Opinion of the European Economic and Social Committee on ‘How to improve the implementation and enforcement of EU legislation’

(2006/C 24/13)

On 10 February 2005, the European Economic and Social Committee, acting under the second paragraph of Rule 29 of its Rules of Procedure, decided to draw up an opinion on How to improve the implementation and enforcement of EU legislation.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 27 July 2005. The rapporteur was Mr Joost van Iersel.

At its 420th plenary session, held on 28-29 September 2005 (meeting of 28 September), the European Economic and Social Committee adopted the following opinion by 90 votes to six with 12 abstentions.

Implementation and enforcement

Executive summary

In this opinion the EESC argues that better lawmaking and implementation and enforcement are closely linked: a good law is an enforceable and enforced law. The Commission, the Council and the Court of Justice regularly address application problems. The follow-up, however, is limited. This has to do with different cultures and responsibilities and varying degrees of involvement in effective implementation across Europe. The EESC distinguishes different sets of actions to be taken by the Member States and the Commission. For the Member States it is primarily a matter of political will. The attitude of national administrations has to reflect that they themselves are the EU and that they invest accordingly in the Union’s decisions. This implies changes in specific approaches such as guaranteeing administrative capacity, screening domestic rules and procedures, abstention from gold-plating and cherry-picking and improvement of information. As for the Member States, a systematic discussion between relevant authorities across the EU is desirable, as well as ex-post evaluations and accountability of national administrations towards counterpart authorities in other Member States. Involvement of subnational authorities with autonomous legislative powers is also required. The EESC advocates an active role of the Commission in promoting confidence between enforcement authorities in supporting networks of public authorities, the systematic assessment of their performance and the identification and spread of best practices. Extension of existing training programmes for judges and public administrations is to be considered. Some of the proposals discussed in this opinion are under discussion within the Commission and some changes are in the process of being put into practice by Member States. Currently, however, the overall picture of implementation and enforcement shows serious deficiencies. The European Parliament and the national Parliaments should be committed as well. In the EESC’s view a cultural change is required, including a shift from increasing new EU law to an emphasis on effective application, thus ensuring that agreed EU law and policy attains its full effect. This will contribute to a well functioning EU of 25 Member States and beyond, ensuring its necessary cohesion.

1. EU law as basis of European integration

1.1 A well-functioning internal market with appropriate standards of social — and in particular worker — protection, consumer protection and environmental protection is at the core of European integration. It legitimises integration by generating significant benefits for citizens and businesses.

1.2 The EU is based on the rule of law. It strengthens the foundations of the internal market and prevents any discrimination on the basis of origin or nationality of products, persons or companies. Effective application of EU law boosts public confidence in European policies and processes and makes the EU more relevant to the concerns of citizens and businesses. This implies however a timely and correct transposition of EU law at national level.

1.3 Moreover, European legislation that aims to remove barriers of any kind to creating a level playing field, must be applied promptly and coherently across the EU and enforced effectively by all relevant authorities: national and regional.

1.4 The internal market functions properly and becomes a source of growth and prosperity only when there are no discriminatory or covert barriers to citizens or businesses, including cumbersome or lengthy administrative procedures. Numerous complaints lodged by citizens and businesses every year result from national measures which often tend to be too restrictive, or too complex and disproportional (1). This is partly due to so-called gold-plating, which takes place during transposition of EU law into national law. Gold-plating adds national regulations which may obfuscate the objectives of the EU.

(1) The results of a questionnaire on possible shortcomings and deficiencies in implementation and enforcement in the Member States, carried out by the EESC, are summarised in Appendix B.
1.5 Better lawmaking is an integral part of the Lisbon Agenda. The European Council Conclusions of 22-23 March 2005 acknowledged explicitly the positive contribution of an improved regulatory environment to competitiveness. So did the Competitiveness Council on 6-7 June 2005 (7). In this respect it must be underlined that better lawmaking and implementation and enforcement are closely linked: a good law is an enforceable and enforced law.

1.6 For a law to be enforceable it must be sufficiently clear, and to be effective it must provide an appropriate response to specific problems. Where the law is too complex and too vague, for example, because there has not been a proper impact assessment, implementation problems inevitably arise. As a result, additional laws have to be drafted to address these problems. Bad laws lead to a proliferation of laws and excessive amounts of rules that impose an unnecessary compliance burden on businesses and confuse citizens (3).

1.7 In order to ensure that the law is effectively implemented, the authorities must have the essential administrative capacity. Otherwise administrative weaknesses result in implementation and enforcement problems.

1.8 At the same time, effective application of EU law improves competitiveness and facilitates cross-border cooperation, which are two fundamental aims of the Lisbon Agenda.

1.9 The EESC considers that the EU has an implementation and compliance problem. Statistics on the state of implementation of EU law show that Member States experience delays in the timely transposition of directives. Statistics of infringement proceedings reveal that often transposition is incorrect or incomplete. Indeed, 78 % of the cases initiated by the European Commission against Member States during 2002-5 concern transposition and application of directives. This suggests that Member States experience problems in determining the national method of implementation to give effect to directives.

1.10 In various Resolutions the Council has addressed implementation and enforcement problems (4). The Interinstitutional Agreement of 2003 on Better Lawmaking also referred to ‘better transposition and application’.

1.11 In a number of cases the EU Court of Justice has ruled on the obligation of Member States to ensure effective implementation and enforcement (8).

1.12 The Commission has produced several documents elaborating how the Member States could improve their transposition and application performance (9). In its White Paper on Governance, the Commission states: 'ultimately the impact of European Union rules depends on the willingness and capacity of Member State authorities to ensure that they are transposed and enforced effectively, fully and on time' (10). Most recently, its Communication of 16 March 2005 on Better Regulation for Growth and Jobs in the European Union outlined a course of action for improving the Community regulatory framework without excessive administrative costs.

1.13 Since 1985 the New Approach has been increasingly, a very useful tool in enhancing effective harmonisation of standards and regulatory approaches. It creates a stable, lean and transparent legal framework with a system of checks and balances for the authorities by using a great variety of instruments defined in directives, and a major responsibility for manufacturers and third parties. As regards implementation the Commission concludes in particular on the basis of an in depth analysis that ‘experience has also demonstrated that implementation of these directives can be further improved in a number of ways’ (11). This document reveals serious shortcomings.

1.14 In its Second Implementation Report of the Internal Market Strategy 2003-2006 (12) the Commission analyses deficiencies in implementing and enforcing in a great number of fields. It defines also intentions and aims for improvement. Among other things this implies more direct commitment by the Member States and thus political will. The Commission Recommendation on the transposition into national law of directives affecting the internal market (13) identifies certain practices that Member States are urged to adopt. Chief among such practices are the assignment of monitoring and coordinating responsibility to a single Minister and Ministry, the establishment of a national data-base on transposed directives and the encouragement of close cooperation between national officials who negotiate in Brussels and officials who implement national measures.

1.15 ‘Scoreboards’ on implementation show shortcomings in formal transposition. But, notwithstanding these signs of attention by the respective European Institutions, the way in which agreed rules are implemented in national legislation and/or regulation has not received systematic scrutiny

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(1) In point 11 of the Conclusions the Council ‘invites Member States to redouble efforts to reduce transposition deficits and to consider to undertake a screening of domestic legislation for compatibility with EU rules ...’.

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(3) It is quite justified to refer here to the British Better Regulation Task Force which has published three valuable documents in 2003 and 2004 on national and European law making, including implementation. The analyses and the recommendations underline amongst other things the need of clarity and effectiveness of law making in order to make the necessary interaction between the various processes successful.


(6) Commission, WP 02/17, p. 6.

(7) Ibid. p. 21.


(12) Of L 98/47, 16.4.2005
and follow-up discussion in the Council. Whilst different implementation in different parts of a Member State would quickly give rise to public calls for action, different implementation from one Member State to the next is not even on the political agenda.

1.16 Undoubtedly 'Scoreboards' have made the transposition record of Member States more transparent. There are not yet equivalent 'Scoreboards' on application in order to enhance transparency in how national authorities apply EU law and policies.

1.17 Although improvements are discussed, there is still too little awareness and too little commitment by the public stakeholders across Europe in guaranteeing that EU law as the basis for European integration functions correctly. This will only happen if the whole process is duly respected: adoption of directives, transposition, implementation, enforcement. In many cases, the will to implement the whole process consistently may well be lacking. Too. The Commission documents, numerous rulings of the Court of Justice and relevant academic literature provide sufficient sources for the Member States to draw on in improving the fulfilment of their legal obligations.

1.18 Effective application of EU law requires special attention and safeguards in an EU with an increasing number of Member States. The EU’s integration process must not be jeopardised by dilution of the effectiveness of EU rules.

2. Context and developments

2.1 While the EC Treaty provides for a variety of approximation and harmonisation measures to complete the internal market (11), experience in the 1970s and early 1980s has shown that complete harmonisation is a slow, cumbersome and, in certain cases, unnecessary process. Measures based on mutual recognition and home-country control have been easier to negotiate and implement. They have also been more effective in freeing up trade and investment without imposing an excessive compliance burden. However, it has to be noted that the EU has entered a new stage that is characterised by increasing differences in governmental cultures. This may lead to a renewed desirability of regulations in order to attain convergence and the promotion of good practices.

2.2 Despite the shift to new policy instruments, the growth in Community legislation has partly been the natural outcome of the deepening and widening of integration but also partly the result of incomplete or defective implementation by the Member States. New rules have been added to prevent Member States from non-fulfilling their obligations or from making national rules overly complex (12). An illustrative example is the liberalisation directives adopted by the Commission on the basis of Article 86 (3) in such fields as telecommunication services and telecommunications equipment.

2.3 Given the implementation difficulties experienced in many Member States (13), improvement in the application of EU law requires also concerted efforts by Member State authorities. These have been lacking until now, just as desirable shifts to less interventionist and lighter instruments of policy implementation and regulation are taking place in the Member States.

2.4 The Lisbon European Council in 2000, that launched the process to raise the competitiveness of the Union, introduced the open method of coordination for the purpose of improving implementation and delivery using qualitative and quantitative indicators, benchmarking and best practices. Member States have not yet drawn more systematically and extensively on such best practices in order to improve their own record of policy implementation.

2.5 At the beginning the open method of coordination raised high expectations. So did the aims of benchmarking and best practices. Experience does not justify a positive conclusion. Without binding commitments Member States appear to be unwilling to adapt legislation, not to mention implementation and enforcement.

2.6 By 2004 the ten candidate Member States had integrated the acquis communautaire into their national legislation. This deadline has therefore formally been respected. But changing law does not by itself imply correct transposition. In addition, implementation and enforcement require satisfactory administrative authorities and procedures, which in a number of cases had to be set up on a new footing, because there is a lack of the necessary experience to apply EU rules effectively. Greater cooperation between national authorities and with Community institutions should facilitate uniform application of EU rules across the Union (14).

2.7 Although EU regulation and legislation is directed towards creating common conditions in an open European market, the tools can differ considerably between one area and another. The principle may be the same in all areas, but the degree of integration that is aimed at can differ greatly. This leads to less or more strictly Community-based rules and consequently to different outlooks and legal approaches.

2.8 These differences arise from the different objectives of integration between for instance areas such as the internal market and environmental policies, and areas such as social policy and health which are primarily national. The Treaty itself also uses words which are less ambitious as regards public health or education. In these policy areas the role of the EU is to 'coordinate' and 'encourage' rather than integrate.

(11) Articles 94-97 of the EC Treaty.
defides, From Graphite to Diamond: The Importance of Institutional Structure in Establishing Capacity for Effective and Credible Application of EU Rules, European Institute of Public Administration, 2002 and references cited therein.
2.9 Consequently, the current developments provide a picture of a colourful diversity, in which various legislative instruments at EU level exist alongside each other, in their turn affecting national approaches. Among these are the following:

— EU instruments providing for full harmonisation of legislation;
— EU instruments providing for minimum harmonisation, enabling Member States to adopt stricter rules (which in a cross-border context can be applied only subject to a mutual recognition test);
— ‘new approach’ directives, aiming at establishing essential requirements that must be met by products in the EU market;
— EU legislation based on a ‘country of origin’ principle;
— framework directives, leaving considerable discretion to Member States as regards implementation;
— recommendations which can be translated into Member States’ law;
— decisions.

2.10 This broad set of Community-based instruments that require transposition, implementation and enforcement in the Member States often gives cause to national and thus different interpretations of what is to be implemented and enforced at national level and how this is to be done.

2.11 The practical impact of the model as it operates at present takes into account in varying degrees the following elements as far as the Member States are concerned:

— different national legal cultures and systems;
— diverging responsibilities within national administrations and within ministries;
— specific regional and local competences in the Member States;
— influence of national lobbies — political, socio-economic and societal;
— domestic needs/desirabilities, leading to gold-plating and cherry picking;
— financial and organisational resources to implement correctly.

2.12 The EU approach, of course, respects the diversity of Member States and their rich administrative traditions, legal cultures and political systems. This is even a question of principle. However, the varying traditions and cultures must be able to guarantee effective application of EU legislation so that distortions or discrimination are avoided. The extension of competences of the Union and the ongoing enlargement underline the complexity of this task.

2.13 As for the Commission, some specific compelling elements which have effects on the final outcome include:

— imprecise use of technical and legal language (including translation problems) when legislation is drawn up;
— varying degrees of using more or less binding legal instruments, as a consequence of decisions by the Council;
— varying degrees of involvement in implementation and enforcement within the Commission; there are important differences between the DGs;
— sometimes a lack of clarity about the prerogatives of the Member States and/or the prerogatives of the Commission because of the impact of subsidiarity;
— sometimes a lack of sufficient personnel in the Commission;
— linguistic problems (in carrying out surveillance in the new Member States);
— significance and impact of infringement procedures.

2.14 Together with the growth in Community legislation there has been a corresponding increase in non-legal instruments and processes whose aim is to induce Member States to implement EU law in a timely and correct manner, such as the regular reports and Scoreboards on the transposition record of Member States.

2.15 In addition, the Commission has undertaken several actions to inform citizens and business of their rights and encourage them to exercise those rights before national authorities and in national courts. For example, the contact points for citizens and businesses and SOLVIT Centres aim to identify and resolve difficulties experienced by persons and companies that move to or operate in Member States other than their own.

2.16 The latest report on the cases dealt with by SOLVIT Centres shows that over 50 % of all problems concern recognition of professional qualifications, market access for products, motor vehicle registration and residence permits. Although 80 % of cases are resolved successfully, these statistics also indicate that the problems are not new or novel. Citizens and companies experience difficulties largely because of bureaucratic procedures and the unwillingness of national administrations to streamline their requirements. Moreover, despite the success of SOLVIT Centres, 20 % of the problems are not solved. The Member States should act in such a way that this percentage goes down and that the national SOLVIT offices and the European SOLVIT network become better known to the public — businesses and citizens alike.

2.17 The enlargement of the Union is also a challenge. Increase in membership cannot be managed without a corresponding strengthening of consultation and surveillance procedures.
2.18 This strengthening of consultation and surveillance procedures has been most evident in the most recent enlargement and in the parameters agreed at the Brussels European Council of December 2004 concerning the forthcoming enlargements. Prospective Member States will be subject to closer scrutiny by the Commission and will be expected to have implemented a larger proportion of the acquis communautaire before they enter the EU. They will also be expected to complete more quickly any transitional arrangements they may be granted.

3. Need for reflection

3.1 Effective implementation and enforcement are of crucial importance to citizens and companies. They are an integral part of the rule of law. The often diverging interpretations of commonly adopted legislation raise questions among businesses and citizens, such as: where to go to complain? Who is in charge? what to do in the short term? More fundamental is the question: to what extent does ineffective implementation lead to delay or change of investment patterns and to lack of trust among citizens? These questions have to do with legitimacy, coherence and predictability of EU policies. Continuation of the present unsatisfactory pace of transposition and implementation can no longer be tolerated.

3.2 The great complexity and the confusing developments in carrying out correctly approved directives at EU level demand an overall SWOT-analysis of the system as it functions: Where do we stand? What about the causes of the problems? What challenges are Member States facing? What are the Member States aiming at: what is the desirable relation and interaction between subsidiarity and EU monitoring? In other words: who is in charge of measuring what, and what are the criteria? To what extent do the legal instruments and the current practices correspond with the objectives of European integration? How are the EU and the Member States going to respond to the complaints of companies and citizens about the incomplete and sometimes counter-productive way of transposing, implementing and enforcing EU rules in national regulations and practices?

3.3 In addition to discussions on improvements in Member States, these intriguing questions have to be put to endorse a broad and open debate between policy makers and officials as well as the private sector and civil society on desirable adaptations in procedures and practices in the EU and in the Member States. It must raise awareness about the impact of correct transposition, implementation and enforcement for all agreed EU policies.

3.4 It is necessary to reflect on the impact that future enlargements will have on the coherence and uniform application of Community law across the EU. The EU should also consider how to avoid a situation whereby a Union of 27 or more Member States with ever greater diversity may itself lead to certain barriers to trade, investment and establishment.

3.5 There are various views on the problem of solving misapplication of EU law which, from a political perspective, is related to tensions between subsidiarity and a Community approach. There is the view that, while fully accepting the responsibility of Member States to implement EU law, the Commission should keep a close eye on it. A second approach is based on subsidiarity: give free room to the Member States and let everybody deal with their own problems. A third possibility is that Member States take greater ownership and more responsibility, with Member States holding each other to account and the Commission keeping a close eye on compliance, and assertively using its legal powers, when necessary.

3.6 As the guardian of the Treaties and as the initiator of legislation, the Commission plays an important role in ensuring the proper functioning of the internal market. It has a responsibility to propose simple and enforceable legislation that remedies problems in the internal market without imposing excessive costs on the Member States and businesses. Indeed the Commission has made serious efforts during the past couple of years to simplify legislation and to measure the impact of proposed legislation. At the same time, the Commission needs to act quickly and resolutely to end infringements. The Commission should consider how to expand the recommendations it made in 2004 (see above) on timely and correct transposition to also cover the stage of implementation and enforcement.

3.7 As co-owners of the Union, Member States have a duty to act loyally towards the Union, fulfil their obligations, facilitate the achievement of the tasks of the Community and refrain from jeopardising the objectives of Article 10 of the EC Treaty. To be clear: the attitude of the Member States has to reflect that they themselves are the European Union, and that they invest accordingly in the Union's decisions (*).

3.8 The European Court of Justice has clearly ruled in numerous cases that Member States may not plead in their defence the existence of any internal administrative difficulties in order to justify incomplete or improper implementation of Community legislation. These rulings may help to improve proceedings to be foreseen for the future.

3.9 It will also be necessary to reflect on the kind of legal and non-legal instruments and procedures that will be the most appropriate in guaranteeing effective policy implementation in a Union with more than 30 members.

3.10 The results from the use of non-legal instruments and procedures have been rather mixed. Despite its promising start, the open method of coordination does not appear to have been successful. By contrast, SOLVIT Centres have resolved 80 % of the problems they have had to deal with.

(*) An analysis of the negative outcome of the referenda in France and the Netherlands shows to what deceiving extent public opinion and some politicians (!) still qualify the relationship between a Member State and 'Brussels' in terms of 'we' and 'they'.
3.11 The Competitiveness Council, in its March 2005 Conclusions, invited the Member States to screen domestic legislation for compatibility with EU rules in order to remove market barriers and open up competition. The European Parliament has also recognised the merits of having national administrations monitor compliance with EU rules in their countries. Screening is a practical way to identify, and remove, barriers to trade, whether they stem from incorrect implementation, a lack of proper enforcement of EU law, or simply an administrative practice that is not in line with EU requirements.

4. Conclusions and recommendations

4.1 General

4.1.1 The EESC considers implementation and enforcement of legislation to be inextricable elements of better lawmaking, and therefore a political priority (16). This is as yet not the case, notwithstanding a changing approach in some Member States and within the Commission that paves the way to the future. Legislators have often insufficiently taken into account the implementation and enforcement requirements. Consistent impact assessments for better lawmaking have also to take into consideration how legislation should be developed and how it has to be enforced. The whole process is a prerequisite for a level playing field and for the legitimacy of the EU.

4.1.2 As a matter of principle, it falls primarily to the Member States to ensure proper implementation and enforcement of EU law. The Commission's role, as guardian of the Treaties, is to make sure that Member States actually fulfil their responsibilities. Any shortcoming can be addressed by the Commission through infringement procedures or other means deemed appropriate to solve a problem of misapplication of EU law.

4.1.3 As a consequence of the Interinstitutional Agreement of 2003 the Council is currently deliberating better regulation and legislative simplification. The EESC considers that sufficient attention should be given to improved application of all EU rules, not just directives, to be enforced by Member States.

4.1.4 The EESC considers that the Competitiveness Council with its commitment to the Internal market, core of the integration process, should be the natural partner of the Commission at EU level, in discussing implementation and enforcement.

4.1.5 A very important and often decisive aspect is that the domestic administrative arrangements of the Member States are outside the scope of the Treaties. Nonetheless, it follows from Article 10 of the EC Treaty and the case law that national authorities must ensure a proper implementation and enforce-

4.1.6 For too long the emphasis has lain on introducing new EU regulation. The EESC agrees with the Commission that in an EU of 25 Member States the focus ought to be on implementation and enforcement of existing legislation rather than on adding new regulation. New Community legislation will not be an attractive option because it will require considerable investment in time and resources. Similarly, exclusive reliance on legal proceedings to force Member States to remedy problems will also take much time and will absorb scarce resources. What is needed, rather, is a change of culture, whereby the focus within the Member States and in the Commission shifts from new regulation to implementation and enforcement, thus ensuring that agreed EU law and policy attains its full effect. This is not to say, of course, that the emphasis on implementation and enforcement can serve as an alibi for not legislating in areas in which new legislation is still required.

4.1.7 Screening of existing and already implemented EU law — see also experience in Denmark — will be helpful in the process of better lawmaking. This is an illustrative example of the interaction between simplification and improving implementation and enforcement.

4.1.8 As regards alternatives, i.e. self-regulation and co-regulation (17), there has to be a case-by-case examination of where these would work and where they would not. Notwithstanding the need to encourage self-regulation and co-regulation initiatives, their viability must be tested in the process of concrete application.

4.1.9 In the EESC's view it is also obvious that the increasing difficulties with implementation and enforcement processes at national level have to be addressed and resolved through closer cooperation between national and Community authorities.

4.1.10 The EESC considers that such an intensified cooperation also serves the objective of avoiding superfluous Community legislation which is unlikely to be the right course of action towards national implementation procedures. These are too slow and cumbersome and often seek to apply national policy objectives through disproportional means.

4.2 Member States

4.2.1 The EESC considers that Member States should continue to enjoy discretion in determining their own implementation methods and procedures. These methods and procedures could also be addressed by the Member States and the Commission in their impact assessments.

(16) This consideration is perfectly in line with remarks in EESC's Opinions since 2000 on updating, simplifying and improving the acquis communautaire and the regulatory environment.

4.2.2 In the view of the EESC and irrespective of the methods or procedures Member States choose to implement EU law or national law that affects the functioning of the internal market, the results must be similar across the EU. Moreover, the results must give real effect to EU primary and secondary law.

4.2.3 When speaking about Member States, the EESC view is that involvement is also required of sub-national authorities with autonomous legislative powers and/or implementing responsibilities (e.g. Länder, provinces, regions).

4.2.4 The EESC considers that the next step in the cooperation between EU institutions and national authorities in the implementation of EU law and policies is strengthening or streamlining of national administrative capacity for policy application, as is currently being discussed in some Member States.

4.2.5 Administrative capacity is a matter of 'common concern' and Member States must make clear that implementing and enforcing authorities possess such capacity at high level. For the EESC this implies amongst other things a close cooperation between the negotiators in Brussels and the legislative bodies within the national administrations.

4.2.6 One specific approach which the EESC has noted is the practice of national regulators in certain areas such as telecommunications. National regulators respect at the same time common European rules and national surveillance. These practices have also to be scrutinised.

4.2.7 Member States are to be stimulated to screen domestic rules and procedures (as some Member States, such as Denmark, are presently doing). Implementation problems often arise because national rules and procedures are not sufficiently attuned to the large European market.

4.2.8 A particular way of implementing EU law is gold-plating and cherry picking. The EESC considers that a general rule could be introduced whereby Member States, in notifying national implementing measures, justify formally with transposition tables to the Commission that these are in complete and full conformity with Community law.

4.2.9 It may be desirable that Member States provide more and better information about rights and obligations both within their own administrations and to the general public. Lack of adequate information is often a reason for non-compliance. The EESC considers that national sanctions for non-compliance by citizens or companies might be considered.

4.2.10 At the moment, consultations on transposition and application are essentially limited to bilateral contacts between governments and the Commission. More interaction and flexibility are required. The impact of multilateral discussions in groups of national experts which are already taking place in view of transposition and implementation should be reinforced. Systematic and deliberate discussion between all relevant authorities across the EU in any given policy field is needed on the results that are achieved and on the experience of Member States. Ex-post evaluations are desirable.

4.2.11 In bilateral contacts between Member States, consideration should be given to exchange of officials along the lines of the successful ‘twinning projects’ that greatly assist new Member States and candidate countries.

4.2.12 Ex-post evaluation of directives and applied EU law has to be carried out systematically. As consultation is crucial for better lawmaking, similar procedures have to be foreseen for the process of ex-post evaluation (\(^{19}\)). The original legislative bodies should not be responsible for such evaluations, which may also include the future need and relevance of certain rules.

4.2.13 The EESC considers that discussions will lead to systematic identification of best practices that can be adopted by authorities across the EU. Where legal or administrative differences between Member States prevent adoption of identified best practices, national authorities should have to demonstrate how their own method or procedure leads to similar results as in other Member States with best practices. One such good practice pursued in some Member States consists in a ‘priority rule’. As a basic working principle, the transposition of EU legislation has priority over the implementation of legislation of a national nature.

4.2.14 National authorities are normally accountable to governments or ministers and eventually to parliament. Since the mis- or non-implementation of EU law also adversely affects the interests of the citizens and businesses in other Member States, the EESC considers that the EU may have to develop a new concept of reciprocal responsibility towards counterpart authorities in other Member States (\(^{19}\)).

4.2.15 Member State authorities must explain to their counterparts their administrative practices, formal decisions and other actions related to the implementation and enforcement of EU law, when such practices, decisions and actions are perceived by counterpart authorities in other Member States as preventing the smooth functioning of the internal market.

4.2.16 For the EESC it is important that Member States regularly review the capacity of their implementing and enforcing authorities and the compatibility of domestic rules and regulations as well as administrative practices with the requirements of EU law.

\(^{19}\) The outcome of the EESC questionnaire – see Appendix B – contains examples that stress the need for such ex post evaluations.

\(^{19}\) The UK government has recently established a Panel for Regulatory Accountability. This panel may also contain useful elements for the EU level.
4.2.17 In the process of further enlargement, candidate countries must have transposed the whole of the Community ‘acquis’. For the EESC it is desirable that they have adequate administrative capacity at their disposal to implement it correctly before they are able to join the EU.

4.2.18 The EESC considers that Member States must be prepared to devote greater human and financial resources to promote implementation and enforcement seriously. The Committee points to the striking contrast between the resources devoted to the open method of coordination (officials, meetings, documents) and the difficulties in terms of finances and manpower in many Member States in supporting an important network such as SOLVIT. A positive exception in this respect is for instance Sweden.

4.2.19 There must be particular focus on the operation of the courts, which are specifically responsible for interpreting and directly implementing Community legislation (regulations) and the legislation resulting from its transposition (directives). Substantial difficulties have been encountered in standardising interpretation of these instruments and implementing them rapidly in practical cases. There is therefore a particular need for judges and lawyers to receive training in Community law, especially in the fields of competition, health and consumer protection.

4.3 Commission

4.3.1 The EESC considers that the Commission, apart from its efforts to get better lawmaking within its own services on the right track, also has a role in promoting confidence between enforcement authorities in supporting the networks of national authorities, the systematic assessment of their performance and the identification and spread of best practices. It can contribute through particular tools, such as information systems, to facilitate day-to-day administrative cooperation between officials. In this respect the Internal market Advisory Committee presents a useful platform to the Commission and the Member States. The same goes for an information service on the Internal Market that is planned by the Commission in order to promote cooperation between the Member States.

4.3.2 In addition to the instruments that the Commission has identified in its Communication on Better Monitoring of the Application of Community Law (1) for preventing infringements, the EESC’s view is that it is also important to develop further cooperation between national authorities. The Commission can be helpful in reviewing national practices — even when these have not given rise to formal infringement proceedings — by facilitating problem-solving and by promoting best application practices between Member States.

4.3.3 The EESC recommends that the Commission be invited to conduct audits of enforcement structures in the Member States — possibly relying on a neutral partner — and to report regularly on implementation and enforcement in the form of Scoreboards.

4.3.4 EU-funded training programmes based on national studies and experiences, bringing together practitioners from across Europe, need to be stimulated. The recent Commission-sponsored training of judges in the field of competition has yielded positive results. Such training programmes for judges in the lower and regional courts as well as for public administrations must be extended to all relevant fields, as required knowledge is still often lacking. Attention could also be given to the role of the Ombudsmen.

4.3.5 The Commission should actively look for alternatives to formal legal action, which often tends to be too slow for the complainant. 50 % of the infringement procedures last more than four years! Alternatives include package meetings and instruments such as SOLVIT. The Commission might consider making the outcome of package meetings public.

4.3.6 The preoccupation should be to identify the most appropriate measure to achieve the policy outcome desired. In specific cases and to serve reliable outcomes in the Member States, the Commission might consider presenting proposals for a regulation instead of proposals for a directive. More generally, the Commission should take into account problems that may arise from diverse national implementing procedures.

4.3.7 In the Committee’s view, the Commission must be equipped with the necessary competences and resources to carry out its traditional task of overseeing implementation of EU law and its new tasks of facilitating the identification and spread of best practices. The EESC welcomes the internal audit the Commission intends to carry out in 2006 in order to assess its existing procedures and working methods in this field.

4.3.8 The Commission should be encouraged to streamline its surveillance efforts of implementation and enforcement. This may require more resources within the Commission as well. In this respect a greater coherence between the approach of the different DGs is needed.

4.4 Good governance and society

4.4.1 For the EESC, reporting, consulting and surveillance of implementation and enforcement must not be limited to administrations and officials. The European Parliament and also the national Parliaments should be committed to the same processes. The EESC welcomes the initiative, recently taken by the European Parliament, to put implementation and enforcement on its agenda. This initiative will certainly contribute to raise badly needed political attention for this subject.

4.4.2 As part of the better governance initiative, the Commission undertook to consult widely (21). The same was expected from the Member States. Certain secondary legislation such as regulations on competition or directives on telecommunications requires that national authorities consult interested parties before they adopt any measures. Some Member States have a tradition of public inquiries as a means of supporting their policy formulation and assessment. Most Member States carry out some form of impact assessment concerning financial or environmental effects. Impact assessment has both a consultation stage and an evaluation component. In the EESC's view, such consultations and evaluations, which in essence identify the needs of citizens and businesses and then the policy effects on them, improve understanding of policies, strengthen their legitimacy and prepare the ground for policy improvements.

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4.4.3 Because of the complexity of these processes good governance implies explaining across the whole of Europe that, notwithstanding ‘subsidiarity' and specific administrative traditions, governments are bound to carry out what they have agreed upon at EU level. This means also that besides the Commission and the Member States, input from the private sector and civil society is most welcome to promote improvement and best practices.

4.4.4 In the EESC’s view, a well balanced publicity is required as soon as the Commission and the Member States have developed concrete ideas about presenting implementation and enforcement as an integral part of better lawmaking.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate:

Point 1.2

Amend as follows:

‘The EU is based on the rule of law. It strengthens the foundations of the internal market and prevents any discrimination on the basis of origin or nationality of products, persons or companies. Effective application of EU law under strict compliance with existing social, consumer and environmental protection standards boosts public confidence in European policies and processes and makes the EU more relevant to the concerns of citizens and businesses. This implies however a timely and correct transposition of EU law at national level.’

Reason

Only an internal market governed by the above principles will ensure the desired outcome for the majority of the population. Recent referendums (on the EU treaty in France and the Netherlands) and surveys (Eurobarometer) have shown that people clearly want policies that they can broadly identify with.

Voting:

For: 43

Against: 45

Abstentions: 7

Point 2.1

Amend as follows:

‘2.1 While the EC Treaty provides for a variety of approximation and harmonisation measures to complete the internal market (1), experience in the 1970s and early 1980s has shown that complete harmonisation is a slow, cumbersome and unnecessary process. Measures based on mutual recognition and home-country control have, in some cases, been easier to negotiate and implement. They have also been more effective in freeing up trade and investment without imposing an excessive compliance burden, but the universal application of the country-of-origin principle requires first of all that the proper conditions be put in place for that purpose by pursuing a differentiated approach in each individual sector, with priority given to the harmonisation of employment, consumer protection and environmental standards at a high level. This is the only way to ensure that the internal market as a whole — when completed — is of an appropriate standard, and also reflects the call made by the EESC in its February 2005 opinion on the services directive (2). However, it also has to be noted that the EU has entered a new stage that is characterised by increasing differences in governmental cultures. This may lead to a renewed desirability of regulations in order to attain convergence and the promotion of good practices.’

Reason

After the long discussion when drawing up the opinion on the services directive, which eventually resulted in the above consensus, it would be inappropriate to query the harmonisation of provisions in relation to this one. Incorporating the results of that discussion here not only improves consistency between the EESC opinions, but is also a useful factual addition to the current theme of harmonisation.

(1) Articles 94-97 of the EC Treaty

(2) CESE 137/2005.
Voting:
For: 44
Against: 48
Abstentions: 9

The following text of the section opinion was rejected in favour of an amendment but received at least a quarter of the votes cast.

**Point 1.1**

‘1.1 A well-functioning internal market is at the core of European integration. It legitimises integration by generating significant benefits for citizens and businesses.’

Voting:
For: 38
Against: 44
Abstentions: 10