internal market through SOLVIT¹, as described below, EU Pilot is used for all instances in which the Commission services decide, either as a result of incoming correspondence or of their own initiative, that contact with a Member State authority could help to provide useful information or to resolve a problem raised concerning the implementation or application of EU law in a particular Member State. This includes correspondence coming from a citizen or an undertaking (new complaint or request for information), a lobby/interest organisation or an issue otherwise identified by the Commission service concerned as requiring clarification or resolution, including for example issues raised with the Commission in the European Parliament Petitions' Committee or a letter from a Member of the European Parliament. EU Pilot is not used to manage any issue on which an infringement proceeding has been initiated, through the issuing of a letter of formal notice, under Article 258 of the Treaty on the functioning of the European Union (TfEU – ex-Article 226 of the EC Treaty), or to follow-up on a Court of Justice ruling on the existence of an infringement.

EU Pilot is used by the Commission services for a wide range of written contacts with the participating Member States concerning specific issues of the interpretation or application of EU law. This does not exclude the use of other forms of contacts as, for instance, committee or expert group work, an organised programme of work on the transposition of a directive, package meetings or management or audit arrangements for specific EU Policies or Funds.

In EU Pilot, the relevant Commission Department conducts an initial evaluation of incoming correspondence before any correspondence is transmitted to the participating Member State. The decision to use EU Pilot depends on factors such as the nature of the issues raised, the information already available and the likelihood that the Member State authorities concerned should be able to clarify or resolve the issues at stake. Issues that have already been presented to the Member State directly by the citizen and upon which the MS has already taken a position need to be assessed carefully so as to avoid unnecessary and repetitive consultations. The EU Pilot project is not intended to add any unnecessary steps to the investigation of complaints and enquiries. Issues which are subject to judicial proceedings in a Member State can be submitted to EU Pilot with a view at least to obtaining confirmation of this fact and indications of the timing of the proceedings in question as well as to identify the nature and scope of the issues covered.

EU Pilot is not to be used once the first formal step in an infringement proceeding has been taken through the sending of a letter of formal notice.

2.3. EU Pilot and SOLVIT

SOLVIT deals with cross-frontier problems faced by individual citizens and organisations caused by bad application of EC internal market rules. Such issues can be submitted directly to the SOLVIT system by individuals, organisations or concerned parties (e.g. Members of the European Parliament). Should such issues be submitted to the Commission, and should the

¹ Commission Communication "Effective Problem Solving in the Internal Market (SOLVIT)" [COM(2001/0702) final]

Commission wish for some clarification of the issue to be obtained from the Member State, the relevant service can submit the issue to SOLVIT. Hence, all cross-border EU law issues (i.e. involving two or more Member States) encountered by a citizen or organisation in relation to the functioning of the internal market (Article 14(2) of the EC Treaty) which are not the subject of a formal infringement proceeding should be put into SOLVIT.

EU Pilot differs from SOLVIT in terms of the type of issues it handles and the fact that communication is between the Commission and the relevant Member States whereas within SOLVIT Member States work together to solve cross border problems. If it is already clear from the start that a cross-frontier problem arising in the internal market is caused by non-conformity of national legislation with EU legislation, the case may be more suitable for treatment in EU Pilot rather than SOLVIT. However, if the cause of the problem is not clear from the outset and a consistent administrative practice wrongly applying EU law or a regulatory barrier is encountered in the process of handling a SOLVIT case, SOLVIT centres are often prepared to continue their attempts to resolve the problem and correct the infringement (this is called SOLVIT+).

Member States have the possibility to redirect cases that have been submitted to EU Pilot by mistake and the other way around. The EU Pilot Central Contact Points need to cooperate closely with the SOLVIT Centres to ensure the smooth functioning of the two systems.

2.4. Relationship of EU Pilot with other information services organised by the Commission

There is a range of other services organised by the Commission to provide information to citizens or organisations. Some of them offer dispute resolution possibilities to citizens or organisations in their dealings with public authorities or private operators.

EU Pilot is distinct from these services in that EU Pilot is not a general information system or a system for the settlement of disputes between citizens and commercial operators. It is a system for direct co-operation between the Commission services and Member State authorities to respond to specific questions and problems and to correct, at an early stage, infringements arising in the context of the daily interpretation and application of EU law by those authorities.

2.5. Working method

If the Commission Department considers that a particular problem could be resolved by the competent Member State authority, or that additional information from the Member State authority or a statement of the position of the authority on the issue should be possible and could be helpful, it will refer the issue to the Member State through EU Pilot.

A ten week benchmark has been set for Member States to send as comprehensive and complete a reply as possible, wherever possible providing a solution to identified problems. In some cases, the Commission may present a reasoned justification for a shorter period or a Member State may likewise justify the need for longer time to respond.

The responsible Commission Department will assess the response of the Member State and decide either to accept the position expressed by the national authorities and to close the file, or to ask for more information or to reject the answer and inform the concerned authorities of

the conclusion that the problem did not appear to have been resolved and some further action may be taken. If an infringement is detected, the launch of the infringement procedure may be decided.

A flow chart showing the main steps in EU Pilot is annexed.

2.6. Confidentiality

Existing rules² protecting the identity of complainants followed in the treatment of correspondence and complaints apply to EU Pilot.

The Commission services send an evaluation of the response of the Member State authority to the citizen at the end of the process informing the Member State through the recording of a copy in the EU Pilot IT application.

When citizens and organisations are willing to reveal their identity for fact-finding reasons, the Member State authority or Contact Point may inform the correspondent directly of its response to his enquiry or complaint, with a copy to the Commission. However, if the Member State decides to not correspond directly with the citizen, the Member State will send its response to the Commission and the Commission will reply to the correspondent. The Commission will communicate the information provided, informing the Member State through the recording of a copy in the EU Pilot IT application.

Access to documents on EU Pilot held by the Commission is governed by Parliament and Council Regulation N° 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L145, 31.05.2001, p.43), as implemented by the Commission Decision of 5 December 2001 amending its Rules of Procedure (J L345, 29.12.2001, p.94). National authorities are also bound by their own national legislation on access to documents.

3. DEVELOPMENT AND CLARIFICATION OF THE WORKING METHOD IN THE FIRST YEAR OF OPERATION

3.1. Operational aspects

Some aspects of the working method have been developed or clarified during the operation of the new system:

- **Overall quality of operation** – For the smooth functioning of the new working method, it is essential that national authorities and Commission services work in close cooperation, trying to ensure that the system produces as quick and positive results as possible. However, the idea of the EU Pilot project is to build a partnership approach and therefore to use the system to improve and develop current practice. Overall, the project has been conducted in a very positive spirit of collaboration and willingness to achieve quick and

² Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data and Commission Communication on relations with the complainant in respect of infringements of EU law [COM final (2002) 0141].

positive results. There have been occasions when the quality of the files put into the system by the Commission services or the responses provided by Member States could have been increased. Both the timing of responses of Member States and the time taken by Commission services in reviewing the responses could sometimes also have been improved. These issues have been discussed in the EU Pilot Expert Group and in other contacts with a view to future developments. In particular, in future, the Commission services will also work to a ten week benchmark for the evaluation of Member State responses on the same basis as this benchmark is set for Member States.

- **Administrative letters** – The use of EU Pilot is intended to replace sending of administrative letters by the Commission services (so-called "pre-226 letter") to Member States participating in EU Pilot. However, it has taken some time for this practice to be phased-out. Where such actions have come to light, a follow-up has been organised. It is planned to introduce a form into the IT support platform for EU Pilot to allow attention to be drawn by senior Commission officials to specific aspects of EU Pilot files such as the particular need for urgent treatment or the importance of the issues raised and offering co-operation to find a solution quickly. Once this form is available, this will be the only method of written communication to be used for this purpose.
- **Language issue** – English and the other official languages of the Member States concerned have been variously used in the operation of EU Pilot according to the applicable rules and administrative possibilities. Translation of texts and use of official languages of Member States is being ensured by the Commission services as necessary.
- **Communication between Member States and complainant** – The initial design of EU Pilot envisaged that the Member State concerned would reply directly to the citizen or business raising the issue with the Commission, unless the correspondent has maintained identity confidentiality. However, this method of communication has not proved appropriate for all files. Therefore, it has been accepted that, whenever the Member State feels it appropriate, the response can be communicated to the correspondent via the Commission services. The evaluation of the Commission services will be added to the Member State response. It will be uploaded immediately into the EU Pilot database and communicated to the Member State. In all cases the Commission communicates its own conclusions to the complainant and informs the Member State through the recording of a copy of the correspondence in the EU Pilot application.
- **Scope** – There has been some initial uncertainty on the kinds of files appropriate to be taken up in EU Pilot. The idea behind the project is that this system should be used for all questions and problems concerning the application of EU law, where information or explanations are required from the Member State, or it seems possible that a solution might be found most quickly using this process. There was also some initial lack of clarity whether EU Pilot should be used to treat files submitted by the Commission on its own initiative. It has been agreed that there is no reason to limit the application of EU Pilot in terms of the origin of the issue raised concerning the application of EU law. It should operate without prejudice to other mechanisms established under EU legislation. It is also considered consistent to ensure that at least a minimum opportunity is provided for a quick and positive solution to be identified before any infringement proceeding is initiated, replacing current administrative practices (see indent on "administrative letters") except those concerning late transposition of directives or to ensure respect for rulings of the Court of Justice on the existence of an infringement of EU law or where urgency requires formal legal action. It is also agreed that some forms of enquiry may be too unspecific in

content to justify pursuit through EU Pilot absent further indications. The kinds of files concerned will be clarified.

- **Completion of the process** - Some of the users of EU Pilot in the Commission and Member State administrations had some uncertainty about the necessary procedural steps in EU Pilot and how to complete these steps in the IT application (this concerns especially the completion of the process and the sending of a communication through the system). Further explanations and background documents were made available, indicating the actions required through the whole EU Pilot procedure.

3.2. Technical aspects

The IT application set up for EU Pilot has been frequently developed even after its entry into operation, taking into account the remarks and wishes of the users in the Commission services and in the Member State authorities. In the most recent months of operation, further suggestions of useful developments have been identified and will be realised in the coming months. Further developments are envisaged to improve on the functioning of the system, including on such matters as: providing for the monitoring, in the system, of a response from a Member State which requires the Member State to take follow-up measures; adjustment of the application to deal better with complex files where multiple information exchanges take place, to ensure that there is space to insert all correspondence; development of the application to allow for other services than those directly involved in the Commission, or in Member State authorities, to be associated to the file and to be able to insert comments in the file; and to develop the search and statistical functions.

4. VOLUME AND SHARES OF FILES

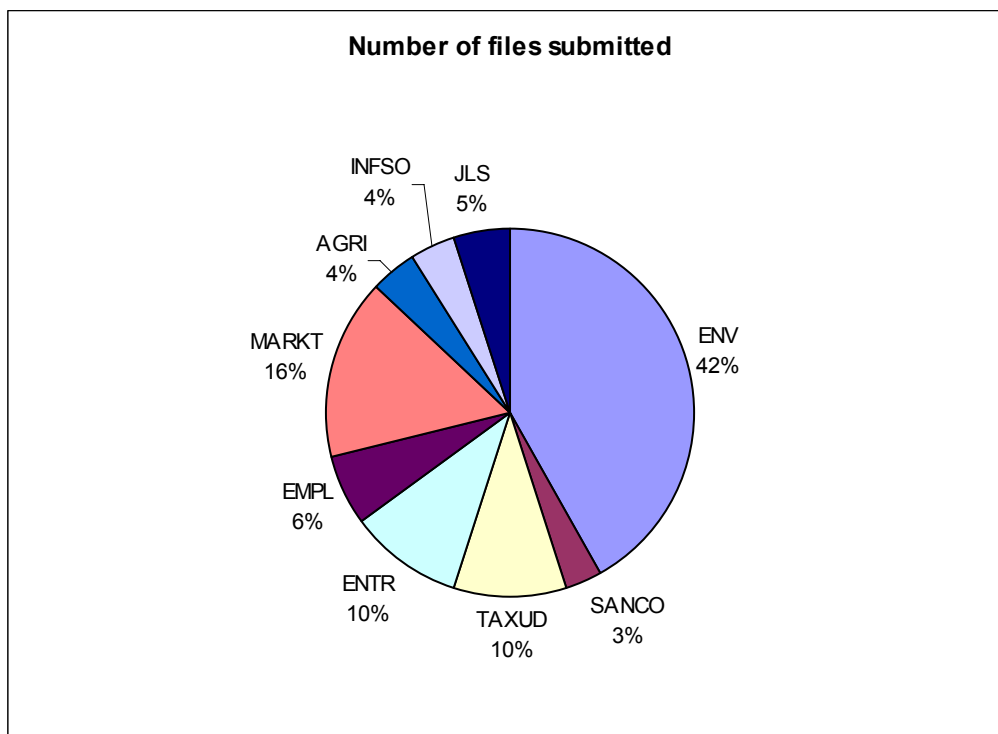
The volume of files submitted in the application increased progressively through the first year of operation, from 100 files after 4 months of operation, to 215 files after 8 months of operation, to 351 files after 12 months of operation, to 429 files after 14 months of operation and finally to 723 files in early February 2010, after 22 months of operation. These figures show a rather constant evolution.

The graph under point 4.1 shows the share of files by sector of EU law during 22 months of operation of EU Pilot. These shares have remained rather constant as well.

The graphs under 4.2 show that the files submitted in EU Pilot found their origin either in enquiries brought by citizens and businesses relating to the application of EU law, in complaints lodged by citizens and businesses against a Member State for a measure or practice attributable to the Member State and which they consider incompatible with a provision or a principle of EU law or in the own initiative of the Commission services. A clear majority of files have been based on complaints lodged by citizens.

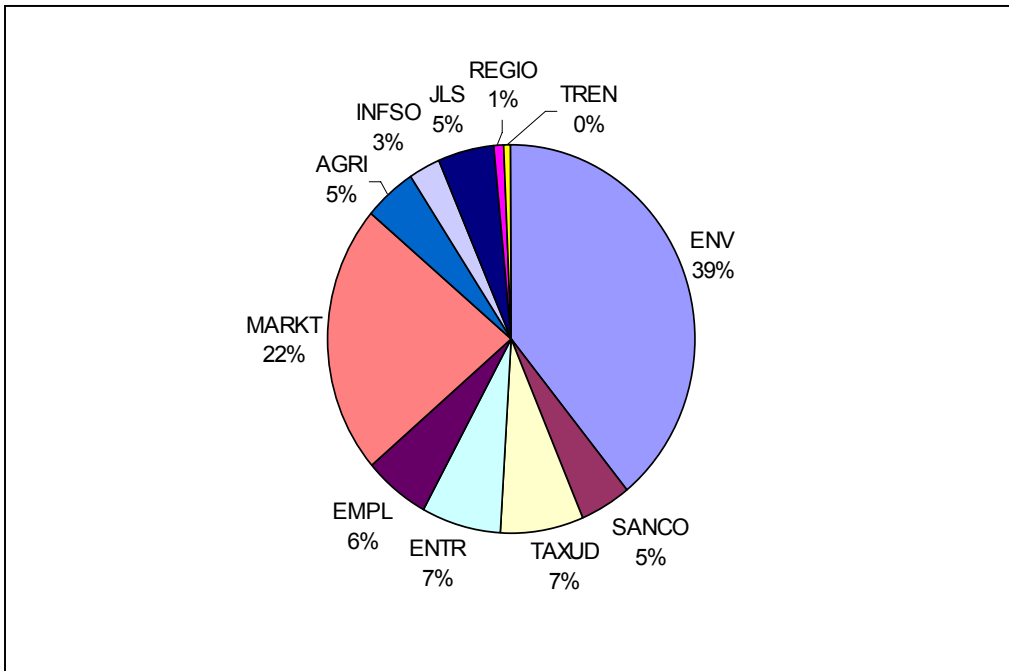
4.1. Breakdown by sector of EU Law³

After 4 months of operation - 15 August 2008 – 100 files

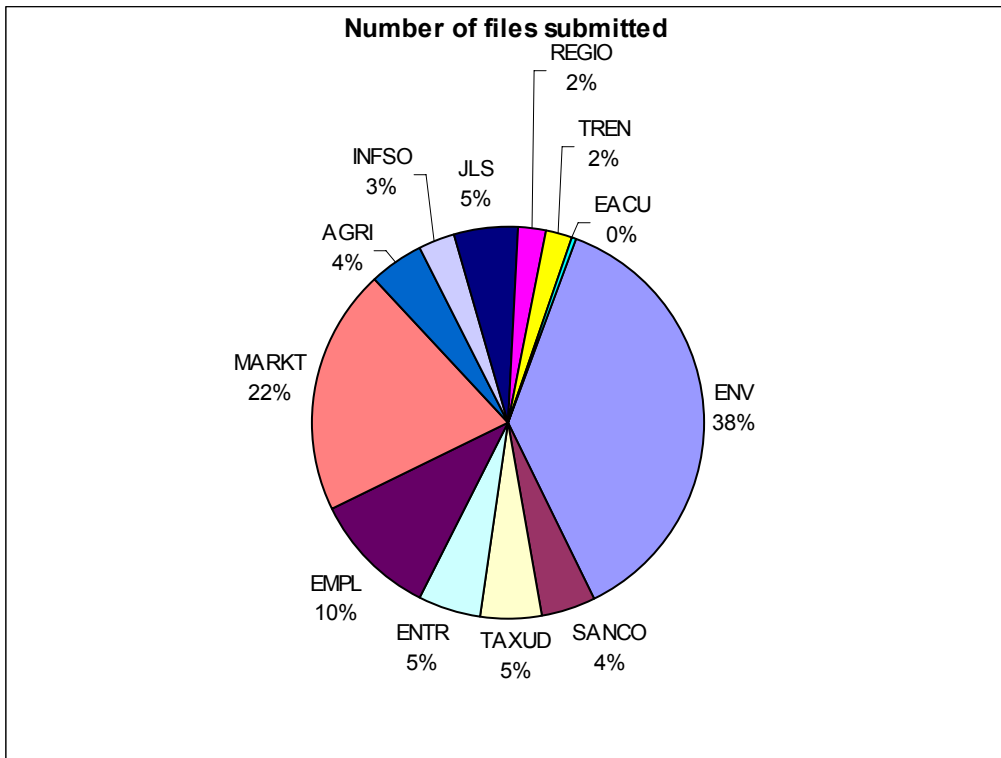


³ AGRI= Agriculture and rural development, ELARG= Enlargement, EACU= Education and culture, EMPL= Employment, social affairs and equal opportunities ENTR= Enterprise and industry, ENV= Environment, INFISO= Information society and media, JLS= Justice, freedom and security, MARKET= Internal market and services, REGIO= Regional policy, SANCO= Health and consumers, TAXUD= Taxation and customs union, TREN= Energy and transport.

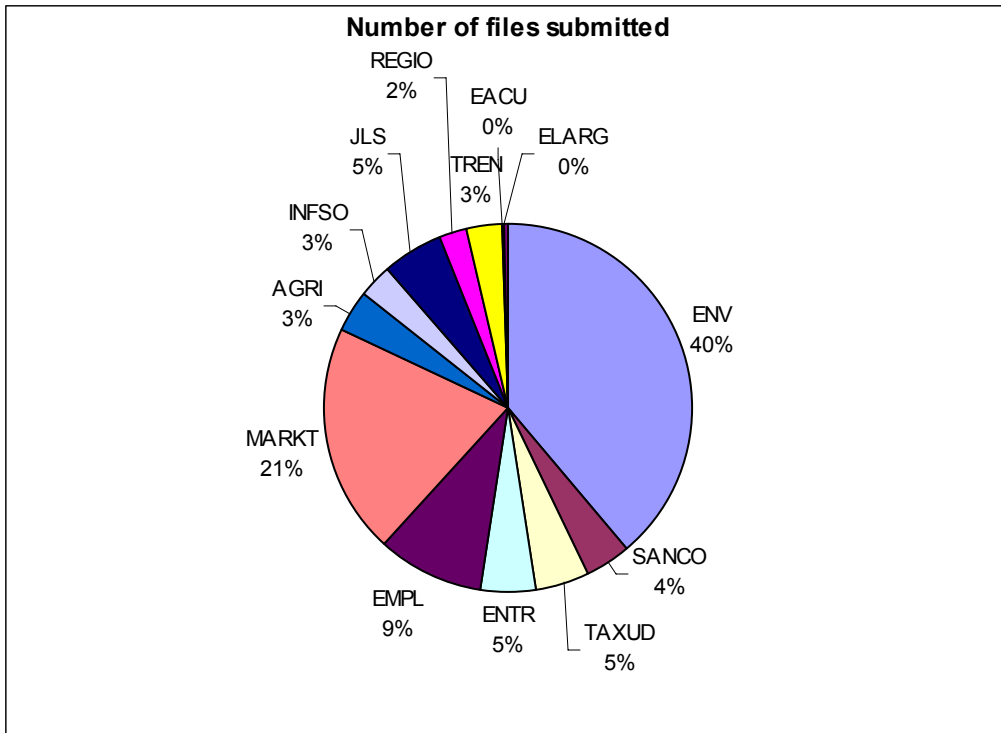
After 8 months of operation - 15 December 2009 – 215 files



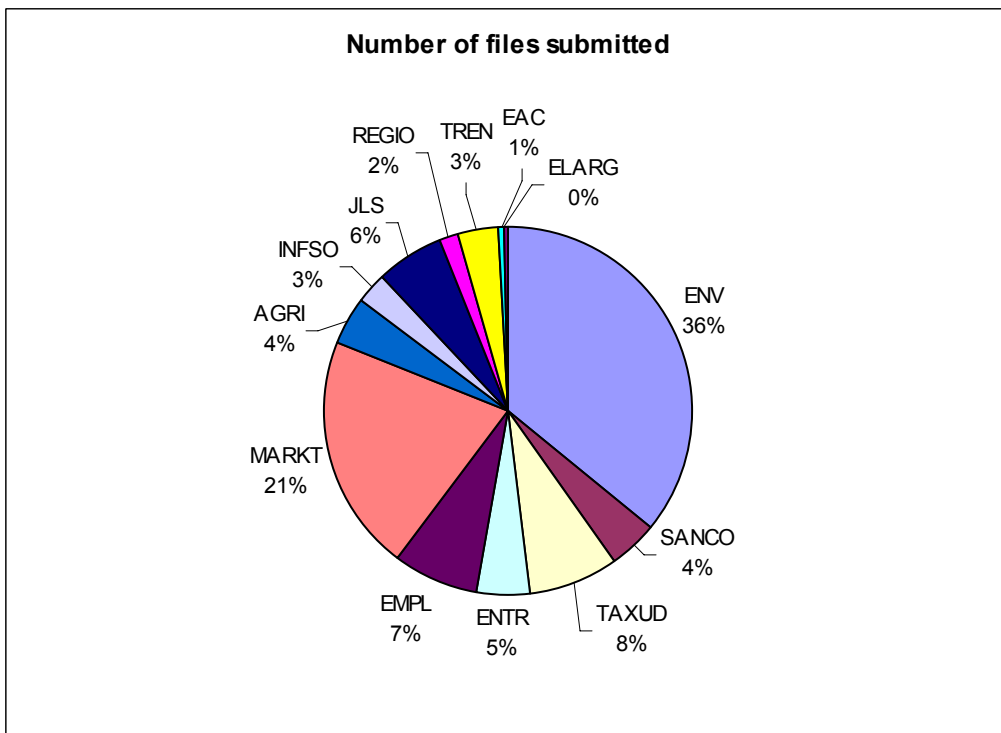
After 12 months of operation - 15 April 2009 – 351 files



After 14 months of operation - 15 June 2009 – 429 files

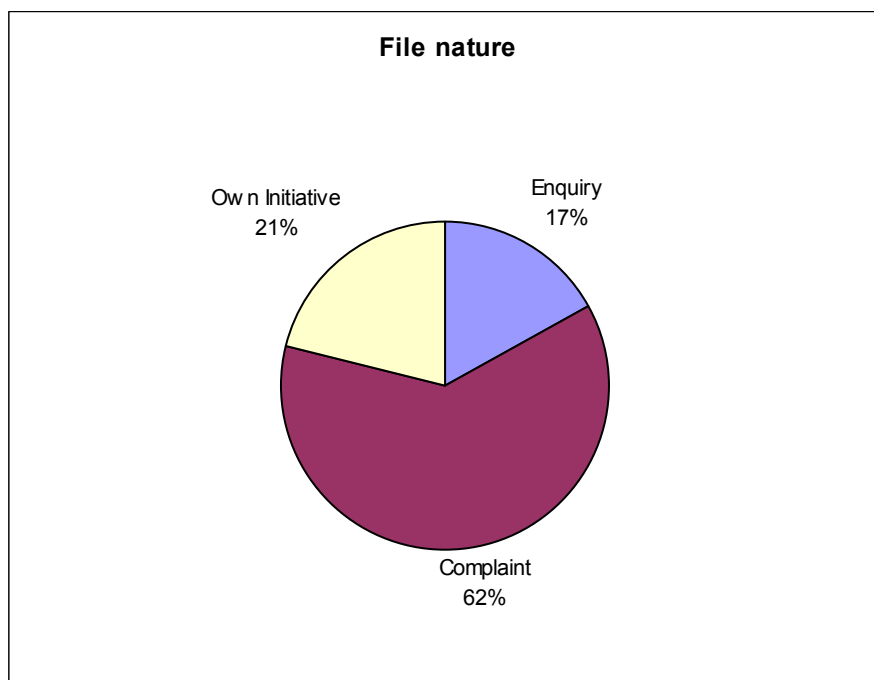


After 22 months of operation – 15 February 2010 – 723 files

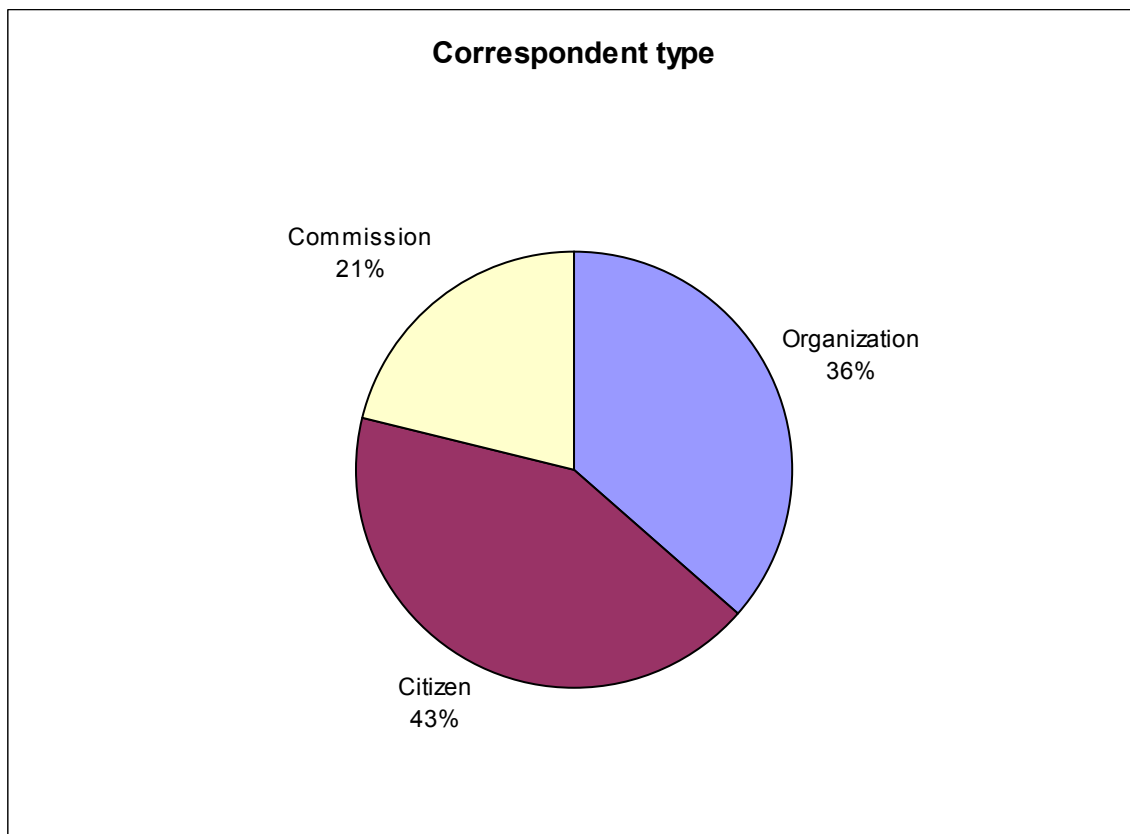


4.2. Breakdown by origin of the files

Enquiries, complaints or own initiative of the Commission



Organizations, citizens or Commission



4.3. Breakdown by nature of the problem at stake

a) Definitions

The nature and content of files submitted in EU Pilot varies greatly. However, for the test purposes, a first attempt has been made to identify four categories of files which have passed all the way through the EU Pilot process:

- (1) **Simple enquiries seeking information:** files submitted in EU Pilot with the purpose of seeking information requested by a citizen or an organisation.
- (2) **Apparent problems in the application of EU law:** files indicating a situation which seems contrary to EU law, in which the citizen does not have a direct or immediate interest, for which the Commission does not have all the necessary information to reach a conclusion and which therefore necessitates a request to the Member State concerned to clarify the situation.
- (3) **Problems to exercise rights under EU law:** files relating to a problem which seems to prevent the full exercise of rights given under EC law by a citizen or an organisation.
- (4) **Potential infringements:** files indicating practices or rules which, in the view of the Commission services, seem clearly to contravene EC law and for which explanations or solutions are requested from the Member State without, at this early stage, having recourse to the infringement procedure with a view to finding a quick solution in conformity with EU law.

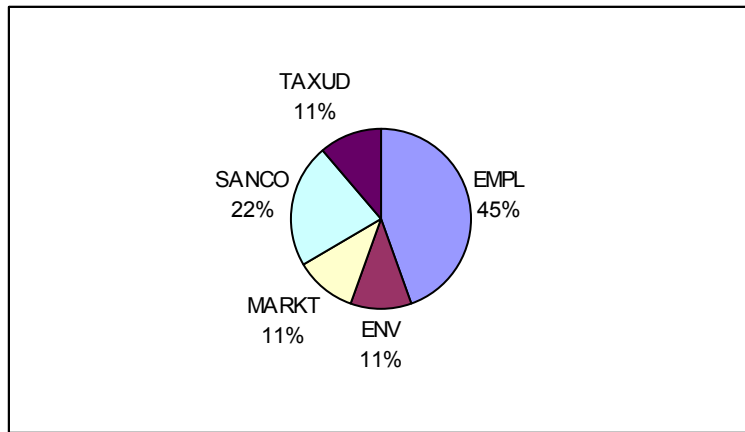
By mid-June 2009, the content of the files submitted to the national authorities was subject to an initial assessment according to the above-mentioned classification. It appears that all provisional categories are represented among those files:

- 2% are simple enquiries seeking information (9 files).
- 59% are enquiries on **apparent problems in application** of EU law (232 files);
- 15% are enquiries on **problems to exercise rights** under EU law (57 files);
- 24% are **possible infringements** (94 files);

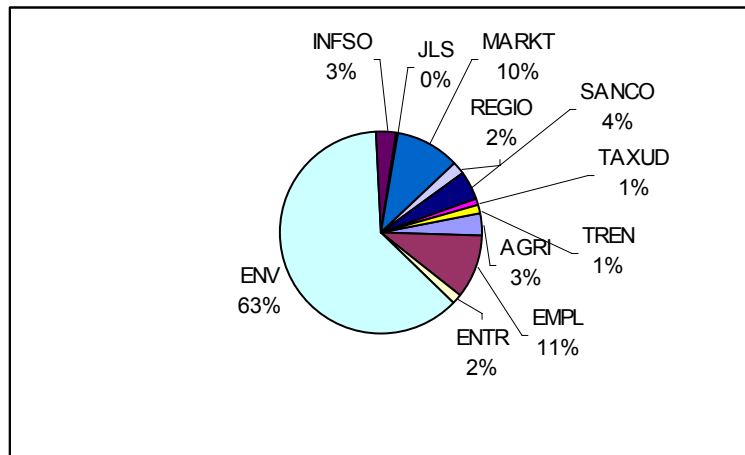
b) Figures

The following graphs show the shares among Commission services in the four different categories of files:

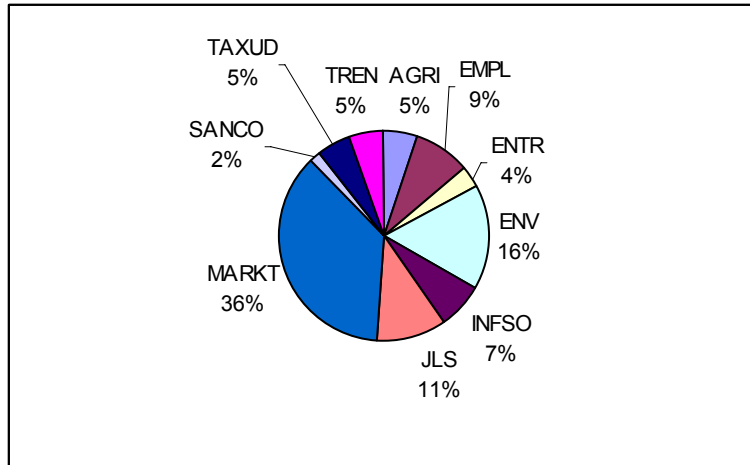
1. Simple enquiries seeking information



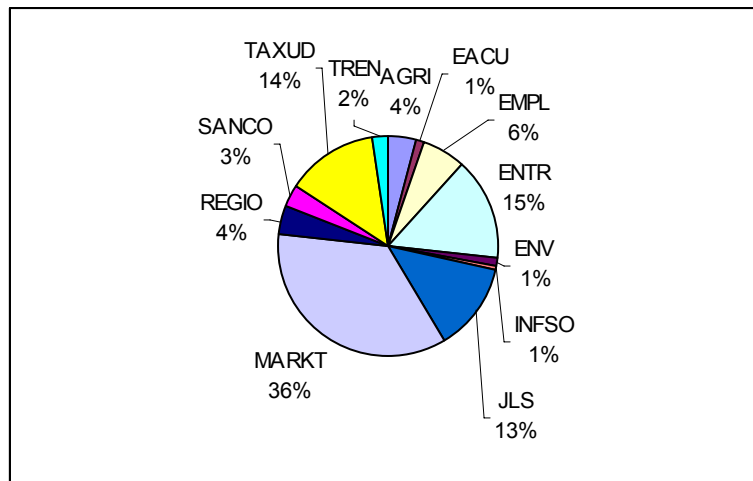
2. Enquiries on apparent problems in application of EU law



3. Enquiries on problems to exercise rights under EU law



4. Potential infringements



5. RESULTS AND SPEED OF TREATMENT

5.1. Speed

Treatment of issues of application of EU law by the Commission must be as quick as possible in order to meet the objectives set by the Commission⁴ for the benefit of citizens and businesses.

Concerning the timing of the functioning of EU Pilot, it should be recalled that the treatment of files in Member States involves a number of steps including: transmission to the relevant Member State authorities, examination of the issues, internal consultation, drafting, possible need for translation, possible inter-departmental consultation and submission to the Commission. The evaluation of Member State responses in the Commission involves analysis, internal and possible inter-service consultation, approval and the completion of final steps in the IT application, sometimes also requiring translation of both incoming and outgoing documents.

At the time of the creation of EU Pilot, a general benchmark was set for files to be managed within ten weeks. This benchmark reflected the need for quick action on the files entered into the system. It was set despite the fact that the kinds of issue fed into the system were clearly likely to vary greatly in content and therefore also in the time required for their treatment.

On average, the Member States responded on files within 73 days, ranging from the quickest response received in 8 days and the longest in 245 days. Nearly 67% of files were treated within the ten week period.

No benchmark was set for the time taken by Commission services in evaluating Member State responses. However, on average, the Commission services took 109 days to evaluate and comment on the responses, ranging from the quickest evaluation done in 2 days and the longest having taken 473 days. 40% of files were therefore evaluated by the Commission services within ten weeks.

The average number of days taken to complete the whole process in EU Pilot is 169 days.

5.2. Results

The EU Pilot project aims at reinforcing the commitment of the Commission and the participating Member States to work together more constructively and efficiently to answer questions and resolve problems of citizens and business concerning the application of EU law. The project is contributing to the development of a partnership approach, based on frequent contact on file-specific issues alongside the broader work of both Commission services and Member State authorities in the management of the functioning of EU law.

This new working method has generally allowed for systematic and accelerated secure communication from and to Commission services and Member State authorities, directed to the responsible officials, while also ensuring an easy system of tracking progress and follow-up.

⁴ Communication on relations with the complainants [COM (2002)141] and Communication "A Europe of results – Applying EU Law" [COM(2007) 502 final]

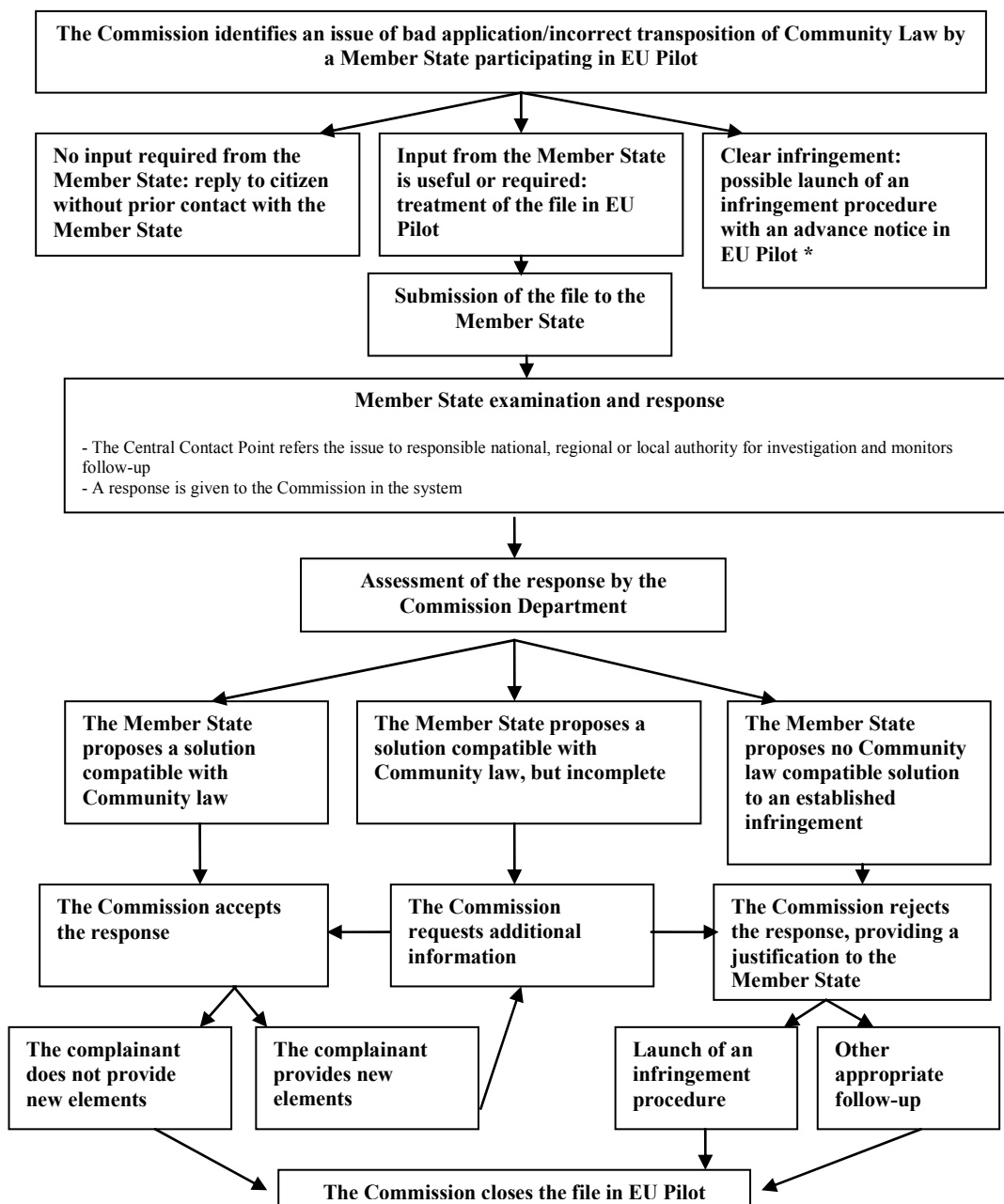
An initial process of verification by the Commission services and Member State authorities of the outcomes of the processing of files in EU Pilot has been organised. This process requires further examination and possible development, for example, to improve evaluation criteria. However, the initial conclusions are as follows.

Only a few files submitted by the Commission have been judged by the Member States to be inappropriate for EU Pilot (4.5%). Less than a quarter of responses provided by the Member States have been judged incomplete by the Commission services (23%) which may in part, have been due to insufficiently clear initial definition of the issues to be addressed.

The Commission services and Member State authorities have managed to agree on the conclusions reached on the vast majority of files which had already completed the process by beginning of February 2010 (success rate of 85%). When responses given by Member States were rejected by Commission services, the information exchanged has nevertheless helped to clarify the issues, allowing for any appropriate further action, be it through the infringement procedure or any other means. Some files did proceed to the infringement phase, resulting, by beginning of February 2010, in 40 infringements proceedings either already launched or being prepared following treatment in EU Pilot.

Annex

Flow chart on the main steps in EU Pilot



* = Where urgency requires, the Commission will proceed directly to the initiation of an infringement proceeding.