

Minutes

Meeting of the EU Law Network¹
7 June 2019, Brussels

1. Approval of the agenda

The agenda (*attached*) was approved without comments/suggestions.

2. Nature of the meeting

The meeting was not public.

3. List of points discussed

➤ Introductory remarks

The meeting was chaired by the Secretariat-General (SG) of the European Commission. The chair mentioned the large volume of new legislation (348 legal acts) adopted in the past years and the importance of the following steps – implementation and enforcement thereof. This is an occasion for the Commission to further shape the preventive dialogue with the Member States on implementation, and for the Member States to work closer together to identify common challenges and best ways to tackle them. The SG highlighted the common goal that the Commission and the Member States have: getting application and implementation correct from the beginning, to avoid the need for corrective action. In the context of the prominent position that enforcement has on the political agenda, the SG referred to the March 2019 Conclusions of the European Council, which invited the Commission to develop by March 2020, in close coordination with the Member States, a long-term action plan for better implementation and enforcement of single market rules.

➤ Recent Court rulings in infringement procedures (presentation by the Commission)

This point was introduced on the agenda at the suggestion from a Member State.

The Legal Service (LS) of the European Commission presented four judgments recently delivered by the Court of Justice of the European Union ('the Court') in infringement cases: (i) case C-235/17, Commission v. Hungary; (ii) case C-416/17, Commission v. France; (iii) case C-620/16, Commission v. Germany; (iv) case C-93/17, Commission v. Greece. The selection of these judgments was made on account of their larger importance going beyond the individual case. The Commission's representative also mentioned the annual reports of the Court, which

¹ Published in the Register of Commission Expert Groups and Other Similar Entities, code number E02770.

give an overview on all of its important rulings and are available online: https://curia.europa.eu/jcms/jcms/Jo2_7000/en/

➤ **Financial sanctions in infringement proceedings - Communication C(2019) 1396 final (presentation by the Commission)**

The LS representative explained the context of the recent Communication on financial sanctions (C(2019) 1396 final) (*attached*): the Commission had to adapt its calculation method, as the Court - in case C-93/17, Commission v. Greece - acknowledged that the Council voting rules set by the EC Treaty had become obsolete since 1 April 2017. The Commission considers that the 'n-factor' should continue to reflect both the Member State's capacity to pay (GDP) and its institutional weight. The Commission identified the seats of a Member State in the European Parliament as a scheme that reflects the institutional weight of the Member States in an appropriate way. The Commission also considered appropriate to use as reference value for the 'n-factor' the average of the values of all Member States instead of that of a specific Member State (previously, Luxembourg). Lastly, the standard flat-rate amounts had to be adapted to ensure that the sanctions proposed are not purely symbolic.

Delegations of two Member States raised criticism regarding the revised calculation formula. They also regretted that the new criteria had not been discussed in advance with the Member States.

➤ **Compliance tools (presentation by the Commission and exchange of views)**

The SG reiterated that working in partnership with the Member States on the implementation of EU law is one of the main pillars of the Commission's enforcement policy. This translates into a wide array of measures and actions, ranging from support for improving capacity building to preventive measures, pro-active monitoring, early-problem solving and targeted enforcement. The Commission believes that there is room for an enhanced preventive approach and, to this end, it has launched an internal reflection process looking into the various compliance promotion tools and mechanisms. Conclusions were gathered in a discussion paper shared with the Member States ahead of the EU Law Network meeting (*annexed*). The paper reflects the Commission services' perspective. In order to make this analysis comprehensive, Member States were invited to present their views at the meeting and subsequently in writing. The objective of the exercise is to identify - based on the Commission services' internal reflection and the Member States' suggestions - concrete proposals to improve the quality of compliance tools.

A representative of DG Environment of the European Commission presented the case of the Nitrates Directive (91/676/EEC) and the various compliance tools used in relation to the implementation thereof (*presentation attached*).

The majority of Member States expressed their views about the existent compliance tools and welcomed the discussion paper prepared by the Commission. On a general note, Member States are very favourable to the dialogue with the Commission, in various forms, to prevent or address breaches of EU law. Package meetings seem to enjoy the widest support among Member States; they are considered useful for the communication between the Member State authorities and the Commission services, as well as for the internal coordination of the Member State authorities. Other useful compliance tools appear to be: bilateral meetings on specific areas/sectors/files, expert groups meetings, compliance dialogues, workshops, guidelines issued by the Commission before the end of the transposition period for a directive, explanatory documents, scoreboards (not only after the transposition deadline for a directive, but also before).

One Member State suggested that the Commission should proactively organise bilateral meetings with the concerned Member State before issuing a reasoned opinion in an infringement case.

As regards explanatory documents, two delegations stressed that Member States should maintain the freedom to choose the type of explanatory document which they use and the manner in which it should be drafted. Another Member State is however of the opinion that it would be useful to have a template for such documents put forward by the Commission.

Several Member States drew attention to the fact that external consultants carrying out transposition/conformity checks on the basis of a contract concluded with the Commission get in touch directly with the Member States, asking for their comments on voluminous documents within a very short deadline. These delegations requested that deadlines be reasonable and requests sent to Member States by the Commission services and not the external contractors.

Two Member States expressed concerns about the administrative burden associated with the suggestions for an increased transparency on the transposition of EU law.

The Commission's representative (SG) mentioned that the SG would consider all remarks made in the meeting. He also invited Member States to send any written comments on compliance tools **by the end of June 2019**.

➤ **Extension of deadlines for response in infringement procedures (presentation by the Commission)**

The SG provided an overview (including statistics) of the requests for extension of deadlines in infringement procedures sent by Member States to the Commission over the last two years (*attached*), which is the period since the current rules in the field are being applied. These rules were presented to the Member States in the meeting of the EU Law Network held in December 2017 (presentation to be recirculated to all Member States; it is also published in the Register of Commission expert groups and other similar entities). The SG representative stressed that the Commission carefully assesses the specific circumstances of each request, while taking into account the need to ensure equal treatment of Member States and a coherent application of these rules in all infringement cases, across policy areas.

Discussions under this point concerned the criteria applied by the Commission when assessing requests for extension of deadlines.

Several Member States referred to the particular situation when a Member State has notified transposition measures for a directive and considers that transposition is complete, but the Commission disagrees with this conclusion and issues a reasoned opinion for incomplete transposition. Member States intervening on this subject argued that the condition of having a draft law prepared is objectively impossible to meet in the scenario described and that a deadline of two months is too short for the Member State to respond appropriately. As possible solutions, the Member States suggested that the Commission should start a dialogue with the Member State concerned before sending the reasoned opinion or first issue an additional letter of formal notice, to allow the Member State to understand which transposition gaps are identified.

The Commission's representatives (SG and LS) encouraged Member States to substantiate their requests for extension better and reiterated that extensions may be granted on account of the special circumstances of the case, even if the formal conditions for extension are not fulfilled.

➤ **Transparency on national measures transposing EU directives (state of play and exchange of views)**

The SG gave an update of the situation: so far 11 Member States have agreed to publish the texts of their national measures transposing EU directives on EUR-Lex. This publication is done as pdf, url link or ELI link. The Member States that are not yet part of this group are strongly encouraged to consider taking a similar approach. The SG stands ready to reply to any questions from the interested Member States and to discuss the most appropriate technical solutions bilaterally.

➤ **Commission's enforcement policy – way forward (exchange of views)**

The SG referred to the landscape review carried out in 2018 by the European Court of Auditors on the Commission's oversight activities². As a follow-up, the Commission indicated that it would consider carrying out a comprehensive stocktaking exercise of the impact of its enforcement policy and draw the necessary consequences. The SG received individual feed-back from various stakeholders on how to move the enforcement policy forward, either in general or in more specific areas such as the single market (the latter being an area where the Commission is currently looking very closely into implementation and enforcement, following the European Council's conclusions of March 2019). While acknowledging the value of those contributions, the SG representative stressed that Member States' input is essential given the partnership between the Commission and the Member States. Therefore, delegations were invited to share their views on the general enforcement policy and specific implementation issues.

One Member State delegation presented some ideas for the future of the Commission's enforcement policy, pleading for: (i) more cooperation between inspectorates/enforcement agencies of the Member States (the Commission can have a coordinating role in this respect); (ii) enforcement guidelines to accompany new directives and regulations; (iii) continuation of the Better Regulation Programme, duly taking subsidiarity and proportionality aspects into account.

Another Member State proposed the Commission to make financial sanctions more useful to end the infringement sooner: financial sanctions could be calculated by the Commission before referral and discussed with the Member States concerned so that they can be covered in the Member State's budget and then be followed by an agreement with the Commission on the termination of the infringement.

In the discussion on compliance tools, as well as in their interventions related to the Commission's enforcement policy, a significant number of Member States highlighted the usefulness of EU Pilot (to streamline informal exchanges with the Commission services and ensure appropriate internal coordination at the level of the Member States; to ensure compliance with EU law and avoid a formal infringement procedure; to better structure the problem, when it is not possible to solve it; to quantify work and the number of problems of non-compliance with EU law). Practically all Member States agree on this point and strongly advocate for a more intense use of this channel of informal dialogue. Some Member States gave suggestions for adjustments (such as short timeframes or a new name) which could encourage the Commission to reconsider its current approach on the use of EU Pilot or to interpret the current policy rules less strictly.

² <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=46718>

In relation to internal coordination difficulties, some Member States also brought back a suggestion put forward in a previous meeting that all letters sent by the Commission on potential violations of EU law should reach the central addresses of the Permanent Representations and possibly the ministries with a coordination role.

The SG representative mentioned that the Commission is aware of the coordination issues encountered by Member States in handling informal exchanges with its services. A list of the Member States' contact points - to be involved in all exchanges between the Commission and the Member State concerned which take place outside the formal infringement procedure - was compiled in 2018. This list was shared with all the Commission services. The SG will issue a reminder to the other Commission services. As regards EU Pilot specifically, the Commission's representative warned that it is unlikely to revert to the previous practice regarding the use of this mechanism, but agreed that it has to be used properly. In this context, the suggestions for adjustments made by some Member States were welcomed.

Member States were invited to send any other remarks on the general enforcement policy and specific implementation issues in writing, by **28 June 2019**. The SG referred to the deadline of March 2020 set by the European Council for the development of a long-term action plan for better implementation and enforcement of single market rules. This subject may be taken up in the next meeting of the EU Law Network.

➤ **Any other business**

- **Reasoned opinions issued in infringement procedures concerning non-transposition of EU directives (presentation by Member States)**

Two Member States that requested that this subject be included on the agenda, supported by several other Member States, briefly presented the situation of their concern: after extensive communication with the Member State's authorities in the context of an infringement procedure for the non-communication of national measures transposing an EU directive, the Commission issued a reasoned opinion which was not sufficiently motivated and took the Member State by surprise (it was unclear why the Commission did not see transposition as complete). One of the delegations taking the floor noted that the Treaty on the Functioning of the European Union does not explicitly refer to partial or full transposition, thus the interpretation of the Court on this matter is awaited with interest. Other Member State delegations stressed the need to make a distinction between non-transposition and incorrect transposition, and claimed that the scenario under discussion should be addressed under a non-conformity infringement procedure, while the non-communication case should be closed.

In reply, the LS representative referred to the Communication from the Commission - Implementation of Article 260(3) of the Treaty (2011/C 12/01) and the completeness check that the Commission carries out in all cases, including when the Member State has declared that transposition is complete. The LS stated however that all infringement cases which are currently pending before the Court concern partial transposition - acknowledged as such by the Member State concerned. The Commission's representative stressed that the situation under discussion concerns transposition gaps, namely situations where the Commission cannot identify a transposing provision in the Member State's legislation. Whenever the Commission identifies

provisions in the national law which are related to those of the directive, the non-communication case is closed and any questions on the national provisions are addressed by means of an infringement procedure for non-conformity. The Commission's representative acknowledged that when, following the letter of formal notice for non-communication, the Member States has provided detailed explanations about transposition, the Commission should carefully assess all elements provided and take account of them for the reasoned opinion. He stressed, however, that the possibility for the Commission to take account of such explanations depends on the degree of detail of the explanations provided by the Member States.

- Upcoming IT developments (information by the Commission)

The SG gave a preview of the upcoming developments of the IT systems used by the Commission in the monitoring of the transposition and implementation of EU law. Under the THEMIS umbrella, the Commission is currently working on the THEMIS/Infringements component; this will substitute the existing IT applications used by Member States to notify their national measures transposing EU directives, and their replies to letters of formal notice and reasoned opinions. The release is planned for the last quarter of this year. Member States will be consulted and involved in the tests of the new IT tool, envisaged for September-October. Furthermore, a workshop will be organised in Brussels for the Member States and a User Manual is under preparation. The Commission will come back with more precise dates in due time.

4. Conclusions

Both the Member States' delegations and the Commission's representatives found discussions on the topics addressed in the meeting very useful.

5. Next steps

The EU Law Network will continue to meet regularly to allow the Member States and the Commission services to exchange views on horizontal issues concerning transposition, application, implementation and enforcement of EU law.

Written comments on compliance tools and the Commission's enforcement policy are awaited until the end of June 2019.

6. Next meeting

The next meeting of the EU Law Network will, in principle, take place in the second half of 2019. The date will be announced to the members of the network in due time.

7. Participants:

Representatives of all 28 Member States and the following Commission services: SG, LS, DG CLIMA, DG CNECT, DG ENER, DG ENV, DG FISMA, DG GROW, DG HOME, DG MOVE, DG TAXUD.