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**23rd ANNUAL REPORT FROM THE COMMISSION**  
**ON MONITORING THE APPLICATION OF COMMUNITY LAW**  
**(2005)**

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Each year the European Commission draws up a report on the monitoring of application of Community law, in response to requests made by the European Parliament (resolution of 9 February 1983) and the Member States (point 2 of Declaration No 19 annexed to the Treaty signed at Maastricht on 7 February 1992). The report also responds to the requests expressed by the European Council or the Council in relation to specific areas of activity.

## 1.1 Introduction

In exercising its exclusive function as guardian of the Treaties, the Commission ensures and monitors the uniform application of Community law by the Member States pursuant to Article 211 of the EC Treaty. Article 226 EC provides that the Commission can take action against a Member State for adopting or maintaining legislation or rules which are contrary to Community law.

The White Paper on European Governance<sup>1</sup> published by the Commission in 2001 emphasises that the primary responsibility for applying Community law lies with national administrations and courts in the Member States. The primary objective of infringement proceedings is to encourage the Member States to comply voluntarily with Community law as quickly as possible. Furthermore, the Commission has aimed to boost cooperation with the Member States by means of complementary or alternative methods to resolve problems.

The undertaking of monitoring the application of Community law is vital in terms of the rule of law generally, but it also helps to make the principle of a Community based on the rule of law a tangible reality for Europe's citizens and economic operators. The numerous complaints received from citizens of the Member States constitute a vital means of detecting infringements of Community law.

The 23rd annual report, including the staff papers annexed to it - contributions from the Commission's departments (SEC(2006) 1005) and statistical annexes (SEC(2006) 999) - gives an account of the Commission's activities in connection with monitoring the application of Community law in 2005.

## 1.2. Enlargement of the Union and notification of measures for transposal of directives

2005 saw preparations for the enlargement of the Union to include Bulgaria and Romania. The integrated system for electronic notification of national measures for transposal of directives in the 25 Member States was adapted to enable Bulgaria and Romania to meet their pre-notification obligations for the directives included in the "acquis communautaire". Both countries notified the first measures at the end of 2005.

In 2005 the Netherlands and Sweden joined the electronic notification system, while preparations were at an advanced stage in France, the last Member State to join the system.

As a result of the progress made in notifying national transposal measures, in January 2005 an average of 97.69% of measures had been notified by the 25 Member States. This average rose to 98.12% in March, 98.69% in May, 98.78% in July, 98.88% in September and 98.92% in November<sup>2</sup>.

## 1.3 Infringement proceedings

The total number of infringement proceedings initiated by the Commission fell from 2993 in 2004 to 2653 in 2005. By 31 December 2005, 1697 cases out of the 2653 registered were still ongoing. There was a slight increase in the number of complaints registered by the

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<sup>1</sup> European Governance – a White Paper (COM (2001)428).

<sup>2</sup> See the details for each Member State on the Secretariat-General's EUROPA website: [http://europa.eu.int/comm/secretariat\\_general/sgb/droit\\_com/index\\_fr.htm#transpositions](http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_fr.htm#transpositions)

Commission with respect to 2004, from 1146 to 1154. In overall terms, complaints accounted for around 43.5% of the total infringements detected in 2005. The number of infringement proceedings initiated by the Commission on the basis of its own investigations rose from 328 in 2004 to 433 in 2005 for EU 25.

For EU 25, the number of proceedings for failure to notify transposal measures decreased by 29% with respect to the previous year, from 1519 to 1079 cases. This decrease is partly explained by the fact that the 2004 figures related not only to the regular monitoring of failure by EU 15 to transpose directives due for transposal but also to the monitoring of failure by the ten new Member States to notify in respect of the whole pre-accession *acquis*.

The average time taken to process all the infringements in the period 1999-2002, from registration of the case within the specified time limit to the sending of the letter of referral to the Court of Justice under Article 226 of the EC Treaty is 24 months. The average time taken to process cases originating in well-founded complaints and those detected by the Commission's own investigations was 35 months. For infringements originating in failure to notify national measures to transpose directives, the average time was 15 months.

#### **1.4 Implementation of the Commission communication “Better monitoring of the application of Community law” COM(2002)725**

The Commission implemented this Communication specifically by accelerating the analysis and processing of infringements and by more rigorous compliance with the code of good administrative conduct in its dealings with complainants. The Commission combined the basic principle of equal treatment for the Member States with a wide range of non-legislative measures in order to anticipate possible implementation problems. In this context, we would emphasise the implementation of preventive mechanisms to facilitate the transposition of “difficult” directives; systems for notifying drafts of new rules; participation in forums to present guidelines for transposal; reinforced multilateral contacts such as transposition “package meetings”, conferences, seminars and workshops; the setting up of “implementation networks” and bilateral consultation mechanisms to create a “structured dialogue”; and enhanced communication with the public, in particular through the Europa website. There was a considerable increase in the use of SOLVIT to resolve problems and complaints. Inspections continued to play an important role in the area of food, air and maritime safety and the safeguarding of nuclear materials, as well as in the field of the monitoring of the level of environmental radioactivity.

#### **1.5 Infringements relating to petitions presented to the European Parliament**

Petitions to Parliament represent a valuable source of information for detecting breaches of Community law. The statistics show that between one quarter and one third of the petitions are linked, or give rise, to infringement proceedings. Certain matters, such as registration of cars or town planning laws in Spain, have been the subject of several petitions, as well as several complaints.

In many cases the petitions are presented at the same time as a complaint to the Commission. The number of petitions presented varies considerably depending on the field in question, ranging from 10 for the area of enterprise and industry to 179 for the area of environmental protection. The highest number of petitions relate to the area of the environment and the single market.

In the area of environmental protection, a large number of the petitions linked to active infringement proceedings concerned the question of the completion of an environmental

impact assessment. These sometimes concerned motorway, electricity high tension lines or airport construction, sometimes linked to special nature or wildlife conservation areas. In the field of wildlife, other petitions concerned protection of wild birds from hunting in some new Member States, as well as protection of wolves and turtles. A full range of water quality standard issues were also covered by petitions, often identifying particular issues specific to local conditions.

In core areas of the Internal Market, a significant number and wide range of issues were also raised by petitions. As is regularly the case, individual issues of recognition of professional qualifications accounted for a significant number of petitions mostly linked to late transposition of directives. The financial services sector also accounted for a significant volume of petitions largely concerning shareholders' rights, banking and insurance. Even if a significant number of petitions do not give rise to issues falling within the scope of Community law, the procedure allows for explanations to be provided to those concerned. Individual, high profile cases such as "Lloyds" and "Equitable Life Assurance Society" have also been covered as well as problems with crossborder payments in euros. Services more generally constitute another significant area of petitions, including recurrent issues on the installation of satellite dishes. Finally, a range of issues, including some public procurement issues have arisen in petitions concerning urban development laws in Valencia in Spain, which were the subject of a report by the Parliamentary Petitions Committee of 13 December 2005.

This information confirms the volume, variety and importance of the issues raised and also the detailed nature of the work required of the Commission in order to examine, explain and deal with the different questions both in terms of its own authority to bring infringement proceedings and the need to keep complainants and the Petitions Committee informed.

## **1.6 Main developments in each of the areas of Commission activity**

The following are the main developments by area of activity.

**In agriculture**, monitoring the application of Community law concentrated on two main objectives: removing barriers to the free movement of agricultural produce and ensuring that the more specific mechanisms of the agricultural regulations are applied effectively and correctly.

The trend towards removing the traditional barriers to free movement of agricultural produce was reinforced.

In monitoring the application of the specific rules of the common agricultural policy, the Commission paid particular attention to ensuring that the protection of certain geographical denominations in the Community as part of the quality policy with respect to agricultural produce is not undermined by attitudes or interpretations that are contrary to Community law, as in the case of Germany with respect to "Parmigiano Reggiano".

The Commission also reminded Member States of their obligation to send annual reports on all existing state aid arrangements in agriculture.

The Commission was notified of national measures transposing agricultural directives as a result of its monitoring activities.

**In education and culture**, the Commission is aware of the outstanding difficulties regarding the recognition of qualifications. Harmonising the recognition of academic qualifications through legislation is ruled out; harmonisation must be achieved by encouraging policy cooperation and the approximation of systems. In addition, the national authorities must avoid any direct or indirect discrimination on the grounds of nationality.

The Commission dealt with cases relating to the *cost* and *duration* of procedures for recognition of academic qualifications. The charging of overly high costs for recognition of qualifications obtained in other Member States can create barriers to the free movement of students between countries and to their access to education. With regard to the conditions for access to education, Community legislation guarantees equal treatment of national students and students from other Member States as regards access to education (Articles 12, 159 and 150 of ECT). In a previous year the Commission initiated an infringement proceeding against Austria concerning access by Community citizens to Austrian universities, which was referred to the Court in 2004. Austria adopted measures to comply with the Court judgment, which are being analysed by the Commission.

The Commission continues to receive numerous letters from members of the public regarding students' entitlement to maintenance grants, loans, and other matters following the Bidar judgment (C209/03).

**In employment**, the monitoring of the application of Community law as regards the free movement of workers focuses in particular on incorrect application of the EC Treaty and the related regulations brought to the Commission's notice by individual complaints. In other areas (working conditions, health and safety at the workplace and equal treatment for women and men), the main problems giving rise to infringement proceedings concern incorrect transposal measures or failure to notify measures.

With regard to non-discrimination under Article 13 EC, the Court of Justice handed down its first judgments against the Member States in question for failure to notify transposal measures for Directives 2000/43 and/or 2000/78, due for transposal by 2003. These proceedings were therefore pursued in accordance with Article 228 EC. In addition, following in-depth examination of the measures to transpose Directive 2000/43, non-conformity proceedings were initiated against a considerable number of EU 15 Member States.

Another priority was monitoring the application of the Community acquis by the new Member States. The periodic and systematic monitoring process was extended beyond 1 May 2004.

In addition, a detailed examination was made of the national measures taken by the various EU 15 Member States to implement the transitional provisions annexed to the 2003 Act of Accession. Infringement proceedings were brought where appropriate.

By 31 December 2005 the **enterprise and industry** department (single market for products) was responsible for 504 directives and for application of Article 28 EC. The 333 infringement proceedings initiated in 2005 in relation to this legislation (194 relating to directives and 141 to Article 28 EC) accounted for 9.4% of the total proceedings brought by the Commission in 2005. This represents an increase in the number of proceedings handled by the Enterprises and Industry DG over 2004 and 2003 (249 and 218 active procedures, respectively).

As regards directives, as in previous years the largest number of active proceedings were for failure to notify national transposal measures (129, 101 of which were initiated in 2005). The areas most affected were the pharmaceutical and automotive industries. Fifteen new non-conformity cases and ten cases of flawed application were initiated in 2005, compared with six and three cases, respectively, in 2004 and 53 and ten cases in 2003.

As in previous years, Directive 98/34/EC laying down the procedure for the provision of advance information on national draft technical regulations on products played an important role in preventing barriers to the operation of the single market and in facilitating exchanges of information with and among Member States. The number of notifications increased by over 30% in 2005, largely owing to enlargement (the new Member States accounted for almost one-third of the notifications received).

**In the area of the environment**, in 2005, timely and correct implementation of EU law remained an important priority for the Commission. Improving the effective handling of open infringement cases continued to be a priority. However, this is still the Commission department with the highest number of open cases in the Commission. In 2005 it accounted for about one quarter of the total number of open cases concerning non-compliance with Community law<sup>3</sup>.

The reduction in the number of open cases is mainly due to a more rational handling of complaints and infringements. Priority is given to tackling structural problems in Member States through the practice of grouping together cases concerning the same subject matter and launching horizontal cases addressing systemic problems of flawed implementation. Furthermore, as a result of pro-active follow-up through package meetings and bilateral contacts with Member States, a number of open cases have been settled. The decrease in the number of cases will allow the Commission services to focus on faulty transposition of directives, non-compliance with fundamental secondary obligations under Community environmental legislation and systemic problems of flawed implementation.

In order to assist in the handling of complaints and infringements, implementation task forces were set up in 2005 in the Environment Directorate-general. The work of these task forces has resulted in the identification of a comprehensive set of pro-active measures to foster the implementation of nature, air, waste, water, and impact assessment legislation, which are the five areas with the highest number of open cases. These jointly account for around 90% of the total number of complaints and infringement cases in the environmental field.

In **competition policy**, the priorities in 2005 were monitoring the transposal of the Directive on competition in the markets for electronic communications and the transparency Directive (both of which are based on Article 86 EC). As regards individual cases, the Commission handled several complaints relating to Article 86 combined with Article 82 EC.

In the **area of the information society**, the 2002 Directive on electronic communications has three broad objectives in the context of the Lisbon strategy - to create a stable and predictable regulatory environment, to encourage innovation and to stimulate new investment in communications networks and services. As all but one Member State (Greece) had completed transposition, the focus was on monitoring correct implementation. The Commission

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<sup>3</sup> At the end of 2005 the total number of open cases was 3562 for the whole Commission. The environment sector as a percentage of the total number of cases decreased from 27% in 2004 to 22.4% in 2005.

examined in particular the major concerns expressed in the annex to the 2004 Implementation Report<sup>4</sup>. Infringement proceedings concentrated, as a priority, on the transitional regime, the independence and the full range of powers of the NRA, delays in reviewing the relevant markets, the designation of a universal service provider, as well as consumer issues such as number portability, directory services, the single European emergency number (112) and protection against spam.

The main objective of the “Television without Frontiers” directive is to create the conditions for the free movement of television broadcasts within the Union. The Commission has hired an independent adviser, by a public tender procedure, to monitor implementation by the Member States of the rules laid down by this directive on TV advertising.

The Directive on the re-use of public sector information (PSI) pursues three main objectives: to facilitate the creation of Community-wide services based on PSI, to enhance effective cross-border re-use of PSI for added-value services, and to limit distortions of competition in the Community market. As a priority, infringement procedures were launched against those Member States that had not notified national transposal measures in time.

In the area of **justice, freedom and security**, in 2005 the deadlines for transposal by the Member States of two major Directives<sup>5</sup> granting substantial rights to third-country nationals expired. Transposal of a further two similarly important Directives will be due in 2006 (Directives 2003/109<sup>6</sup> and 2004/83<sup>7</sup>). For this reason, in 2005 the priority in the field of immigration and asylum was to offer assistance to Member States in the process of transposal and applying these acts. Another important issue arising from the Hague programme was to efficiently monitor the application of these acts in the Member States. Furthermore, an external study was launched on the monitoring of both application and transposition of Directive 2003/9/EC by Member States.

In **the internal market**, in 2005 the Commission’s objective was to reinforce the political importance of the action taken by it to implement Community law.

As part of the action taken on the Recommendation of 12 July 2004 on good practices concerning transposition<sup>8</sup>, following a letter of 3 May 2005 addressed by Commissioner McCreevy to all the Member States, the Internal Market DG was able to gather information on how this Recommendation had been applied nationally. This investigation revealed that a considerable number of the recommendations issued by the Commission had been translated into concrete measures.

As regards the monitoring of transposal, in 2005 the Internal Market DG examined most of the 1300 national transposal measures notified by the new Member States covering the acquis in force as of 1 May 2004. This substantial work gave rise to 259 new infringement proceedings, only 85 of which are still open.

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<sup>4</sup> SEC(2004) 1535 of 2.12.2004.

<sup>5</sup> Directives 2003/9 and 2003/86, see above.

<sup>6</sup> 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.

<sup>7</sup> 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, 30.9.2004, p. 12.

<sup>8</sup> SEC (2004) 918 final, 12.7.2004.



In 2005 the Internal Market DG also launched a debate on the best way of improving the legal and economic impact of the infringement proceedings brought by it. This debate is based on the first national measures taken since 2003 to implement the 2002 Communication.

In **health and consumer protection**, the Commission monitors the implementation of Community legislation through various actions that take into account the specific features of the different areas.

The integrated approach to food safety aims to assure a high level of food safety, health, animal welfare and plant health within the European Union through coherent farm-to-table measures and adequate monitoring, while ensuring the effective functioning of the internal market.

The Food and Veterinary Office (FVO) plays an important role in monitoring the correct implementation of these provisions. It conducts inspections in the Member States and third countries which export to the EU. It draws up an annual inspection programme, identifying the priority areas and countries for inspection. The programme is reviewed at mid-term to ensure that it is updated and relevant. The inspectors' conclusions and recommendations are included in their inspection reports.

Consumer protection is one of the Community actions aimed at improving the quality of life of European citizens. The implementation of Community policy in this area includes developing Community legislation that defends consumer interests, health and safety in the single market. Another aim of Community action is to set up redress procedures enabling Community consumers to assert their rights without the need for legal proceedings.

Health is an essential priority for the Commission, which therefore strives to improve public health in the EU, prevent human illness and diseases and obviate sources of danger to human health. Most of the directives concerning this area were due for transposal in 2005. The actions taken by the Commission focused on monitoring the adoption of transposal measures.

In **energy and transport**, 622 infringement cases were processed, 247 for failure to notify transposal measures and 375 for incorrect transposal of directives or incorrect application of Community law. There was an increase in the number of infringements, with 314 new cases opened. The Court ruled on 12 infringement proceedings. Transposal of the "energy" directives rose to 97.6%. In the transport area, delays in transposing directives were made up for more slowly, and the percentage of "transport" directive transposed is only 96%.

The ratio of cases of failure to notify to other types of infringement (non-conformity, incorrect application) was reversed. In December 2005 failures to notify accounted for only 29%, while there was a rise of over 100% in numbers of letters of formal notice and of reasoned opinions in non-conformity cases.

In the energy area, the Commission decided to refer six Member States to the Court for failure to transpose into their national legislations one or both of the two 2003 directives on the internal electricity and gas market. These two Directives are fundamental to the opening up of the electricity and gas markets in the EU.

The Commission also stepped up its pursuit of infringements relating to the Euratom Treaty by actions concerning not only radiation protection but also other obligations linked to nuclear safeguards, external relations and the role of the Euratom Supply Agency.

In the transport area, the Commission continued to examine transposition of the first railway package and the correct application of the Eurovignette directive on road pricing.

In air travel, the Commission referred five Member States to the Court for failure to notify measures transposing the 2002 Directive aimed at phasing out the noisiest aircraft at EU airports. The Commission also decided to refer to the Court the four Member States which had not yet established a system of efficient, proportionate and dissuasive sanctions for airlines which infringe the rules or ensured that they were correctly applied in accordance with the regulation offering air passengers reinforced protection in the event of denied boarding and of cancellation or long delay of flights.

Lastly, in maritime safety, the Commission continued to take action against Member States which fail to comply with Community legislation on port State control and on improved availability and use of port reception facilities for ship-generated waste and cargo residues.

In **fisheries**, sustainable management of live maritime resources is desirable in the long term both socially and economically.

As regards application of the rules on conservation of resources, particular attention was paid to compliance with the rules on monitoring of the implementation of technical conservation measures (minimum size of species); the exceeding of quantitative catch restrictions; the notification of certain data on catch and fishing activity; and the use of pelagic driftnets.

The Commission is committed to setting up the Community Fisheries Control Agency<sup>9</sup>, the objective of which is to make the application of the regulations more effective by coordinating Community and national control and monitoring of fishing activities.

In **taxation and customs**, in 2005 numerous new demands of citizens and civil society were registered and analysed. Some new infringement cases were also detected through the Commission's own investigations.

In general there have been major changes in the core business of monitoring the application of Community law in the area of taxation, in which there has been a more pro-active infringement policy particularly as regards new Member States. In spite of the transposition of the existing secondary Community law, there is still a significant number of potential infringements in domestic legislation.

The rapidly developing ECJ case-law in direct taxation has also focused priorities on coherent follow up and implementation of judgments in the different Member States. Monitoring compatibility with the EC Treaty of Member State legislation with regard to dividend payments has also been a key activity.

The screening of the legislation of the new Member States in 2005 resulted in a considerable number of infringement cases for failure to notify national implementing legislation or incorrect application of Community law on indirect taxation (VAT and car taxation). The legislation transposing recent directives was also screened.

**In the budgetary area**, in general the Commission has to follow up all cases where infringements of EC legislation resulted in incorrect or late payment of own resources and other revenues.

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<sup>9</sup> Council Regulation (EC ) No 768/2005 of 26 April 2005 – OJ L 128, 21.5.2005, p. 1.

In the area of **Community statistics**, monitoring the application of Community statistical law was a key priority in the year. The Commission made efforts to improve collaboration and communication with the Member States in order to ensure correct application of the statistical acquis. Most of the cases still under way in 2004 (10 of the 13 infringement proceedings) were closed.

The infringement proceeding initiated against Greece for failure to comply with the obligation to transmit statistics on deficits to the Commission in accordance with Regulations (EC) Nos 3605/93<sup>10</sup> and 2223/96<sup>11</sup> and the infringement of Article 10 of the EC Treaty and Article 3 of the Protocol on the excessive deficit procedure is continuing. The Commission is making efforts to ensure that the Greek authorities have taken the necessary measures to prevent any recurrence of the infringement. The proceeding initiated against Greece for flawed application of Regulation (EC) No 1165/98 concerning short-term statistics is also under way. Most of the missing data to which the infringement proceeding relates have been sent. The Commission therefore considers that Greece is in the process of complying with the regulation in question.

In the area of social statistics, the proceeding initiated against Belgium for failure to submit data on the level and breakdown of labour costs in accordance with Regulation (EC) No 530/1999<sup>12</sup> was closed when the missing statistics were transmitted.

In the area of agricultural statistics, the case against Greece was closed after the Greek authorities submitted the presidential decree transposing Directive 2001/107/CE<sup>13</sup>.

Following enlargement, the eight infringement proceedings initiated by the Commission against five new Member States for failure to notify their national transposition measures were also closed. In the area of statistics on transport of goods by road, the Court of Justice, in its judgment of 21 July 2005<sup>14</sup>, recognised the infringement by Greece relating to *incorrect application* of Council Regulation (EC) No 1172/98<sup>15</sup>.

The key priority of DG **Trade** in the area of application of Community law is to monitor the Member States' respect for Community powers in trade matters. These exclusive powers are firmly established in certain sectors of common trade policy, particularly trade in goods, but the continual development of common trade policy and its gradual expansion into new sectors can on occasion lead to problems with the Member States. However, the ongoing dialogue and close cooperation between the Council and the Commission make it possible to prevent individual actions by Member States in the areas of exclusive competence and enable common positions to be developed in all the areas.

**Regional policy**, like the other structural policies, is aimed at reinforcing the economic and social cohesion policy by correcting regional imbalances. This policy, which is implemented by aid from the ERDF or individual cohesion fund projects, covers diverse actions ranging

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<sup>10</sup> Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community.

<sup>11</sup> Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community.

<sup>12</sup> Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs.

<sup>13</sup> Directive 2003/107/EC of the European Parliament and of the Council of 5 December 2003 amending Council Directive 96/16/EC on statistical surveys of milk and milk products.

<sup>14</sup> Judgment of 21 July 2004, Case C-130/04, *Commission v Greece*.

<sup>15</sup> Council Regulation (EC) No 1172/98 of 25 May 1998 on statistical returns in respect of the carriage of goods by road – OJ L163, 6.6.1998, p. 1.

from co-financing of traditional infrastructures to digital infrastructures and including co-financing of aid to enterprises, innovative projects and environmental projects.

This aid is based on the principle of partnership, i.e. close collaboration by the Commission with the national authorities, taking into account both the powers of the partner and the principle of subsidiarity.

The main objective is to ensure that the national authorities manage the structural funds in accordance with Community law and the rules of sound financial management.

There was a significant decrease in infringement proceedings relating to **enlargement** in 2005 following the accession of 10 new Member States in the previous year. The Commission continued to pursue a case concerning incorrect application of the association agreement with Turkey by a Member State resulting in discrimination against Turkish workers who wished to extend their residence permit.

The more detailed supplementary information on the different areas is contained in the Commission staff paper in the Annex. It is planned to adopt an analysis of the outlook as regards the monitoring of the application of Community law in the second half of the year.