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REPORT FROM THE COMMISSION

EU PILOT EVALUATION REPORT

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1. INTRODUCTION

Under the Treaties, the application of European Union law is a primary responsibility of the Member States. The Commission, in its role as guardian of the Treaties, has the authority and responsibility to ensure that the law is applied correctly. Given the scope of the EU *acquis* and the size of the EU, many questions and concerns are raised by citizens, civil society interests and businesses. For the law to be correctly understood and applied, it is necessary for these questions and concerns to be answered and for any problems in the application of EU law to be corrected as quickly and effectively as possible.

This work ensuring the correct understanding and application of the law has always involved a joint effort of Commission services and Member State authorities identifying the issues at stake, clarifying the legal and factual situation, finding solutions and answering questions. A variety of means of contact have been used over time for this purpose. However, there has been no overall structure, no systematic commitment and no means of measuring efficiency and progress in the way this work has been done.

In its Communication 'A Europe of Results – Applying Community law'¹, the Commission suggested the initiation of a project to test increased commitment, co-operation and partnership between the Commission and Member States in this work. It suggested a new joint commitment of the Commission and Member State authorities to test the possibility to work more closely together and more consistently to produce quicker and better answers to questions and solutions to problems. The idea was to use this method of working to correct infringements of EU law at an early stage wherever possible without the need for recourse to infringement proceedings. The project would not therefore be used to manage any issue on which an infringement proceeding has been initiated, through the issuing of a letter of formal notice, under Article 258 of the Treaty on the functioning of the European Union (TfEU – ex-Article 226 of the EC Treaty), or to follow-up on a Court of Justice ruling on the existence of an infringement.

A confidential on-line database was created for communication between Commission services and Member State authorities. A network of contacts was set up to operate the system, ensuring that files entered into it reached their correct destination and to monitor progress and push for efficient and constructive use of the system. Through these means, all aspects of the legal and factual position at EU and Member State level would be clarified and confirmed and appropriate conclusions drawn, citizens and business informed and solutions found for problems, ensuring conformity with EU law.

This project, called "EU Pilot", has been operating since mid April 2008 with fifteen volunteer Member States: Austria, Czech Republic, Denmark, Germany, Finland, Hungary,

¹ COM(2007) 502, Section 2.2 "Improving working methods", p. 8.

Ireland, Italy, Lithuania, The Netherlands, Portugal, Slovenia, Sweden, Spain and the United Kingdom.

The Commission proposed an evaluation of the performance of the project after its first year of operation. This document contains the evaluation report of the functioning of the system up to beginning of February 2010.

2. INFORMATION ON THE OPERATION OF EU PILOT

As of beginning of February 2010, 723 files had been submitted to EU Pilot. Of these, 424 files have passed all the way through the EU Pilot process. This constitutes a sufficient basis for a first evaluation of the functioning of EU Pilot.

Over 60% of files take the form of complaints, while over 20% constitute enquiries and approaching 20% are files created by the Commission of its own initiative. Among the complaints and enquiries, 43% of files come from citizens and 36% from business or civil society bodies. The subject-matter of the files confirms existing experience of the volume of questions and problems arising in the different sectors of EU law: 36% concerning the environment; 21% the internal market, 8% taxation, 7% employment, labour law and social security; 6% justice, freedom and security, 5% enterprise; 4% health and consumer protection and 4% agriculture.

It is clear that larger Member States have a tendency to receive more files, given that they have a higher number of citizens, business and civil society interests. Some Member States have only so far had to treat a small number of files. At this stage, feedback received from the Member States has been largely positive. Member States particularly highlighted the contribution that EU Pilot can make to enhancing communication with the Commission, thereby leading to quicker and better responses to inquiries and complaints. At the same time, the Member States pointed to the need to improve further the concrete functioning of the system (e.g. by clarifying its scope and the rules for the handling of the files by the Commission).

The overall evaluation of Commission is that the issues raised in the overwhelming majority of these files have relevant content which merits a response. The initial evaluation of the success rate has been high with the Commission services considering that 85% of responses provided by Member States were acceptable allowing the file to be closed. Some files did proceed to the infringement phase, resulting by beginning of February 2010, in 40 infringement proceedings either already launched or being prepared following treatment in EU Pilot. Concerning the treatment of the files received, there has been a very low level of refusal of files by Member States (3%) mostly linked to insufficient information transmitted by the complainant. Nearly 67% of files received a response from the Member State within ten weeks, with an average of 73 days. No timeframe was set for the work of the Commission services following-up on responses given by Member States, but around 40% were completed within a further ten weeks, with an average of 109 days.

The Commission has an initially positive perception of the functioning of EU Pilot and the way in which most files have been treated. EU Pilot has started to contribute to make a positive contribution to Commission / Member State co-operation to produce results on issues of application of EU law within reasonable timeframes. At the same time, the efficiency of the

system could be improved further through increased communication and co-operation on the individual files and shortening of the average time taken to process the files.

3. FURTHER ANALYSIS AND DEVELOPMENT OF EU PILOT

Commission services and Member State authorities have developed a clear understanding of the technical platform and are operating it efficiently. There are aspects that can be clarified and improved, to facilitate its use. Many developments are already programmed.

The nature of the files introduced to EU Pilot is generally considered to be relevant to the scope of application of EU Pilot and raising issues justifying attention. At the outset it was not clear for some Member States that the project would cover own-initiative files introduced by the Commission services as the project was essentially designed to deal with issues raised by citizens, business and civil society interests. However, this issue has been discussed and broad agreement has been reached on the advantages of using the system for all such kinds of communication between the Commission services and Member State authorities. For particularly complex cases, exchanges through EU Pilot could be complemented through expert meetings.

There has been confirmation of the value of a more consistent use of EU Pilot by Commission services. Without prejudice to other mechanisms established by EU law, this means that all files should be entered into EU Pilot so that the factual or legal position can be clarified. However, where urgency or another overriding interest requires the immediate launching of an infringement procedure, exceptions may be authorised. In many cases this will ensure that questions are answered or a solution is found to a problem more quickly than through infringement proceedings thereby ensuring improved information exchange and tracking of files. Where, as now, the Commission service considers it useful to send an administrative letter before any formal step is taken, a form will be provided to be completed in EU Pilot and sent through the system as the sole means of communicating this information. This would replace regular practice of Commission services to send administrative letters and ensure a more consistent and general practice of recourse to EU Pilot. It would provide at least a short period of consultation with Member State authorities to find a constructive solution more quickly than would be possible through an infringement proceeding. Use of EU Pilot does not preclude the discretion to use additional contacts to ensure further follow-up on files in EU Pilot. It does guarantee that Member States would at least be consistently informed of the likely launch of infringement proceedings, without requiring any delay in the initiation of those proceedings. This would always be done, unless urgency requires immediate formal action, thereby confirming the continuing mutual commitment to seek the earliest possible resolution of all issues at whatever stage in the process to reinforce the correct application of EU law. This would bring benefits for citizens, consistency and efficiency in the organisation of this work for both Member State authorities and Commission services.

The Commission services are also working to ensure that the issues raised in EU Pilot are always introduced on the basis of the clearest possible explanation of the issues, thereby adding the interest and authority of the Commission to issues raised by the citizen. This facilitates the work of Member State authorities to ensure that their responses also provide clear explanations and solutions targeting the key issues. Member State authorities are committed to ensuring that issues raised are well-targeted by the responses provided.

The question has arisen of the languages to be used for communication to and from Member States and with the citizens, business or civil society interest groups concerned. It is recognised that texts can need to be translated at one or other moment in the process. The Commission is committed to ensure that the system works as effectively as possible, taking account of relevant rules and procedures and the varying use of languages possible in different administrative contexts. The Commission will ensure translation for its own purposes and where necessary to support Member State work.

EU Pilot envisages direct communication of Member State authority responses to the final addressee whenever appropriate to simplify and shorten the time taken to process files dependent on the particular context and issues raised. Moreover, some Member States consider that it is generally more appropriate for the Commission to respond to correspondence which has, in the first place, anyway been addressed to the Commission. This also ensures that the correspondent receives all elements of the response, containing elements provided by the Commission services and the Member State authorities, at the same time. Therefore, the response to the correspondent can be sent out via the Commission services unless the Member State considers a direct response appropriate. Either way, the correspondent will always receive an evaluation by the Commission services of the response of the Member State authority.

In undertaking this first evaluation of the functioning of EU Pilot, a first attempt has been made to categorise files according to their content. The purpose is to try to identify if different kinds of file needing to be processed in different ways and to see if a standard method can be designed by which to evaluate how much time seems appropriate for the processing of different kinds of issue. The further examination of this question will form part of the ongoing work on the project. This approximate breakdown of the files indicates around 60% identifying a possible practical difficulty perceived by a citizen or business arising in the context of the application of EU law, 25% raising a possible infringement of EU law, 15% concerning enquiries on issues linked to the exercise of rights under EU law and 2% constituting simple requests for information or explanations.

The ten week benchmark set for responses in EU Pilot is recognised as providing a general reference for the processing of responses by Member State authorities. This is because the nature of the issue raised and the action required to deal with it can vary greatly, as the widely varying length of time taken on different files which have passed through the system has confirmed. Many issues should be capable of a response far more quickly than ten weeks, while others may require longer. The Commission services sometimes request a response in less than ten weeks, for reasons to be explained in the request. Overall performance is measured against the ten week benchmark. The time taken by Commission services in evaluating responses and informing the final addressee of the conclusions reached is clearly an important element in the speed of processing of files, even more so when the Member State response and the Commission services' evaluation is being communicated to the final addressee by the Commission services. A benchmark of ten weeks is therefore recognised as providing a general reference for the Commission services' assessment of Member States' responses on the same basis as described above for Member States. Respect for these benchmarks will ensure that the first formal step in the management of such files, that is either the sending of a letter of formal notice or the closing of the file, can often be taken within six months, well ahead of the twelve months so far targeted for the initial processing of complaints leading up to the sending of a letter of formal notice or the closing of the file.

Overall, Member State authorities and the Commission services have devoted considerable time and effort to getting this project up-and-running and ensure its initial operation. There has been very good collaboration between the Commission services and Member State authorities both bilaterally and collectively. Much attention has been paid to reviewing the progress and outcome of files and the general functioning of the system. There is widespread support to continue to use and develop this working method and interest in the participation of other Member States.

4. GENERAL CONCLUSIONS

The evaluation of the Commission of the functioning of EU Pilot so far has shown that:

- The start-up of EU Pilot has been successfully completed and the project is beginning to make a positive contribution to cooperation between the Commission and participating Member States in answering enquiries and resolving problems of citizens, business and civil society interests;
- An important achievement of EU Pilot is to have created an active network of contact points in Commission services and national authorities. This is reinforcing oversight of the management of enquiry and complaint files and increasing co-ordination and cooperation between the Commission and the Member States;
- An open and collaborative relationship between the Commission services and participating Member State authorities has been evident in the development of the project and its early operation;
- The system has started to produce positive results while there are also many aspects which can be further developed to improve the functioning of the system, increase understanding between the Commission services and participating Member States and improve the speed of the processing of files and results achieved;
- The Commission and participating Member States are committed to continuing to work on improving the processing of files through EU Pilot and improving the working methods involved in EU Pilot; and
- EU Pilot should continue to be used and developed with as wide as possible participation of Member States to broaden and strengthen its application.

The Commission intends to invite those Member States not yet participating in EU Pilot to join the project, to broaden its application, extend its impact and strengthen its further development.

A further evaluation of the functioning of EU Pilot is planned for 2011.