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signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
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COMMISSION STAFF WORKING PAPER
SITUATION IN THE DIFFERENT SECTORS

Accompanying the document

REPORT FROM THE COMMISSION

**28th ANNUAL REPORT ON MONITORING THE APPLICATION OF EU LAW
(2010)**

{COM(2011) 588 final}
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surveillance exercise in the form of a sweep on sites selling tickets for cultural and sporting events. Such sweeps allow the Commission to identify the existing non-compliant conditions on websites and through contacts with the involved companies to obtain corrections on the websites.

Conclusion

The above shows the Commission's determination to fully implement its *acquis* in the policy areas of consumers, food safety and public health and to up-date its regulatory framework, if necessary. Consumers can be confident that the safety of their food is protected by strict enforcement of controls. Trade can take place under conditions of uniform and high safety levels, which allow markets to focus on price, quality and consumer preferences. The Commission remains ready to manage any emergencies or other unforeseen circumstances in this area having always in mind the welfare, well-being and protection of European citizens.

16. HOME AFFAIRS

16.1. Immigration and integration

16.1.1. Current position: General introduction

EU legislation in the field of immigration and integration currently consists of nine directives.

Regarding legal migration, four sets of measures have been adopted:

- a first set of measures adopted in 2003: the Family Reunification Directive 2003/86¹ and the Long-term Residents Directive 2003/109²;
- Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities³;
- the Students Directive 2004/114⁴ and the Researchers Directive 2005/71⁵; and
- the Highly qualified Workers Directive 2009/50⁶ ('EU Blue Card').

Three directives concern irregular immigration:

¹ Council Directive 2003/86 of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12.

² Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44.

³ OJ L 261, 6.8.2004, p. 19.

⁴ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 23.12.2004, p. 12.

⁵ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3.11.2005, p. 15.

⁶ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.6.2009, p. 17.

- the Carriers Liability Directive 2001/51¹ and Directive 2002/90² defining facilitation of unauthorised entry, transit and residence; and
- the Employer Sanctions Directive 2009/52³, which aims to reduce illegal immigration by prohibiting the employment of illegal staying migrant workers and providing for sanctions against employers who infringe the prohibition.

The EU's comprehensive migration policy continues to be developed, so efforts in this area are as much about developing new legislation as ensuring the correct application of existing legislation. Regarding labour migration, in its 2005 Policy Plan on Legal Migration⁴, the Commission announced its intention to present proposals for a general framework directive and directives for specific categories of paid workers.

The first such directive — the EU Blue Card — was adopted in 2009, and discussions continued in the European Parliament and Council on the proposed 'Single Permit' Directive⁵. The Commission presented proposals for Directives on seasonal workers and intra-corporate transferees in July 2010, and discussions in the European Parliament and Council are ongoing.

16.1.2. Current position: Report on work done in 2010

In line with the Stockholm Programme's call on the Commission to evaluate and, where necessary, to review the Family Reunification Directive, taking into account the importance of integration measures⁶, the Commission intends to carry out a wider consultation — in the form of a Green Paper — on the future of the family reunification regime.

In 2010, the Commission presented a Report on the Victims of Trafficking Directive (2004/81)⁷. It found that the number of residence permits issued on the basis of this Directive was significantly lower than the number of victims identified. This proved that the potential of this Directive is being underused.

As regards presumed infringements disclosed by complaints, the case in the Netherlands concerning the high level of fees charged to those applying for long-term residents' permits is still pending before the Court of Justice. In another infringement case, concerning the same point, but against Cyprus, the results of the ECJ judgment will be applied accordingly.

The Commission continued the infringement procedure against Austria regarding rules under which third-country national students are permitted to work in that Member State. The

¹ Council Directive 2001/51 of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, OJ L 187, 10.7.2001, p. 45.

² Council Directive 2002/90 of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, OJ L 328, 5.12.2002, p. 17.

³ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30.6.2009, p. 24.

⁴ COM(2005) 669 final.

⁵ Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, COM (2007) 638 final of 23.10.2007.

⁶ Presidency Conclusions, document EUCO 6/09. The Programme itself is in document 17024/09.

⁷ COM(2010) 493 final.

Commission considers that the Students Directive 2004/114 requires that third-country national students be allowed to work under less restrictive conditions.

Regarding the management of the existing *acquis*, a meeting of the contact committee on legal migration directives in December 2010 provided the opportunity for a useful exchange of views between the Commission and national experts involved in their application. A meeting of national contact points appointed under the Long-term Residents Directive 2003/109 was also held. Alongside discussions in the contact committee, the European Migration Network¹ (EMN) continued to be a means for Member States (and the Commission) to address *ad hoc* queries to obtain a quick overview on how other Member States transpose specific provisions of the directives. The Committee on Immigration and Asylum (CIA) provided a forum for the Commission to give up-dated information to Member States on the legal *acquis*, as well as allowing Member States to comment on factual aspects of their transposition in the context of the Commission's reports.

Work continued on the external transposition studies for the Students Directive and the updated study on the Long-term Residents Directive, commissioned with a view to preparing implementation reports on the directives. In cooperation with Commission department in the area of Research, the contract for an external study on the Researchers Directive was launched. The final study is due in August 2011. These three studies will form the basis of the Commission's reports on the application of the directives in question.

Regarding the transposition of new legislation, Member States have to transpose the EU Blue Card into national law by June 2011, and the Employer Sanctions Directives by July 2011. Meetings of the contact committees were held in late 2009 and in 2010 (two meetings for the EU Blue Card, three meetings for Employers' Sanctions), enabling a useful exchange of views between the Commission and national experts involved in the national transposition of the directives.

Legislative discussions in the Council and European Parliament continued on the 'Single Permit' Directive for labour migration. This will provide for a single permit (residence and work) and basic socio-economic rights for migrant workers. Negotiations also started on proposals adopted in July 2010 on seasonal workers and intra-corporate transferees.

16.1.3. Evaluation based on the current situation

Bearing in mind that it took until 2009 to fully transpose directives dating from 2005 and earlier EU-wide, there is a pressing need for Member States to reinforce their efforts to complete transposition of the most recent directives in this field, the EU Blue Card and Employer Sanctions, by the mid-2011 deadline. By end of 2010, only one Member State had communicated its full transposition measures for these to the Commission.

The Commission has continued to pursue the most important presumed infringements disclosed by complaints, and it will go on doing so.

Legislative activity (preparing new proposals as well as legislative discussions themselves) continued to be important in this sector. The Lisbon Treaty has introduced co-decision in the

¹ Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network, OJ L 131, 21.5.2008, p. 7.

area of legal immigration, thus giving an enhanced role to the European Parliament. This has given impetus to legislative discussions on the general framework directive for a single permit and rights.

16.1.4. Evaluation results: Priorities

The main priorities are:

1. Ensuring the correct application of existing legal migration directives;
2. Ensuring the correct and timely transposition of the Blue Card and Employers' Sanctions Directives;
3. Preparing Commission reports on the application of existing directives;
4. Ensuring appropriate follow-up to the Report on the Victims of Trafficking Directive.

16.1.5. Evaluation results: Planned action (2011 and beyond)

As regards priorities 1 and 2, the Commission will examine Member States' transposition measures for the Blue Card and Employer Sanctions Directives, and will take action as appropriate for non-transposition and incorrect transposition of the Directives. In addition it will actively follow up complaints about the application of the other legal migration directives in Member States.

As regards priority 3, the Commission will in 2011 present reports on the Long-term Residents, Students and Researchers Directives. On the basis of these, the Commission will decide what further action is needed.

As regards priority 4, the Commission will examine all cases of problems in applying this directive. This may involve contacting Member States and/or launching procedural steps for non-compliance, where appropriate, in accordance with Article 258 TFEU. In its report on the Victims of Trafficking Directive, the Commission also announced that it may consider the need for amendments.

Other activity will include:

- Contributions to the Commission's intervention before the Court of Justice with regard to requests by national courts for preliminary rulings on the interpretation of EU legislation in the area of legal migration;
- Continued discussions in the "contact committees", allowing Member States an open forum in which to discuss questions or problems they have identified in their transposition of the Directives.

16.1.6. Summary

The Commission will prepare reports on the Students, Researchers and Long-term Residents Directives. Given the ongoing development of the EU's comprehensive migration policy, it will also give attention to the legislative process to ensure coherence with directives already

adopted. Ensuring the correct transposition of the two Directives adopted in 2009 will be a priority.

16.2. Asylum

16.2.1. Current position: General introduction

Following the entry into force of the Treaty of Lisbon, asylum policy is now regulated by Article 78 TFEU. The asylum *acquis* is essentially composed of four directives (Reception Conditions¹, Qualification², Asylum Procedures³ and Temporary Protection⁴) and three regulations (Dublin⁵, Eurodac⁶ and European Asylum Support Office⁷). The directive on the status of third-country nationals who are long-term residents⁸ is also relevant for asylum policy. Amendments to all these legal instruments (except the European Asylum Support Office Regulation) are currently being negotiated by the co-legislators.

Regarding asylum policy, the main development in 2010 was the continuation of negotiations on legal instruments for the second phase of the Common European Asylum System (CEAS). Negotiations gathered pace, especially during the second semester, as the Belgian Presidency had made asylum one of its priorities. Significant progress was made on some legal instruments, *e.g.* with the formal adoption of the instruments aiming at the creation of the European Asylum Support Office (EASO) and a compromise reached between the European Parliament and the Council on the extension of the legal system for third-country nationals with long-term resident status to include persons with international protection (modification of Directive 20003/109/EC). Concerning the Qualification Directive, in the course of 2010, the Presidencies proposed several compromise amendments and an important number of reservations was lifted. Progress was also made on the 'Joint EU Resettlement Programme'. Discussions were however difficult on some instruments, in particular with limited progress on the Asylum Procedures Directive, the Reception Conditions Directive and the Dublin Regulation. As far as the EURODAC Regulation is concerned, the Commission aims with a new proposal at allowing for a rapid agreement by the co-legislators, and thereby facilitate

¹ 06.02.2003 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers; OJ L 031, 06.02.2003 p. 18 – 25.

² 30.09.2004 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; OJ L 304, 30.09.2004 p. 12 – 23.

³ 13.12.2005 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status OJ L 326, 13.12.2005, p. 13.

⁴ 20.07.2001 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof; OJ L 212, 07.08.2001, p. 12 – 23.

⁵ 25.02.2003 Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; OJ L 50, 06.02.2003, p. 1 – 10.

⁶ 15.12.2000 Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention; OJ L 316, 15.12.2000, p. 1 – 10.

⁷ 29.05.2010 Regulation (EU) no 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office; OJ L 132, 29.05.2010, p. 11- 28.

⁸ 23.1.2004 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents Official Journal L 16, 23.1.2004, p. 44–53.

progress on the whole asylum package as well as the timely set up of the IT Agency (that should also be responsible for the management of EURODAC).

As far as the EASO is concerned the co-legislators formally approved the creation of the EASO and Member States decided that its seat would be in Valletta, Malta. Since then, the Commission has been actively working with a view to preparing the start of EASO's operations, and it should be fully operational by 19 June 2011.

16.2.2. Current position: Report on work done in 2010

The Commission decided in June 2010 to refer Belgium to the Court of Justice for failure to communicate measures fully transposing the Asylum Procedures Directive further to infringement proceeding initiated in 2008. In September 2010, the Commission received notification of full transposition, so the infringement proceeding was closed.

In June 2010, the Commission decided to refer Ireland to the Court of Justice for failure to communicate measures fully transposing the Asylum Procedures Directive. Ireland delivered its Defence to the Court of Justice on 25 November 2010. It indicated that it intended to adopt measures transposing the provisions of the Asylum Procedures Directive in the near future.

In March 2010, the Commission proposed closing three cases of non-communication against Sweden, Spain and Cyprus, further to notifications of full transposition of the Asylum Procedures Directive; and to close two cases of non-communication against Sweden and Spain concerning the Qualification Directive.

The Commission has taken steps to review reported deficiencies in the asylum system in Greece. The reports raised concerns as to whether the Greek asylum system is in compliance with the minimum standards prescribed by EU law, particularly those set out in the Asylum Procedures Directive, the Qualification Directive and the Reception Conditions Directive. In November 2009, the Commission sent Greece a letter of formal notice followed by a supplementary letter of formal notice in June 2010.

An Action Plan has been drawn up and submitted to the Commission in August 2010. The Commission, Member States, the European Asylum Support Office, UNHCR and other European Partners have signalled their commitment to assist Greece in this process (by financial and other means). In December 2010, Member States experts visited Greece under Commission financing, to provide advice in the areas of backlog management, training and screening/registration of asylum applications. The expert reports drafted in collaboration with UNHCR have become the basis for planning future supporting measures. The provision of EU assistance to Greece will continue in 2011, with the support of the Commission and EASO and in close cooperation with UNHCR.

16.2.3. Evaluation based on the current situation

In line with ambitions the Council articulated in the Hague Programme adopted in 2004, and the Stockholm Programme agreed in December 2009, as well as in the Commission's own 2008 Policy Plan on Asylum, the scope of the asylum *acquis* needs to be extended and enhanced to ensure successful completion of the Common European Asylum System (CEAS).

More specifically, EU asylum legislation should guarantee:

- higher levels of protection generally;
- a more level playing field for persons seeking asylum in different Member States;
- more efficient treatment of asylum applications;
- better coordination of external aspects of asylum policy;
- more solidarity between Member States in sharing the burdens associated with receiving asylum seekers.

Moreover, the Commission is particularly concerned by the fact that rates of recognition of asylum seekers as qualifying for protection still vary very considerably among Member States, despite common minimum standards and a significant degree of harmonisation via the current *acquis*. This can be attributed to a number of causes, including insufficiently far-reaching legislative harmonisation, variation in the manner in which current legislation is applied in practice, and variation in the nature of information on the situation in countries-of-origin on which asylum decisions are taken.

In view of these shortcomings, the Commission intends to continue to pursue a ‘twin-track’ approach. This will consist of working to extend and improve the EU *acquis*, as well as consolidating it by:

- (a) taking infringement actions against Member States for non-transposition and/or incorrect application of the *acquis*, and
- (b) enhancing practical cooperation activities, particularly by ensuring that the European Asylum Support Office is placed on a sound footing.

16.2.4. Evaluation results: Priorities and planned action (2011 and beyond)

To date, the Commission has given priority to creating and further developing EU legislation in the asylum field, and to facilitating practical cooperation among Member State authorities.

The Commission intends to pursue the following priorities regarding development, application and monitoring of EU law in the coming years:

- Further development of EU legislation, notably as regards the amendment of existing legislative instruments and the possible adoption of new ones;
- Pursuit of practical cooperation efforts to improve the practical implementation/application of the *acquis* in Member States, particularly as regards ensuring an effective transition to setting up the EASO;
- Monitoring and evaluating the implementation of EU legislation;
- Contribution to the Commission’s intervention before the Court of Justice with regard to requests by national courts for preliminary rulings on the interpretation of EU legislation, and follow-up of individual complaints about compliance with EU legislation in Member States.

16.2.5. Summary

EU law in the asylum field is still being developed. Some shortcomings have been identified in the scope and impact of the existing *acquis* and in the manner in which it is applied. The priority in the short to medium term should be to extend and improve the legislation. At the same time, practical cooperation among Member States needs to be intensified with a view to ensuring more consistency in their application of the *acquis*, particularly by ensuring the successful establishment of a European Asylum Support Office. The Commission will continue to monitor and evaluate implementation of the law, to intervene before the Court of Justice with regard to requests by national courts for preliminary rulings on interpretation of the law, and to follow up complaints against Member States for incorrect application of the *acquis*.

16.3. European visa policy

16.3.1. Current situation: Report on work done in 2010

In July 2009, the European Parliament and Council adopted a Regulation establishing a Community Code on Visas¹, applicable since 5 April 2010. The Visa Code recasts the legal framework for the common visa policy and enhances transparency, equal treatment of applicants and legal certainty, and it harmonises procedures for issuing short-stay visas. It includes *inter alia* provisions on mandatory motivation of visa refusal and right to appeal (applicable as from 5 April 2011), harmonised deadlines for the visa handling process, enforcement of local Schengen cooperation and development of consular representation at local level.

In line with Article 51 of the Visa Code, the Commission elaborated two Commission decisions providing operational instructions on the practical application of the Visa Code, i.e. the Commission Decision of 19 March 2010 establishing the Handbook for the processing of visa applications and the modification of issued visas² and the Commission Decision of 11 June 2010 establishing the Handbook for the organisation of visa sections and local Schengen cooperation³.

16.3.2. Evaluation based on the current situation

As the Visa Code has only recently become applicable, efforts were focused mainly on ascertaining together with Member States that the new provisions were correctly interpreted, through discussions in the Visa Working Party and the Visa Committee. It was not considered opportune to open infringement proceedings, since no flagrant systematic practice infringing the Visa Code had been observed.

Under the Visa Code, Member States are required to try to harmonise their practices in the framework of local Schengen cooperation in each third country.

In 2010, the Commission continued to receive complaints from individuals that EU law had been incorrectly implemented in the field of visas. After examination, it appeared that, when

¹ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.

² C(2010) 1620 final.

³ C(2010) 3667 final.

well founded, these complaints reflected some weaknesses in the current *Visa acquis*. These will be resolved thanks to implementation of the Visa Code and sustained efforts in the framework of local Schengen cooperation.

16.3.3. Evaluation results: Priorities and planned action (2011 and beyond)

In light of important changes that intervened on 5 April 2010 and those due on 5 April 2011, the Commission considers that ensuring timely, correct and efficient implementation of the new legislative framework by all Member States is a priority. The Commission will undertake systematic screening of Member States' implementation of the Visa Code's provisions, particularly those with a significant impact on visa applicants.

Due to the importance of visa policy in EU external relations, as well as the impact of an efficient visa policy on combating irregular migration, the Commission closely monitors implementation of the Visa Code. Existing fora such as the Visa Working Group in Council or the Visa Committee will continue to play an important role in identifying issues of common interest and solving them in an appropriate way.

At local level, the involvement of EU delegations in local Schengen cooperation should increase, and they should play a stronger role in ensuring that the common visa policy is implemented correctly and in a harmonised way by all Member States' consulates.

16.4. Document Security (European passport and residence permits)

16.4.1. Current situation: Report on work done in 2010

Regarding infringement procedures on residence permits, the case against Italy was withdrawn from the Court in September 2010 as Italy had started to issue residence permits in conformity with Regulation (EC) No 1030/2002.

Regarding non-conformity with Regulation (EC) No 2252/2004 on passports, reasoned opinions were sent to Bulgaria and Cyprus in March 2010. Following confirmation that biometric passports were being issued, the case against Bulgaria was closed in September 2010 and the case against Cyprus is expected to be closed in early 2011. Belgium was sent a letter of formal notice for non-conformity with Regulation (EC) No 2252/2004 on passports as regards the implementation of the second biometric identifier (fingerprints).

16.4.2. Evaluation results: Priorities and planned action (2011 and beyond)

The main priorities are:

- (1) Ensuring correct implementation of Regulation 2252/2004. The vast majority of Member States have now correctly implemented the Regulation. However, further measures are needed in terms of infringement policy and to carry out the conformity testing of specimens notified by Member States.
- (2) Ensuring correct implementation of Regulation 1030/2002 on residence permits (incorporating facial image); deadline: May 2011.
- (3) Facilitating Member States' implementation of the complex Public Key Infrastructure (required to protect personal data stored on documents) for both residence permits and

passports.

In 2011, conformity testing of 2nd generation biometric passports (with a chip storing facial image and fingerprints) will be carried out by the Joint Research Centre, and the Commission will decide on any subsequent infringement procedures as appropriate.

16.5. Border management and return policy

16.5.1. Current position: General introduction

In the field of border management and return policy, the Commission mainly carried out monitoring of the application of EU law. This resulted in the follow-up of one infringement proceeding launched in 2008, and several consultations between the Commission and some Member States via EU Pilot. Moreover, the Commission handled multiple consultations with Member States on the compatibility of draft bilateral agreements with third countries in the framework of the Local Border Traffic Regulation. Strategic priority was given to preparing the ground for timely, correct transposition of the European Parliament and Council Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals (the 'Return Directive').

16.5.2. Current position: Report on work done in 2010

The Commission has received and followed up several complaints from individuals and written questions from Members of European Parliament related to the incorrect application of EU law in the field of border management, particularly of the Schengen Borders Code. Most of these concern non-compliance with provisions related to the abolition of internal border controls at land and air borders and to the removal of obstacles to traffic at road crossing points at internal borders between Member States.

Furthermore, the Commission drafted a proposal to amend the Schengen Borders Code as a result of experience since its entry into force. Adoption is expected in early 2011.

Within the framework of the Local Border Traffic (LBT) Regulation, multiple consultations took place between the Commission and a number of Member States on the compatibility between bilateral draft agreements with third countries and the LBT Regulation. There were exchanges of information and informal advice, and experts' meetings, as well as formal exchanges of correspondence.

Regarding implementation of Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data, the evaluation of transposition measures communicated by Member States has been completed by closing the non-communication case against Poland.

Regarding return policy, action focused on cases of non-communication of transposition of Directive 2001/40/EC on mutual recognition of decisions on the expulsion of third country nationals closing one remaining case against Malta and Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air closing the case against Spain.

To facilitate the correct, consistent transposition of the Return Directive, Commission Services convened three meetings of a Contact Group in 2010. This group provides an informal forum for exchanging views between Member States and the Commission on how to meet requirements set out in the directive. The Commission also organised two workshops,

bringing together Member States and key stakeholders in the return process, namely international and non-governmental organisations which have concrete practical experience on selected issues. They focused on how best to apply specific provisions in the directive. The topics discussed were the requirement to provide alternatives to detention, and the return of unaccompanied minors.

The deadline for transposing all provisions of the directive into national law (except for those relating to free legal aid) expired on 24 December 2010. The deadline for provisions relating to free legal aid will expire on 24 December 2011. All Member States, with the exception of the United Kingdom and Ireland, are bound by the Return Directive. By the end of 2010, only six Member States had notified measures that they consider constitute full transposition of the directive: the Czech Republic, Estonia, Greece, Spain, Portugal and Slovakia. A further four Member States had notified measures which they consider as constituting partial transposition by the same date: Belgium, Latvia, Lithuania and Sweden. The Commission will examine these notifications in the course of 2011.

According to the doctrine of direct effect developed by the European Court of Justice, provisions of a directive which confer rights on individuals and which are sufficiently clear and unconditional become directly effective from the end of the time limit for implementing the directive. Many of the provisions of the Return Directive fulfil these requirements and therefore have to be directly applied by national administrative and judicial authorities in Member States, even if they have not yet transposed the directive.

16.5.3. Evaluation based on the current situation

The correct application of EU legislation in the field of border management, particularly in the absence of internal border controls, has a substantial impact on the area without internal borders in which the free movement of persons has to be ensured. Alleged internal border checks at land borders and at airports were again reported during 2010. The Commission is closely monitoring the situation regarding internal border zones. It is also following developments regarding the dismantling of remaining traffic obstacles at road crossing-points at internal borders.

In October 2010, the Commission adopted a report to the European Parliament and the Council on the application of Title III (Internal borders) of the Schengen Borders Code¹. In the report, the Commission paid particular attention to the practical application of Article 21 of the Schengen Borders Code (police checks within the territory, particularly in internal border zones), to difficulties related to the removal of obstacles to traffic at road crossing-points at internal borders, and to difficulties arising from the reintroduction of border controls at internal borders.

In November 2010, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on setting up an evaluation mechanism to verify application of the Schengen *acquis*². The proposal is currently under discussion in the Council and European Parliament. It organises in more detail the Commission's power to carry out unannounced on-site visits to verify the absence of controls at internal borders. The Commission is of the

¹ COM(2010) 554 final.

² COM(2010) 624 final.

opinion that such visits would make a significant contribution to the correct application of EU law as regards the abolition of internal border controls.

In the field of return, the Commission continued its successful experience of organising a Contact Group (or Contact Committee) in 2010. This facilitates the correct and consistent transposition of the Return Directive. Since the directive was adopted at the end of 2008, Commission services have convened six such meetings, including three in 2010. The Contact Group, and related Workshops on specific return-related topics, are highly appreciated by Member States. They have contributed to better transposition of the directive and to better general understanding of its provisions. The Group will therefore continue meeting during 2011, though the transposition deadline expired in December 2010. It is expected that these meetings will go on facilitating correct application of the directive at national level in the coming years and will facilitate transposition where this has not yet taken place.

16.5.4. Evaluation results: Priorities

In 2010, priority was given to following up complaints received from citizens and questions from Members of European Parliament regarding checks carried out on persons in internal border zones and at airports, and to remaining obstacles to traffic at road crossing points at internal borders. The Commission regularly addressed Member State national authorities to obtain explanations, particularly on alleged checks on persons within internal border zones, and it sought information on remaining traffic obstacles, concerning their progressive removal.

In the field of return, strategic priority was given to preparing the ground for timely, correct transposition of the Return Directive 2008/115/EC. Several complaints related to return issues were received, but no concrete follow-up could be given, as the transposition period for the directive had not yet expired.

16.5.5. Evaluation results: Planned action (2011 and beyond)

As one of its fundamental objectives, the Commission will continue to closely monitor the correct application of EU legislation on dismantling internal border controls and remaining traffic obstacles. The Commission's proposal on the Schengen evaluation mechanism could undoubtedly contribute to accomplishing this. Priority will thus be given to following up complaints received from individuals and questions from Members of European Parliament. The Commission will continue to seek explanations from relevant Member States regarding alleged border checks and remaining traffic obstacles at internal borders. The Commission will take all measures necessary, including the launching of infringement procedures, to ensure the correct application of EU law.

Moreover, the Commission will continue to have consultations with Member States and to analyse the compatibility of draft local border traffic agreements with EU law. The Commission submitted a second report on the implementation and functioning of the local border traffic regime to the European Parliament and Council and this was adopted on 9 February 2011.

During 2011, strategic priority will be given to examining national measures notified to the Commission for transposition of the Return Directive 2008/115/EC. The Commission will be assisted in this task by an external contractor with relevant expertise in the national laws of Member States. Infringement proceedings will be launched against Member States which

have not communicated transposition measures. The Commission will, moreover, continue to convene the Contact Group during 2011, to facilitate the correct application of the directive at national level, and to facilitate the transposition of the Return Directive 2008/115/EC where this has not yet been done. Once the transposition deadline has expired, the Commission will become more active regarding complaints and petitions from stakeholders (NGOs, etc) calling for action to be taken against Member States which have allegedly incorrectly transposed the directive, or which are allegedly not applying or incorrectly applying aspects of it. This could result in infringement proceedings against some Member States. Depending on the number of complaints received, there will be a need to set priorities.

16.6. Security

16.6.1. Data Retention Directive

Current position: General introduction

On 15 September 2007, Member States should have brought into force legal instruments to comply with the Data Retention Directive 2006/24/EC. In all, 18 Member States¹ invoked the clause of Article 15(3) that allowed them to postpone application of the directive to the retention of communications data relating to internet access, internet telephony and internet e-mail until 15 March 2009.

Current position: Report on work done in 2010

In 2010, the Commission continued non-communication cases against four Member States: against Greece and Ireland, condemned by the European Court of Justice on 26 November 2009 (cases C-211/09 and C-202/09 respectively), against Sweden, condemned in February 2010 in case C-185/09, and against Austria, condemned in July 2010 in Case C-189/09.

In May 2010, the Commission sent Greece a letter of formal notice pursuant to Article 260 TFEU. A similar letter was sent to Sweden in June 2010.

The Commission closed an infringement case against Luxembourg after receiving its national transposition measures.

Evaluation based on the current situation

The evaluation report that the Commission intended to submit to the Council and Parliament further to Article 14 of the directive, due on 15 September 2010, was postponed until early 2011 to take on board further data and analysis. The state of notifications will also be included in that evaluation.

Evaluation results: Priorities and planned action (2011 and beyond)

The Commission will proceed with pending infringement cases and open new ones against Member States where the applicable law was annulled because of rulings of Constitutional Courts, unless the Member States concerned enact new legislation.

¹ The Netherlands, Austria, Estonia, United Kingdom, Cyprus, Greece, Luxemburg, Slovenia, Sweden, Lithuania, Latvia, Czech Republic, Belgium, Poland, Finland, Germany and upon accession Bulgaria and Romania.

16.6.2. European Programme for Critical Infrastructure Protection

Current position: General introduction

The Directive 2008/114/EC on the Identification and Designation of European Critical Infrastructures and the Assessment of the Need to Improve their Protection was adopted in December 2008 and entered into force in January 2009.

Its objectives are:

- To establish a procedure to identify European Critical Infrastructures (ECIs);
- To establish a procedure to designate infrastructures as European Critical Infrastructures;
- To devise a common approach to assess whether it is necessary to improve the protection of such infrastructures.

Current position — Report on work done in 2010

The deadline for implementing Directive 2008/114/EC is January 2011, and most Member States are working on identifying potential ECIs in the energy and transport sectors. Generally, work on identification is being carried out at national level by working groups bringing together the relevant national ministries or agencies, as well as associations of operators.

By the end of 2010, 14 Member States had notified measures that they consider constitute full transposition of the directive. A further two Member States had notified measures which they consider as constituting partial transposition by the same date. The Commission will examine these notifications in the course of 2011 and take the necessary actions also in respect of Member States which will not notify measures by the deadline.

The Commission continued to offer its support to the process of identification of potential ECIs. Two workshops have taken place at the Joint Research Centre in Ispra, with a view to exchanging practices and information on the implementation procedure in Member States. Both workshops also provided an opportunity to discuss the general framework for reviewing the directive, and both Member States and Commission made preliminary contributions on the structure and content of the process leading to the review.

Evaluation based on the current situation

The situation and volume of work in 2010 was stable and focused on exchanging information and good practices on the identification and designation of ECI experience in Member States.

Evaluation results: Priorities and planned action (2011 and beyond)

The review of Council Directive 2008/114/EC will begin in January 2012, i.e. three years after its entry into force. For a smooth review process, mutual trust and a sound basis for discussion between Member States, the Commission and the European Parliament must be established as early as possible. This is particularly important, as the legal basis of the directive changed with the entry into force of the Lisbon Treaty.

The voluntary ‘implementation’ workshops and the CIP contact point meetings will remain

the backbone of the review process throughout 2011 and beyond. If needed, extra meetings could be added, or side-events dedicated to preparing the review. In addition, the Commission will procure a separate study to inform the review process.

The Commission will deliver summary reports providing results from these workshops. Shortly before the start of the review process (January 2012), the Commission, supported by Member States, will put forward a general report summarising preparatory activities. This report will be the starting point for political discussions at Council level.

Moreover, a general discussion on the European Programme for Critical Infrastructure Protection will start in 2011.

16.6.3. Directive on preventing and combating trafficking in human beings, and protecting victims, replacing Framework Decision 2002/629/JHA

Current position: General introduction

In March 2010, the European Commission tabled a proposal for a new directive on trafficking in human beings, aimed at further approximating legislation and penalties, ensuring successful prosecution, better protection of victims and assistance to them, and prevention of trafficking. In December 2010, political agreement was reached on a final text.

The objectives of the directive are:

- To approximate substantive criminal law;
- To bring robust provisions on victims' rights in criminal procedures and on assistance;
- To facilitate prosecution of offenders, including extraterritorial jurisdiction;
- To step up preventive measures to discourage the demand that fosters trafficking.

16.6.4. Third pillar instruments

Current position: Report on work done in 2010

Monitoring in the context of ex-third pillar instruments was mainly done on the basis of implementation reports. These had to be produced following specific provisions in articles in the legal instrument itself.

In the case of the Council Framework Decision 2008/919/JHA of 28 November 2008, amending Framework Decision 2002/475/JHA on combating terrorism, Article 3 requested Member States to take the measures necessary to comply with the Framework Decision by 9 December 2010. During 2010, the Commission assisted Member States by organising two expert meetings on the transposition of the Framework Decision, on 19 April and 28 June.

The Commission is currently preparing an update of the first implementation report on the application of Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector. The report will be issued in mid-2011.

Also being prepared is an implementation report on Decision 2007/845/JHA, concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing

and identification of proceeds of crime, or other property related to crime.

The Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime required Member States to take measures necessary to comply with its provisions before 11 May 2010 and to communicate the text of transposing legislation to the General Secretariat of the Council and to the Commission.

The Swedish Framework Decision (Council Framework Decision 2006/960/JHA) concerning simplification of the exchange of information and criminal intelligence across the European Union required the Commission to submit an evaluation report to the Council before 18 December 2010. Just four months after the implementation deadline had expired, the Commission organised a conference that sought to review implementation of this instrument. The outcome of that conference, including detailed replies to the Commission's questionnaire, fed into a second conference on implementation, also organised in 2010.

Evaluation based on the current situation

Regarding the Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism, only three Member States fully complied with their obligations and informed the Commission in time about provisions to transpose the Framework Decision. The Commission has sent a reminder to the other Member States concerned. The deadline set for submitting notifications is 4 March 2011.

Evaluation results: Priorities and planned action (2011 and beyond)

In accordance with Article 3(2) of the Framework Decision 2008/919/JHA and on the basis of information received from Member States, the Commission will prepare a report to assess whether Member States have taken the measures necessary to comply with the Framework Decision.

The second report on implementation of Framework Decision 2003/568 on combating corruption in the private sector and the report on implementation of Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds of crime, or other property related to, crime, are scheduled for 2011.

Regarding Council Framework Decision 2008/841/JHA on the fight against organised crime, on the basis of a Council report based on information provided by Member States and a written report transmitted by the Commission, the Council will, before 11 November 2012, assess the extent to which Member States have complied with the Framework Decision.

17. JUSTICE

17.1. Free movement of persons

17.1.1. Current Position

17.1.1.1. Introduction

Free movement is a core right of EU citizens and their family members. It is one of the most

cherished rights by EU citizens. Citizenship of the Union confers on every EU citizen a primary and individual right to move and reside freely in the EU. It should therefore be strictly enforced.

Article 21(1) TFEU stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. These limitations and conditions are to be found in Directive 2004/38/EC¹ which codified the existing legislation and case-law in the area of free movement, streamlined the procedures, cut the red tape and simplified the legal text in the interest of reader-friendliness and clarity.

17.1.1.2. Report of work done in 2010

Building on the 2008 report² on the application of Directive 2004/38/EC which concluded that the transposition of the Directive in Member States was not satisfactory and identified a large number of shortcomings and following the 2009 guidelines³ for better transposition and application of Directive 2004/38/EC which provided guidance to Member States on how to apply Directive 2004/38/EC correctly, in 2010 the Commission focused on enforcing the EU rules on free movement.

In accordance with the priorities established by the previous Annual Report on the Control of Application of Community law, the Commission held bilateral meetings with almost all Member States to discuss the issues of implementation of Directive 2004/38/EC identified as problematic. By the end of 2010, the Commission met the authorities of 22 Member States⁴, thus largely complying with its commitments.

A group of Member States' experts on the practical application of Directive 2004/38/EC established in 2009 met three times in 2010 to discuss issues related to the correct application of EU law in the area of free movement, particularly on fighting abuses and frauds. The exchange of views, know-how and best practices are contributing towards improved implementation of EU law and the case-law of the Court of Justice of the European Union. The group continues to meet on a regular basis.

In 2010, the Commission continued to deal with a large number of enquiries and complaints in the area of free movement of persons; 781 enquiries and complaints were received. There were also 44 written EP questions and 31 petitions in this area.

The Commission made an extensive use of informal dispute-settlement mechanisms, such as SOLVIT. According to the 2010 report on development and performance of the SOLVIT

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158 of 30 April 2004, p. 77).

² COM(2008)840 final.

³ COM(2009)313 final.

⁴ Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Ireland, Spain, France, Italy, Latvia, Hungary, Malta, Austria, Poland, Portugal, Romania, Slovak Republic, Slovenia, The Netherlands, Finland, Sweden, United Kingdom.

network¹, in 2010 SOLVIT centres closed 306 cases concerning residence rights, which amounted to 23% of the total of all SOLVIT cases, managing to solve 91% of them. There was a decrease in cases in comparison to 2009 (549 cases handled and closed) because one Member State has reduced the delays in handling applications for residence cards for EU citizens' family members, in response to the high number of problems flagged, among others by SOLVIT. Progress has also been made with regard to other cases under Article 258 TFEU, where priority was given to older cases.

Concerning cases raising issues of principle or having particularly far reaching negative impact for citizens, the United Kingdom informed the Commission in October 2010 that it has abolished delays in handling applications for residence cards for EU citizens' family members. A simplified guide on EU law for EU citizens on freedom of movement was updated, published and widely distributed in 2010 in all EU languages.

17.1.2. Evaluation based on the current situation

The analysis and the work done by the Commission in 2010 showed that the situation in the area of free movement of persons requires further improvement.

In October 2010, the Commission adopted the EU citizenship report 2010 "Dismantling the obstacle to EU citizens' rights"², which gives a comprehensive overview of the obstacles citizens still face and makes proposals on how they can best be removed. The report underlines the fact that the right to free movement is hindered by divergent and incorrect application of EU law and by cumbersome administrative procedures. To facilitate free movement of EU citizens and their third-country family members, the Commission will enforce EU rules strictly, including on non-discrimination, by promoting good practices and increased awareness of EU rules on the ground and by stepping up the dissemination of information to EU citizens about their free movement rights.

Alike, the 2008 report on the application of Directive 2004/38/EC concluded that the overall transposition of the Directive was rather disappointing. The situation improved gradually in 2010. The 2009 guidelines and the exchange of views and information with the Member States during the bilateral meetings held in 2010 provided them further guidance on what legislative amendments are needed in their national legislation and on how to apply the Directive 2004/38/EC correctly, with the objective of dismantling the obstacles to free movement of EU citizens and of making the EU an area of security, freedom and justice. To address the unsatisfactory implementation, the Commission continued working in 2010 at technical level with the Member States within the group of experts. The work of the group in 2010 focused on the sensitive areas of fighting frauds and abuses, but also on how to improve information about residence rights.

Many EU citizens have complained about Member States not implementing correctly their national law transposing EU law in the area of free movement of EU citizens. The complaints concern various problematic areas in the field of free movement and residence rights. An important issue addressed by the Commission in 2010 related to the delays in handling residence applications of EU citizens and their family members in the United Kingdom. Some

¹ Report under finalisation.

² COM(2010) 603 final

350 individual complaints were received by the Commission on this issue since October 2008 alleging that the authorities of that Member State were failing to meet the deadlines imposed by national and EU law. Following contacts with the Member State, a comprehensive solution was implemented and in October 2010 the Commission was informed that the backlog has been cleared and that measures were taken to avoid such backlogs in future. The Commission will continue to closely monitor the situation.

This particular issue underlines the crucial role Member States play in the practical implementation of EU law and that correct transposition must be accompanied by robust measures enabling national authorities to effectively apply the law. This is even more important in the areas of direct concern to large groups of EU citizens, such as residence applications.

In 2010 first positive results could be visible, since a significant number of Member States, following the bilateral meetings and exchanges with the Commission, modified their law or announced amendments including a precise calendar to ensure full transposition of Directive 2004/38/EC thoroughly discussed. Improvement of transposition will remain a priority for the Commission in 2011.

17.1.3. Evaluation results

17.1.3.1. Priorities

In 2011 the Commission will pursue the infringement cases related to the incorrect transposition of Directive 2004/38/EC. It will also address the infringement proceeding raising issues of principle or having particularly far reaching negative impact for citizens.

17.1.3.2. Planned action (2011 and beyond)

As from 2011 the Commission will step up its efforts to ensure that the Directive is correctly transposed and implemented across the EU, using fully its powers under the Treaty and launching infringement proceedings, when necessary.

The Commission will continue working at technical level with the Member States in the group of experts.

The Commission will continue to inform EU citizens about their rights under the Directive. An updated simplified guide on EU law for EU citizens on freedom of movement, which was launched in 2010, will continue to be widely distributed. The Commission will encourage Member States to launch awareness-raising campaigns to inform EU citizens of their rights under Article 34 of the Directive.

17.1.4. Summary

The Commission attaches great importance to the concrete fulfilment of the fundamental and personal right of EU citizens and their family members to move and reside freely. The transposition and implementation of the Directive in Member States need to be further completed. The Commission has been stepping up its efforts to ensure full enforcement and

will continue to work closely together with Member States to solve more problematic issues of free movement and share best practices. Together with intensified information to citizens this should bring real improvements in the daily life of EU citizens and their family members.

17.2. Citizenship

17.2.1. Current position

17.2.1.1. Introduction

Article 22 of the Treaty on the Functioning of the European Union grants the right to EU citizens to vote and to stand as candidates in municipal and European elections in the Member State where they reside, without holding the nationality of that State. These rights were put into effect by Directive 1993/109/EC¹ as regards European Parliament elections and Directive 1994/80/EC² as regards municipal elections. Directive 1994/80 was modified by Directive 1996/30/EC and Directive 2006/106/EC in view of consecutive enlargements of the Union.

17.2.1.2. Report of work done in 2010

In October 2010, the Commission adopted the Report on the implementation of EU law in the 2009 European elections³. The report concludes that on the whole, the legal conditions allowing EU citizens to exercise their right to vote and to stand as candidates in their Member State of residence are fulfilled. As for the few issues of transposition of Directive 93/109/EC and of the Act of 1976 that were identified in the report, a number of EU Pilot (pre-infringement) cases have been opened during 2010.

In particular, six cases were opened concerning the transposition of Directive 93/109/EC, one case concerning the implementation of the Act of 1976 on the election of Members of the European Parliament and five cases concerning the right of EU citizens to become members or to found a political party in the Member State where they reside.

The Commission has also dealt with 97 enquiries and complaints on citizenship and electoral rights of the EU citizens: 55 on citizenship and 42 on electoral rights. In 2010, there were 14 written EP questions and 5 petitions in this area. This shows the increasing awareness and interest of EU citizens concerning their electoral rights.

¹ Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.

² Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.

³ Report on the election of Members of the European Parliament (1976 Act as amended by Decision 2002/772/EC, Euratom) and on the participation of European Union citizens in elections for the European Parliament in the Member State of residence (Directive 93/109/EC); COM(2010)605

17.2.2. Evaluation based on the current situation

Essentially, all Member States transposed the Union legislation in electoral matters. No infringement proceedings were open as of 31 December 2010. The situation in the field of the electoral rights of EU citizens can be considered broadly satisfactory.

However, as a result of a compatibility study concluded in February 2009, EU Pilot (pre-infringement) cases were opened in 2010. The replies of the Member States are currently under examination.

As far as the right of EU citizens to vote and stand as candidates in the municipal elections in the Member State of residence is concerned, a Commission Report assessing the implementation of Directive 93/109/EC is planned for 2011.

17.2.3. Evaluation results

17.2.3.1. Priorities:

In 2011, the Commission will continue the work to ensure conformity of national legislations of Member States with Directive 93/109/EC (participation of EU citizens in European elections) and Directive 94/80/EC (participation of EU citizens in municipal elections) and to ensure conformity across the EU member States with the 1976 Act on the elections of the representatives of the European Parliament.

17.2.3.2. Planned action (2011 and beyond)

As from 2011, the Commission will step up its efforts to ensure that the instruments in electoral matters are correctly transposed and implemented. The Commission will continue working at technical level with the Member States in the group of experts and launch infringement proceedings when necessary.

A report on the implementation of Directive 94/80/EC (participation of EU citizens in municipal elections) is planned for 2011.

On the basis of a study on possible developments of the EU law on electoral rights, concluded in 2010, and in the light of the 2010 report on European elections, the Commission is considering options to better achieve the objectives of Directive 93/109/EC. The objective is to improve the efficiency of the administrative proceedings to facilitate participation of candidates in the elections, as well as to improve the information exchange mechanism for preventing double voting.

A proposal to amend the Directive, presented by the Commission in 2006¹, is currently with the Council and negotiations are suspended. Any new step for improvements has to take into account the outcome of the electoral reform ongoing in the European Parliament which may have a direct effect on the Directive.

¹ COM(2006)791 Proposal for a Council Directive amending Directive 93/109.

17.2.4. Summary

Electoral rights of the EU citizens accompany their right to free movement and are part of the rights attached to the Citizenship of the Union: EU law in the electoral field grants the right to the EU citizens to participate in municipal and European elections in the Member State where they reside without holding the nationality of that State. Detailed arrangements for the exercise of these rights are to be found in Directive 94/80/EC with regard to municipal elections and in Directive 93/109/EC with regard to European elections. The Act of 1976 on the election of representatives of the European Parliament as amended by Council Decision 2002/772/EC, lays down common principles for the Member States in the organisation of the European elections.

Transposition of Union law in electoral matters can generally be considered satisfactory. However, EU Pilot (pre-infringement) cases were opened in 2010 addressing a number of issues. These issues concern inter alia details of the arrangements in the organisation of elections, such as the procedure for registering voters or candidates on the electoral rolls. They also concern the possibility of founding or participate in a political party for those EU citizens residing in another EU Member State who want to stand as candidates in municipal and European elections.

The Commission should continue to focus on checking and ensuring correct transposition and implementation of Directives 93/109/EC and 94/80/EC and of the Act of 1976, as amended by Council Decision 2002/772. This will need close work at technical level with the Member States and use of infringement proceedings, where necessary.

The Commission shall report on the implementation of Directive 94/80/EC on municipal elections in its Report planned for 2011. The Commission will also pursue preparatory work to consider how to go forward with the modification of Directive 93/109.

17.3. Fundamental rights

17.3.1. Current Position

17.3.1.1. Introduction

With the entry into force of the Lisbon Treaty the Charter is now legally binding on the EU's institutions and on Member States when they are implementing EU law. The foreseen accession of the EU to the European Convention of Human Rights will complement the strong protection of fundamental rights that already exists in the Union's legal order through the EU's own Charter of Fundamental Rights and the case law on fundamental rights developed over time by the Court of Justice.

The important number of letters received by the Commission reveals a strong interest and expectation from citizens on fundamental rights. It also reveals that more information is needed to explain that the Commission has no general powers to intervene in cases of violations of fundamental rights and that it can do so only if an issue of Union law is involved.

The Commission shall ensure that when implementing EU legislation, Member States strictly respect fundamental rights and that cases involving fundamental rights should be treated as a matter of priority. This obligation will become even more essential when the EU will gain full membership to the European Convention of Human Rights.

17.3.1.2. Report of work done in 2010

The Commission has published on 19 October 2010 a Communication setting the "Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union"¹. The objective of the Charter Strategy is to make the fundamental rights as effective as possible. The respect of the rights enshrined in the Charter must be upheld throughout the entire legislative process. The Commission reinforced the evaluation of the impact on fundamental rights of its legislative proposals by establishing a "Fundamental Rights Check-List" to check systematically the compliance of the proposals with the Charter.

The 2010 Report on the Application of the EU Charter of Fundamental Rights, to be adopted in 2011, will show that all Commission departments in 2010 received more than 4000 letters from the general public on fundamental rights issues. Approximately one third concerned situations where the Charter could apply, while the rest did not involve Union law and fell outside the powers of the Commission to control the application of Union law. Approximately half of petitions and questions from the European Parliament concerned cases where the Charter could apply and the rest were related to issues outside of EU competence.

The EU Treaty (Article 6 paragraph 2 TEU) requires the EU to become a member of the European Convention on Human Rights. The Commission has thus recommended on 17 March 2010 to the Council to open accession negotiations with the Council of Europe. On the basis of a mandate agreed by the Council, the Commission launched accession negotiations on 7 July 2010. The EU's accession to the European Convention of Human Rights will complement the strong protection of fundamental rights that already exists in the Union's legal order through the EU's own Charter of Fundamental Rights and the fundamental rights developed over time by the Court of Justice.

17.3.2. Evaluation based on the current situation

The 2010 Charter Strategy pointed out that for the rights enshrined in the Charter to be effective the public needs to be well informed about these rights and how to enforce them in practice when they are violated. Citizens should know where they can turn for assistance in cases of violations of fundamental rights. The Commission will promote awareness raising and will explain in particular what it can and cannot do.

17.3.3. Evaluation results

The Charter Strategy announced the presentation of an Annual Report on the Application of the EU Charter of the Fundamental Rights, as an essential tool in implementing the rights and

¹ Communication from the Commission of 19 October 2010 on the Strategy for the effective implementation of the Charter of Fundamental Rights by the EU, COM/2010/0573 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:EN:PDF>

freedoms of the Charter. These annual reports will track the progress being made and also the new concerns that are arising. The Annual Report will be the track record on the implementation of all the provisions of the Charter.

17.3.4. Summary

The Charter needs to be put into practice whenever EU law applies, so that people can effectively enjoy their fundamental rights. That is why the Commission, in 2010, adopted a Strategy on the effective implementation of the Charter. The Charter Strategy pointed out the need to inform the public about fundamental rights and how to enforce them in practice when they are violated.

17.4. Protection of personal data

17.4.1. Current position

17.4.1.1. Introduction

Personal data is collected and used in many aspects of everyday life. The protection of personal data is a fundamental right, which requires that individuals must be protected with regard to the processing of personal data. Personal data should be able to flow freely from one Member State to another. In order to remove the obstacles to the free movement of such data without diminishing the protection of personal data at the level of the EU, Directive 95/46/EC (the data protection Directive) was developed to harmonise national provisions in this field.

In 2010, the Commission continued the monitoring of the correct application of the Directive 95/46/EC on data protection, the main piece of legislation in this area.

As concerns the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, the Commission started monitoring the implementation of Framework Decision 2008/977/JHA at the end of 2010. Member States were obliged to have taken the necessary measures and to have informed the Commission by 27 November 2010.

17.4.1.2. Report of the work done in 2010

The year 2010 has been marked by the ongoing works in the context of the reform of the data protection framework. Two stakeholder conferences were organised in June/July 2010 which were based on a list of questions prepared by the Commission. The contributions provided valuable insight on issues covered by Directive 95/46/EC which need to be revised. In November 2010, the Commission presented a comprehensive approach on personal data protection in the EU.

In parallel, works started on an impact assessment on a new legal framework, replacing and amending the legal instruments currently in force in the area of data protection.

The Commission has received 87 letters (information/documents requests and complaints) from citizens, 55 parliamentary questions and 3 petitions in 2010.

In 2010, the Commission was also dealing with 13 infringement cases in the data protection field. The number of cases referring to the incorrect application of the data protection

directive was higher than the non-conformity cases.

The conclusions of the European Court of Justice in an infringement case against Germany on the lack of independence of the data protection authority of 9.3.2010 (C-518/07) were essential and allowed the Commission to advance a similar case against Austria, bringing the matter before the Court of Justice at the end of 2010. As the data protection authorities have the crucial task of protecting the fundamental right to data protection, the Commission will continue to investigate the correct application of the provision contained in Article 28 of Directive 95/46/EC referring to the independence of data protection authorities.

The Commission advanced a case against the UK for concerns in relation to the transposition of Directive 95/46/EC and its application by UK courts. The Commission has worked with the UK authorities to resolve a number of issues, but several remained, notably limitations of the Information Commissioner's Office's powers or the possibility of courts in the UK to refuse the right to have personal data rectified or erased. Therefore the Commission adopted a reasoned opinion against the UK.

17.4.2. Evaluation based on the current situation

The situation and volume of work in 2010 was stable regarding the infringement cases. The number of letters and enquiries has decreased while the number of parliamentary questions increased.

In terms of implementation of the Directive, the increased level of harmonisation that might have provided a solution has not been obtained. The improvement, which was hoped for and which could have resolved the difficulties identified during the first and the second review of the implementation of the Directive was neither achieved by the guidance of case law and of the opinions of the Article 29 Working Party nor through the Commission's infringement policy. Additionally developments such as the impact of new technologies and globalisation, divergent approaches in national law, application and enforcement, created uncertainties and contributed to administrative burden.

No new infringement cases have been opened in 2010.

17.4.3. Evaluation results

17.4.3.1. Priorities

The priority during 2010 was to advance with the elaboration of a new legal framework for data protection. The Commission has succeeded to identify/analyse a number of issues to be covered by the new instrument.

The Commission has also made significant progress in the handling of infringement cases which have been pending for a number of years.

17.4.3.2. Planned action (2011 and beyond)

The primary objective for 2011 will be the adoption of the new legislative framework for data

protection.

The Commission will also present a report on the implementation of Framework Decision 2008/977/JHA which will be based on the information received from the Member States. A stakeholder conference was held scheduled on 2 February 2011. Member States were given the possibility to discuss problems they encountered in the implementation process and to highlight issues they consider important in view of the currently ongoing review of the data protection framework.

The implementation of the ruling of the European Court on the lack of independence of the data protection authority in Germany was closely monitored. A letter of formal notice under Article 260(2) TFEU was notified to Germany on 7 April 2011 as Germany had not complied with the Court's ruling.

17.4.4. Summary

Work towards the reform of the current legislative data protection framework was the major objective in 2010. The adoption of the reform package is due in 2011.

Until the adoption of the new legislation, the Commission will continue to monitor the application of Directive 95/46/EC.

17.5. Judicial cooperation in civil matters

17.5.1. Current position

17.5.1.1. Introduction

Judicial cooperation in civil matters aims to contribute to the creation of a genuine European area of justice based on mutual recognition and trust. In particular, it aims to promote the elimination of obstacles to the good functioning of cross-border civil proceedings in the Member States and thus improve the daily life of citizens and businesses mainly by fostering access to justice. In this context, a considerable number of instruments have been adopted in the area of civil, commercial and family law establishing European rules on jurisdiction, applicable law, recognition and enforcement of judgements for cross-border civil justice cases.

17.5.1.2. Report of the work done in 2010

- New legislation

On 24 March 2010, the Commission adopted a package of proposals to respond to a request by a group of Member States to establish enhanced cooperation in the area of the law applicable to divorce and legal separation¹. The enhanced cooperation package consists of two parts: first, a Council Decision that authorises enhanced cooperation for 14 Member States

¹ Proposal for a Council Decision No .../2010/EU authorising enhanced cooperation in the area of the law applicable to divorce and legal separation, COM(2010) 104 final/2 and Proposal for a Council Regulation (EU) implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, COM(2010)105 final/2.

and, second, a Council Regulation containing the actual measures applying in participating Member States.

On 12 July 2010, the Council of the European Union, with the consent of the European Parliament, authorised 14 Member States to go ahead with the first enhanced cooperation in the history of the European Union and implement rules enabling international couples to agree on which law would apply to their divorce or legal separation¹. The proposal will increase flexibility and autonomy by giving spouses a possibility to choose the law which will apply to their divorce. The new Regulation² entered into force on 30 December 2010 and will apply as from 21 June 2012.

Proposed legislation

Following the 2009 Report evaluating the application of Regulation 44/2001 (Brussels I) and the Green Paper identifying ways to improve its functioning, a Proposal for the amendment to Regulation (EC) n°44/2001 (Brussels I) was adopted on 14 December 2010³.

Preparatory legislative work

The Impact assessment on Proposals for a Regulation on matrimonial property rights and property rights of registered partnerships was finalised with the view to propose two Regulations to cover questions on jurisdiction, applicable law recognition and enforcement of judgements of international couples' property rights.

A Green Paper on the free circulation of documents within the European Union was adopted on 14 December 2010. In this paper, the Commission asks questions on how to improve the free circulation of public documents, such as diplomas, proof of nationality, property deeds. The Green Paper is open for consultation until April 2011.

As to the evaluation exercises, evaluation studies on the Legal Aid Directive and the EEO Regulation as well as the assignment of claims under the Rome I Regulation were launched in 2010.

External Competence

During 2010 negotiations concerning the proposal for a Council Decision on the signature and conclusion of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance continued at the Council; the negotiations are now progressing towards a definitive agreement which could be reached in the course of 2011.

The first two Commission's decisions based on Regulations No 662/2009 and 664/2009 were adopted and three Commission Decisions with Denmark were signed⁴.

¹ Council Decision 2010/405/EU of 12 July 2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 189, 22.7.2010, p. 12.

² Council Regulation N 1259/2010/EU of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 343, 3.12.2010, p. 10.

³ COM (2010) 748 final.

⁴ Commission Decision authorising Denmark to ratify the 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects – Commission Decision of 22.4.2010 authorising Denmark to ratify

Cooperation with other international organisations (as HCCH, Council of Europe, UNIDROIT, UNCITRAL, CIEC) has been further carried out with participation in the relevant meetings and follow-up of the Conventions in the area of civil judicial cooperation.

Monitoring of enlargement issues and contacts with European Neighbour Policy countries continued on a regular basis.

The international negotiations related to the Space Protocol to the Cape Town Convention progressed.

European Judicial Network in civil and commercial matters (EJN)

In 2010, the European Judicial Network in civil and commercial matters prepared the entry into force of its amending decision (Decision 568/2009/EC), especially with respect to the association of the legal professions to the network, new tasks for the contact points and various projects aimed at increasing the level of awareness of the Network with the judicial authorities, citizens and companies.

In 2010, five contact points meetings have been organised which were dealing, amongst others, with the following topics: parental responsibility, the European order for payment procedure, the European Small Claims Procedure, the service of documents, legal aid and the migration of the EJN website to the European e-Justice portal.

A citizens' guide to cross-border civil litigation in the European Union has been published in 2010 on the portal of the EJN.

17.5.2. Evaluation based on the current situation

In 2010, the Commission continued to monitor the correct application of the civil justice *acquis*. The Commission answered 91 complaints. The number of infringement cases pending decreased from 14 to 4. The remaining ones will be dealt with in the forthcoming period.

The Commission is also contributing to the correct interpretation of *acquis* through observations to the preliminary questions to the Court of Justice. With the entering into force of the Lisbon Treaty, which allows also first instance courts to ask the Court of Justice for preliminary rulings, their number has increased considerably in the area of civil justice.

In the area of family law, the new urgent preliminary ruling procedure (PPU) is available since 1 March 2008 and has also increased the number of cases. The new procedure enables the Court of Justice to deal much more quickly with issues relating to the area of freedom, security and justice. Such an issue may arise, for example, in proceedings concerning parental responsibility if the jurisdiction under EU law of the national court hearing the case depends on the answer to the question referred for a preliminary ruling.

In 2010, Commission observations were made in 20 cases in civil justice, 4 of them being "PPU" procedures doubling in number compared to 2009.

the Protocol to amend the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 – Commission Decision of 22.4.2010 authorising Denmark to ratify the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention).

The Commission gave opinions on 14 preliminary questions which concerned the application of the Regulation (EC) 44/2001 (Brussels I), the most important one being the *Pammer – Alpenhof* ruling.

In the Cases C-585/08 and C-144/09 *Pammer – Alpenhof*, the Court of Justice explained the rules of jurisdiction in European Union law that are applicable to consumer contracts, in relation to services offered on the internet. Mere use of a website by the trader does not in itself trigger application of the rules of jurisdiction for the protection of consumers in other Member States.

In the family law area, 4 of the Preliminary ruling cases were ‘PPU’ procedures relating to the interpretation of Regulation (EC) No 2201/2003 (the ‘Brussels II a Regulation’).

In the Case C-211/10 *PPU* the Court of Justice ruled that the enforcement of a certified judgment which required the return of the child could not be refused either on account of a judgment delivered subsequently by a court of the Member State of enforcement or on account of a change of circumstances after its delivery. In Case C-400/10 *PPU*, the Court of Justice stated that the removal of a child by a parent to another Member State was wrongful only if it was in breach of custody rights granted by national law. Furthermore, the Court ruled that national legislation under which the acquisition of rights of custody by a father who was not married to the mother of the child was dependent on his obtaining a court judgment was not in breach of the right to respect for private and family life protected by the Charter of Fundamental Rights of the EU. The Court of Justice’s judgment in Case C-491/10 *PPU* clarifies that the court with jurisdiction in the Member State of enforcement cannot oppose the enforcement of a certified judgment, ordering the return of a child who has been wrongfully removed, on the ground that the court of the Member State of origin which handed down that judgment may have infringed Article 42 of Regulation (EC) No 2201/2003 interpreted in accordance with Article 24 of the Charter of Fundamental Rights of the European Union. In Case C-497/10 *PPU* the Court of Justice was given the opportunity to interpret the concept of ‘habitual residence’ for the purposes of the provisions of Regulation (EC) No 2201/2003 that make reference to a child’s habitual residence in a Member State.

Awareness raising activities

The Commission published a citizens' guide to cross-border civil litigation in the European Union in all languages. The European Union has a system of laws in place designed to help individuals and businesses with cross-border litigations. The Guide aims to explain these laws and the principles behind these European procedures and how citizens can choose whether they want to use them. The "Compendium of Community Legislation on Judicial Cooperation in civil and commercial matters" was published in all languages and distributed in the 27 Member States.

In October 2010, at the same time as the European Day of Civil Justice, the Commission published a Eurobarometer survey in civil justice.

17.5.3. Evaluation results

17.5.3.1. Planned action (2011 and beyond)

A wide range of activities has been launched in order to improve the conditions for cross-border trade and consumer rights, such as the revision of the Brussels I regulation and the

legislative proposal on attachment of bank accounts which will contribute to reducing costs for businesses in line with the objectives of the flagship initiative Industrial policy for the globalisation era. Together with the foreseen legislation on European contract law, these activities strongly aim at improving consumer confidence in cross-border trade and increase business activities in cross-border trade.

The proposals on matrimonial property rights and property rights of registered partnerships are planned to be adopted in 2011. Both Regulations will include provisions on jurisdiction rules, applicable law rules, and recognition and enforcement rules. As regards applicable law, the proposed Regulations will in particular provide for objective criteria, allowing determining the law applicable to the assets of the couples and should also explore the spouses' possibilities of choosing, to a certain extent, the law applicable to their assets. The proposals will also deal with the question of jurisdiction. Its provisions will have to be consistent with existing or future rules, relating to divorce proceedings and successions.

17.5.4. Summary

With the aim of facilitating the life of individuals and businesses involved in cross-border litigation, a wide range of activities has taken place in the area of judicial cooperation in civil matters during 2010. The European Union adopted new legislation on the question of the law applicable to divorce and legal separation using for the first time in its history the enhanced cooperation procedure. Intense preparatory legislative work has been carried out by means of impact assessment studies, evaluation reports and Green Paper consultations. A proposal for revising existing legislation has been put forward to improve and facilitate the circulation of judgments across the European Union. Particular attention has been given to the correct implementation and application of the civil justice *acquis*. The role of the European Judicial Network in civil and commercial matters has been reinforced. Numerous preliminary questions to the Court of Justice of the European Union gave the Commission the opportunity to contribute to the interpretation of civil justice instruments. With regard to the Union's external competence, cooperation with international organisations and negotiations on questions of private international law were carried out. Last but not least, various activities took place aiming at measuring and raising public awareness across the EU of civil justice instruments and procedures.

17.6. Consumer and marketing law

17.6.1. Current position

17.6.1.1. Introduction

There are more than 500 million consumers in Europe and their expenditure represents over half of the EU's gross domestic product (GDP). Consumers are essential to economic growth and job creation in a large market of products and services.

Directorate-General Justice's responsibility for consumer and marketing law is embedded in the Commission's Consumer Policy Strategy as well as in the implementation of the Stockholm Programme, the aim of which is to create an area of freedom, security and justice for Europe's citizens. The objective in consumer and contract law is to maintain and develop an effective legislative framework which promotes the economic interests of European consumers and ensures an open, fair and transparent internal market. This will allow consumers to exercise real choice, give them the required protection, while providing a

level playing field and predictable rules for businesses and excluding rogue traders, thereby helping consumers and businesses take full advantage of the market's potential.

Directorate-General for Justice is in charge of eight directives in the area of consumer and marketing law. In 2010 it was active in both monitoring the transposition and application of these directives as well as the modernisation of the *acquis*.

17.6.1.2. Report of the work done in 2010

- Review of the Package Travel Directive

In the framework of the potential revision of the Package Travel Directive (90/314/ EEC), a public consultation was open until 7 February 2010. It mainly focused on possible ways of solving problems with the current rules. It also aimed to quantify the impacts of various possible legislative options. At the same time a public consultation on air passenger rights was initiated. It touched on a related topic, namely the possible introduction of passenger protection in the event of airline bankruptcy (There is currently no insolvency protection for standalone air tickets, i.e. for flights which are not included in a travel package). In April 2010, the Commission held a stakeholders' workshop to discuss different policy options. In the second half of 2010, the Commission worked on the impact assessment for the revision of the Directive taking account the parallel impact assessment on passenger protection in the event of airline insolvency.

- Negotiations on the proposal for a new directive on consumer rights

The co-decision legislative process in relation to the proposal for a new Directive on consumer rights has now come to a successful conclusion. The proposal, which was adopted by the Commission in 2008, intended to bring together and update the Distance Selling Directive 97/7/EC, the Doorstep Selling Directive 85/577/EEC, the Consumer Sale of Goods Directive 99/44/EC and the Unfair Contract Terms Directive 93/13/EEC, thereby reducing the legal fragmentation in the internal market. Intense negotiations on the proposal under the Belgian presidency led to the adoption of a general approach by the Council on 24 January 2011. The general approach focuses on distance and off-premises contracts and foresaw, with the exception of three opening clauses, to fully harmonise the information requirements, the right of withdrawal and the provisions on delivery and passing of risk. Directives 99/44/EC and 93/13/EEC would remain unchanged. The European Parliament adopted the agreed text in plenary on 23 June 2011. Formal adoption of the new Directive by the Council is expected in October 2011.

- Transposition, application and interpretation of the existing directives

Directive 2005/29/EC on Unfair Commercial Practices

The national laws transposing Directive 2005/29/EC have been in force in all Member States since the beginning of 2010. However, the transposition of the Directive continues to pose a number of challenges considering the important legal impact of full harmonisation in a broad area which was characterised by considerable differences in national rules and policies.

In order to ensure an adequate implementation of the Directive in the Member States, the Commission continued its transposition checks and discussions with Member States and stakeholders with a view to solving transposition problems. In this connection,

the Commission intervened in various cases referred to the Court of Justice for preliminary rulings, such as C-540/08 *Mediaprint* and C-122/10 *Ving Sverige* (judgement issued on 12 May 2011). In the *Mediaprint* case, the Court had to examine the compatibility of an Austrian provision banning the sale of newspapers combined with the possibility to take part in a competition (i.e. sales of newspapers with so-called "bonuses"), and stated that "[...] *the Directive must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which lays down a general prohibition on sales with bonuses and is not only designed to protect consumers but also pursues other objectives*".

In 2010 the Commission started the preparation of the report on the application of the Directive (as provided for by Article 18 of the Directive) and launched a call for tender for a study to assess the application of the Directive in the fields of financial services and immovable property. In the report the Commission will address various issues including the effects of full harmonisation in areas such as sales promotions.

To promote a common understanding and to develop a uniform application of the Directive, the Commission worked on the development of a legal (online) database for the Directive. The database will make available to the public information on the transposition and implementation measures in the Member States, relevant decisions of the European Court of Justice, the leading national jurisprudence and administrative practice, relevant legal literature, guidelines from national authorities, codes of conduct etc. This database was launched at a conference in July and will be publicly available as from July 2011.

Other consumer protection directives

In 2010 the Commission continued infringement proceedings resulting from systematic checks on the quality of transposition of certain consumer protection directives. In addition, its services dealt with a number of complaints identifying potential implementation problems. The Commission also replied to numerous parliamentary questions and correspondence from citizens.

In particular, the Commission closed all infringement proceedings based on the inadequate transposition of Directive 93/13/EEC on unfair terms in consumer contracts which were opened in 2008. In 2010 the two remaining cases were closed since the CZ and SK changed their legislation following a reasoned opinion¹.

Three out of the nine infringement cases opened in 2009² in relation to deficiencies in the transposition of Directive 99/44/EC on the sale of consumer goods and associated guarantees were closed after a letter of formal notice. In six cases the Commission issued reasoned opinions in 2010. Two of these cases were closed following legislative changes in the Member States concerned³. In the four remaining cases⁴ the Member States concerned have announced legislative changes.

In relation to Directive 90/314/EEC on package travel, PL, following the Commission's letter of formal notice, amended its national rules transposing Article 7 of the Directive. This

¹ Commission's press release IP/09/1451.

² Commission's press release IP/09/1032.

³ Luxembourg and Greece.

⁴ Czech Republic, Estonia, Poland and Slovenia.

provision obliges Member States to ensure that consumers are guaranteed a refund of the money paid over and repatriation in case of the organiser's insolvency.

Finally, there were a number of new requests for preliminary rulings under Article 267 TFEU in relation to different consumer protection directives as well as rulings on questions that had previously been submitted to the Court of Justice. Some of these cases are mentioned below.

In Case C-215/08 *E. Friz* the Court ruled that Directive 85/577/EEC does apply to contracts concerning a consumer's entry in a closed-end real property fund established in the form of a partnership even though the principal purpose of joining is not to become a member of that partnership, but is a means of capital investment. If the consumer exercises his right of withdrawal from such partnership, Article 5 (2) of Directive 85/577/EEC does not preclude a national law according to which the consumer's claim against that partnership is calculated on the basis of the value of his interest at the date of his withdrawal from this membership; the consumer may thus get back less than the value of his capital contribution or have to participate in the losses of that fund.

In Case C-511/08 *Heinrich Heine* on a preliminary request from a German court concerning Directive 97/7/EC on distance contracts, the Court found that the provisions of Directive 97/7/EC on the legal consequences of the withdrawal clearly have as their purpose not to discourage consumers from exercising this right. Therefore, the directive precludes national legislation which, in the context of a distance contract, allows the supplier to charge the costs of delivering the goods to the consumer after the latter has exercised his right of withdrawal.

In Case C-484/08, *Caja de Ahorros y Monte de Piedad de Madrid*, the Court of Justice confirmed that, given its minimum harmonisation character, Directive 93/13/EEC on unfair terms in consumer contracts does not preclude national legislation which authorises a judicial review as to the unfairness of contractual terms which relate to the definition of the main subject-matter of the contract or to the adequacy of the price and remuneration, even in the case where those terms are drafted in plain, intelligible language¹.

In Case C-137/08 *VB Pénzügyi Lízing* the Court of Justice further developed its case law on Article 6(1)² of Directive 93/13/EEC on unfair terms in consumer contracts. Following on from previous judgments in relation to this provision³ the Court concluded that national courts must investigate of their own motion whether a term conferring exclusive territorial jurisdiction in a contract concluded between a seller or supplier and a consumer, which is the subject of a dispute before it, falls within the scope of Directive 93/13 and, if it does, assess of its own motion whether such a term is unfair⁴.

¹ See point 1 of the operative part of the Court's judgment of 3 June 2010.

² Article 6 (1) reads: "Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms."

³ E.g. Cases C-243/08 *Pannon GSM*, and C-40/08 *Asturcom Telecomunicaciones*.

⁴ See point 3 of the operative part of the Court's judgment of 9 November 2010.

In Case C-76/10¹ *Pohotovost' s.r.a.* the Court of Justice established, in line with existing case law², that also in connection with the assessment of execution requests for arbitration awards which were granted in the absence of the consumer and have become final, national courts are obliged to examine, of their own motion, whether a sanction (e.g. a penalty) which was applied in the arbitration award is disproportionate, where they have available to them the necessary legal and factual elements and in so far as, under national rules of procedure, such an assessment can be carried out in similar actions of a domestic nature. The Court also concluded that the lack of indication of the annual percentage rate of charge required under the consumer credit legislation may be a decisive factor when determining whether the cost of the credit is expressed in plain intelligible language in the sense of Article 4 of Directive 93/13³.

In the joined cases C-585/08 and C-144/09 *Pammer & Alpenhof*, concerning Directive 90/314/EEC on package travel, the Court confirmed that a voyage by freighter (which included accommodation) could be considered to be a "package travel" under the Directive.

17.6.2. Evaluation based on the current situation

The *acquis* in consumer and contract law has been transposed by all Member States. The quality of the transposition of several directives has improved or is about to improve in specific Member States due, in particular, to infringement proceedings. Several questions on the interpretation of particular provisions have been clarified through rulings by the Court of Justice. Specific implementation problems, may, however, still be discovered through new complaints and requests for preliminary rulings.

Continued efforts will be necessary in particular in relation to the assessment of the quality of transposition of Directive 2005/29/EC on Unfair Commercial Practices.

Since the time-limit for the transposition of Directive 2008/122/EC on timeshare will run out in February 2011, the monitoring of the transposition of this Directive will be made in the next period.

17.6.3. Evaluation results

17.6.3.1. Priorities

The revision of the Package Travel Directive (90/314/EEC) will be a priority in 2011.

In addition, the assessment of the implementation of Directive 2005/29/EC on unfair commercial practices and the preparation of the Report on the application of the Directive will receive particular attention. The same applies to the announced communication on the review of Directive 2006/114/EC on misleading and comparative advertising.

¹ Order of the Court of Justice of 16 November 2010, in particular point 54 and point 1 of the operative part. This case is also relevant from the point of view of the consumer credit legislation, which is in the remit of DG SANCO.

² See in particular C-40/08 *Asturcom Telecomunicaciones*.

³ See, in particular, paragraphs 71 and 72, as well as point 3 of the operative part.

The monitoring of the timely transposition of Directive 2008/122/EC on timeshare, and, at a later stage, of the quality of the national transposition measures will also constitute an important objective for the Commission's services.

17.6.3.2. Planned action (2011 and beyond)

Several initiatives in the field of consumer and marketing law are included in the Commission's action plan for the implementation of the Stockholm Programme for the creation of an area of freedom security and justice for European Citizens in the period 2010-2014. Moreover, the Commission plans to issue a Consumer Agenda in the first quarter of 2012. The Consumer Agenda will build on the results achieved by the Commission's Consumer Policy Strategy for 2007-2013 and will bring together a number of initiatives in different areas which aim at improving the situation for Europe's consumers. It will contribute to fighting a number of obstacles to EU economic growth and improve the protection of consumers. Compared to the current Strategy, it will focus on the empowerment of consumers throughout the consumption life-cycle in a constantly changing environment. For example, it will address the challenges consumers face because of the increased importance of digital products and the online environment, increased complexity of decision making (information overload, more responsibility shifted to consumers), the need to move towards more sustainable patterns of consumption, population ageing and social inclusion/vulnerable consumers.

The actions planned in the coming years aim to improve the legislative framework, achieve transparency of the applicable rules and to ensure effective implementation in the Member States.

They include the revision of the Package Travel Directive (90/314/EEC), a Communication followed by a possible legislative proposal to bring existing EU consumer *acquis* in line with developments in the digital environment, as well as different activities in relation to the Directive on Unfair Commercial Practices (2005/29/EC). The latter actions involve increased transparency through the launch of the legal online database, the examination of the transposition in the Member States as well as the possible review of the Directive in connection with the report on the application of the Directive. This report as well as the planned communication on the Misleading and Comparative Advertising Directive (2006/114/EC) may lead to new legislative proposals.

The Commission will also have to decide whether and how the existing public database on the national rules transposing eight consumer protection directives and their application is to be continued beyond 2011.

Effective implementation by the Member States will remain a very important aspect. Therefore the Commission will supervise the transposition of recent directives (e.g. Directive 2008/122/EC on timeshare and the new Consumer Rights Directive once it has been implemented) and respond to complaints and, where appropriate, initiate infringement proceedings.

17.6.4. Summary

The combined action of Commission and Member States in 2010 has led to a high degree of conformity with the *acquis* in the area of consumer and marketing law. There are however important challenges ahead. In the near future one of the challenges is to create a more

coherent framework for cross-border shopping through clearer, simplified and harmonised rules that are uniformly enforced by national authorities, to increase EU-wide consumer confidence and enable consumers and businesses to fully benefit from the potential offered by the internal market. The implementation of the new Consumer Rights Directive will constitute one step towards this goal, but further action will be needed. This will require continued efforts by all players and, in particular, the Member States, whose role is to transpose and enforce Union law. Consumers and their organisations may help also by signalling problems in the implementation of particular rules.

17.7. Judicial cooperation in criminal matters

17.7.1. Current position

17.7.1.1. Introduction

With the entry into force of the Lisbon Treaty and the abolition of the pillars structure, the implementation of Framework Decisions in the field of judicial cooperation in criminal matters is expected to become less problematic in future. There is widespread recognition that implementation of third pillar instruments has been very poor. In the former third pillar, the Commission did not have enforcement powers and therefore could not start infringement procedures against Member States who did not implement Framework Decisions (or who implemented them belatedly or incorrectly).

17.7.1.2. Report of the work done in 2010

There are currently 12 mutual recognition instruments in criminal law, out of which five ought to have been implemented before or by 2010.

Out of the 12 instruments, only the European Arrest Warrant instrument has been implemented satisfactorily and on time. Framework Decision 2002/584/JHA on the European Arrest Warrant has been transposed by all Member States. Since the Framework Decision came into operation, in general the time taken to execute a warrant is provisionally estimated to have fallen from more than nine months to five weeks. This does not include frequent cases where the person consents to surrender, for which the average time taken is two weeks.

Implementation of the other instruments has not been satisfactory. In particular 4 instruments have been merely partially implemented so far:

- Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings has been poorly implemented. Although the scope of this Member States' initiative covering most of the rights of victims of all types of crimes is still relevant, European societies have evolved and there is growing awareness and a changing judicial culture to better address the rights and needs of victims of crime. This legislation has not been effective in meeting the desired outcome of addressing the needs of victims and achieving minimum standards across the EU. No Member State can claim to have fully implemented the instrument. The ineffectiveness of this legislation is also due to ambiguous drafting, lack of concrete obligations and lack of infringement possibilities under the former 3d pillar. In 2010, the Commission's services have carried out three expert meetings, a public consultation and an external impact assessment study, which confirmed these findings and helped to elaborate options for EU legislation.

- Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties¹ has been implemented in 22 Member States, while implementation (or notification) from 5 Member States is still missing. Besides delays in its transposition, the quality of implementation leaves much to be desired. While some of the most important issues such as the abolition of dual criminality and the recognition of decisions without further formality are properly reflected in the implementing provisions, the grounds for refusal have been implemented mostly as obligatory grounds and additional grounds have been added in contravention of the Framework Decision. Little information is still available on its practical application.
- Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence² has been implemented by 23 Member States. Little information is still available on the practical application of the legislation. Feedback from practitioners seems to indicate that the certificate to request the execution of freezing orders is rather difficult to complete and does not contain all the necessary fields. Therefore, judicial authorities tend to prefer recourse to the mutual legal assistance forms.
- Council Framework Decision 2006/783/JHA of October 2006 applies the principle of mutual recognition to confiscation orders issued by a court competent in criminal matters for the purpose of facilitating enforcement of such confiscation orders in a Member State other than the one in which the confiscation order was issued. The implementation report adopted by COM in August 2010 (delay resulted from the low number of notifications received by the deadline set by the FD: only two notifications were received on time) showed that the degree of implementation of FD is clearly not satisfactory. Thirteen Member States implemented the FD and notified it the Commission (at least informally) by the end of February 2010, fifteen months after the deadline set by the Framework Decision. The national implementing provisions received from the thirteen Member States are generally satisfactory and can be considered to be in line with the Framework Decision, especially regarding the most important issues such as the abolition of dual criminality checks and the recognition of decisions without further formality. Unfortunately, the analysis of grounds for refusal of recognition shows that almost all Member States included in their national legislation several additional grounds, in contravention of the Framework Decision. At present, notifications on the implementation of the Framework Decision have been received from 17 Member States.

Since the rules currently in force do not allow the Commission to initiate infringements proceedings in respect of legislation adopted before 1 December 2009 (for a transitional period of five years from the entry into force of the Lisbon Treaty), DG Justice had decided to launch an array of initiatives designed to improve the implementation record in this area, in particular by providing Member States with guidance and help during the implementation stage. These initiatives have included: a series of workshops with national legislators and practitioners on the three Framework Decisions mentioned above, preparation of handbooks for practitioners; streamlined contact with national authorities responsible for implementation; participation of Commission officials in national training for judges and prosecutors.

¹ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ L 76/16 of 22.3.2005.

² Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, ^o L 196 of 2.8.2003, p. 45.

17.7.2. Evaluation based on the current situation

Workshops carried out in 2010 contributed to creating a new forum for discussion and exchange of information on the practical application of the Framework Decision and prompted implementation by a number of Member States. Workshops have been instrumental in increasing compliance with the Framework Decision and in streamlining contact between national authorities and the Commission, which in turn lead to better quality of implementing legislation. They have also allowed demonstrating an increasing cross-border use between certain Member States.

However, the degree of implementation of the three instruments above is still not satisfying.

17.7.3. Evaluation results

17.7.3.1. Priorities

The number of legislative proposals to be adopted in 2011 or already on the table imposes a prioritisation of the work. On that basis, the main priorities for 2011:

- Recast the Framework Decisions on the standing of victims in criminal proceedings in the framework of a broader package of legislative and non legislative measures to improve the situation of victims of crime;
- Recast the Framework Decisions on mutual recognition of confiscation orders and freezing orders;
- Monitoring the correct implementation of the Framework Decisions on probation orders and custodial sentences (see below);
- Monitoring of the conformity of national measures transposing Directive 2004/80 (compensation for victims of intentional crime).

17.7.3.2. Planned action (2011 and beyond)

Conclusions from the workshops and other meetings on the instruments led to the decision on recasting the Framework Decisions mentioned above in the framework of the 2011 Working Programme in view of achieving better quality legislation as well as improving effective measures in the fight of the cross-border criminality. Legislative proposals on all instruments will be adopted in 2011.

At the same time the Commission's implementation strategy will be continued concerning other instruments. In an attempt to prevent problems stemming from implementation at an earlier stage, Implementation Workshops with national legislators and practitioners this year will concern Framework Decisions 2008/947/JHA on probation measures and 2008/909/JHA on custodial sentences (transfer of prisoners), for which the implementation periods are still running until December 2011. Streamlined contacts with Member States may include implementation "package meetings", where all the different services involved in the implementation work could benefit from the expertise of the Commission services.

The legislative and non legislative package on victims' rights to be adopted in 2011 will include concrete measures to improve the implementation of the new legislation such as elaborating handbooks, exchange of best practices and training of officials which will be in contact with victims.

Regarding Directive 2004/80/EC on compensation for victims of violent intentional crime, and although infringement procedures were already launched against two Member States for lack of communication of national transposing measures (Greece) and for non transposition (Italy), there is increasing evidence, largely based on NGOs and citizens' letters, parliamentary requests and petitions, that these two Member States might still not be compliant with the current Directive. The implementation of the Directive is currently under exam by the Commission which will shortly take action under the EU pilot scheme.

The Commission will also present a report on the application of Framework Decision 2002/584/JHA on the European Arrest Warrant.

17.7.4. Summary

The EU has only been legislating in this area for around 10 years. The expertise of Member States' national legislators is therefore still limited. In order to reduce this gap, the Commission has undertaken a number of initiatives to improve the situation, including: implementation workshops on a regional basis, on top of the regular expert meetings which take place in Brussels; streamlined contacts between national administrations and Commission services, possibly coupled by meetings in the capitals; dissemination of implementation handbooks.

Since the entry into force of the Lisbon Treaty, the Commission can exercise enforcement powers, straight away as concerns newly adopted legislation and subject to a period of five years as concerns Framework Decisions adopted before 1 December 2009. Until then, the Commission will continue to monitor the correct application of criminal justice instruments by other means.

17.8. Antidiscrimination and gender equality

17.8.1. Current position

17.8.1.1. Introduction

The legislative *acquis* in the field of gender equality and anti-discrimination is composed of 11 Directives, based mainly on the specific Treaty provisions: Article 157 TFEU (former Article 141 TEC) for gender equality and Article 19 TFEU (former Article 13 TEC) for antidiscrimination.

The number of infringement proceedings concerning this field used to be high due to a combination of non-conformity and non-communication cases. The majority of these cases were non-conformity cases opened in the period 2005-2007 following conformity check of recently transposed directives. During the period 2008-2010 the number of infringements has steadily decreased following amendments to national laws in the Member States which brought the national legislation in line with the EU *acquis*: more than 100 cases at the end of

2008, 74 at the end of 2009 and 45 at the end of 2010. By the end of 2010, the last remaining non-communication cases were expected to be closed in early 2011 following adoption of national transposing laws.

17.8.1.2. Report of work done in 2010

New legislation adopted

- Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC,
- Directive 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC.

Directive 2010/18/EU implements the revised framework agreement on parental leave concluded by the social partners at European level. The Directive extends workers' rights to parental leave from three to four months for each parent. *The Directive will allow working parents to better balance family and work.* To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis. The transposition deadline for the Directive is 8 March 2012.

Directive 2010/41/EU strengthens social protection of self-employed workers with a view to removing disincentives to female entrepreneurship and improves the social protection of "assisting" spouses who often work in the self-employed sector without enjoying the corresponding rights. The Directive grants for the first time at EU level a maternity allowance to self-employed workers. Self-employed workers are also granted a leave period of at least 14 weeks should they choose to take it. The Directive marks an important step forward in terms of increasing social protection and providing equal economic and social rights for self-employed men and women, and their partners. The transposition deadline for the Directive is 5 August 2012.

There are Member States which have already notified transposing measures for both directives, therefore well in advance of the transposition deadlines in 2012.

New legislation in preparation

In the area of gender equality and anti-discrimination, two 2008 legislative proposals remained under discussion in 2010:

- a proposal for a Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside employment,
- a proposal for a Directive amending Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

Concerning the proposal for a Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside employment the Council negotiations continued at technical level in 2010. However, no

significant progress has been registered in the Council.

Council discussions on the proposal for a Directive amending Directive 92/85/EEC also continued in 2010. The European Parliament commissioned a cost – benefit study of the amendments and in its first reading position in October 2010 proposed considerable amendments to the proposal. These amendments raised concerns in a number of Member States as regards the cost of the Directive and remained under analysis until the end of 2010.

Monitoring of infringements

All Member States have transposed Directives 2000/43/EC, 2000/78/EC and 2002/73/EC. One procedure for non-communication of national measures to transpose Directive 2004/113/EC and two procedures for Directive 2006/54/EC remained still open at the end of 2010. However, in one of the proceedings concerning Directive 2006/54/EC Member State had already notified national transposition and in the two other proceedings the national law had been adopted and the cases were pending the entry into force of the national laws on 1.1.2011.

To monitor the application of the EU legislation in the area of gender equality and anti-discrimination the Commission took the following action in 2010:

- With regard to ensuring the conformity with Article 157 TFUE, the Commission was analysing the new legislative package adopted by one Member State (FR) whilst the Article 260 TFEU proceedings against IT and EL could be closed in November 2010 since the gender differences in pensionable age were corrected in both Member States.
- Concerning Directive 2000/43/EC, the Commission closed five cases (SE, LV, SI, CZ and DE) ; seven other cases for incorrect transposition remained open at the end of 2010,.
- Concerning Directive 2000/78/EC, the Commission closed six cases (CZ, HU, LV, LT, SE and DE); eight other cases for incorrect transposition remained open at the end of 2010.
- Concerning transposition of Directive 2006/54/EC five non-communication proceedings (BE, EE, IT, LU and UK) were closed whilst proceedings against two Member States (AT, PL) remained technically open until the end of the year; in the meantime AT had already notified the national transposing law.
- Concerning transposition of Directive 2004/113/EC the non-communication proceedings against UK were closed, whilst proceedings against PL remained open until the end of the year.
- Concerning Directive 2002/73/EC, six cases (DE, LT, LV, SI, IT and IE) for incorrect transposition were closed, the Commission being satisfied with the amendments introduced or the explanations given. Thirteen proceedings remained open, but a number of these were heading for a solution following legislative amendments at national level.

Contribution to preliminary rulings:

The Commission's services also contributed to a number of preliminary rulings received by the Court of Justice under Article 267 TFEU (ex Article 234 TEC) in connection to the application of the gender equality and anti-discrimination *acquis*. The cases below worth

particular attention:

In Case C-149/10, *Chatzi*, the Court was asked whether a mother who gives birth to twins is entitled to two periods of parental leave, one period for each child, or whether she is entitled to only one period of parental leave corresponding to the birth. Indeed, children have the right to protection and care as is necessary for their well-being. In its ruling, the Court considered that the right to protection and care of the child does not mean however that children have to be acknowledged as having an individual right to see their parents obtain parental leave.

Case C-555/07, *Kücükdeveci*: In Germany, the notice periods which an employer must comply with in the case of dismissal increase progressively according to the length of the employment relationship. Periods of employment completed by an employee before reaching the age of 25 were not taken into account for calculating the notice period. The Court found that the German rules on dismissal were discriminatory as they contain a difference of treatment based on age which cannot be justified.

In Case C-45/09, *Rosenblatt*, the Court was asked whether a collective agreement providing that the working relationship automatically terminates when the employee has reached the age of 65 is in accordance with Article 2 (1) prohibiting the discrimination on ground of age and 6(1)¹ of Directive 2000/78. The Court replied that Article 6 of the Directive does not preclude such national provisions, to the extent that such provisions are objectively justified by a legitimate aim related to employment policy (social policy objective).

In addition, the Commission's services handled an important number of complaints coming from citizens. The Commission also replied to numerous parliamentary questions and requests for information from citizens.

17.8.2. Evaluation based on the current situation

The monitoring of the transposition of the two antidiscrimination directives adopted in 2000 and of the gender equality directive adopted in 2002 gave initially rise to a high number of infringement cases, but many of these could be closed in 2010. This led to a considerable decrease in the number of infringement proceedings, but the work still needs to be continued in 2011. In 2010 work was underway to check the conformity of legislation in BG and RO with the existing *acquis*.

The number of infringement cases can be expected to decrease further although the work on conformity checks of Directive 2004/113/EC and Directive 2006/54/EC is likely to lead to opening of new proceedings in 2011.

The work done in 2010 led to significant progresses towards conformity with the EU legislation in the in the area of anti-discrimination and gender equality. It can be assessed that the full transposition of the legal *acquis* was almost achieved by the end of 2010. Whilst three proceedings for non communication of national measures to transpose the two most recently adopted Directives (2004/113/EC and 2006/54/EC) remained open at the end of 2010, the

¹ Article 6(1) reads: "Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary".

national laws had been adopted and the proceedings were expected to be ready for closure in early 2011.

The only two proceedings under Article 260 TFEU (IT and EL) were successfully closed in November 2010 following compliance by the Member States with the Court rulings. Dealing with these cases had been one of the priorities set for 2010.

17.8.3. Evaluation results

17.8.3.1. Priorities

The main priorities for 2011 will be:

- Monitoring of the conformity of national measures transposing Directives 2004/113/EC and 2006/54/EC, since full transposition of these two directives was foreseen by the beginning of 2011.
- Continuing the negotiations on the two legislative proposals on the table.
- Dealing with the pending infringement cases as quickly as possible.

17.8.3.2. Planned action (2011 and beyond)

In the area of gender equality and anti-discrimination, the negotiation of the two legislative proposals from 2008 currently on the table remains a priority. The Commission will have to continue its efforts to facilitate the adoption of these proposals.

On infringements the efforts will concentrate on advancing with the existing infringement cases as quickly as possible. After analysing the replies from Member States, the Commission will either refer them to the Court or close them.

Since full transposition of Directives 2004/113/EC and 2006/54/EC will be achieved by the beginning of 2011, the new priority will be to monitor the conformity of national transposition measures with the two Directives. This may lead to opening of new infringement proceedings in the future.

In 2012 the transposition deadline of Directives 2010/18/EU and 2010/41/EU will expire, which will gradually set as a new priority towards 2012 and beyond monitoring the transposition of these two directives.

17.8.4. Summary

The Commission will continue to use all the available means to monitor the application of EU law in the field and to deal with the workload resulting from this monitoring work. This will include the use of a number of different tools such as CHAP and EU Pilot, but also external expertise and information from Equality Bodies and Networks of Independent Legal Experts.

National Equality Bodies will continue to contribute to a reduction in the number of complaints concerning this area of EU law, in the areas in which they are competent (so far gender and race).