



## **EPC WORKING PAPER No.25**

### **Making Europe work: improving the transposition, implementation and enforcement of EU legislation**

Lorenzo Allio and Marie-Hélène Fandel

**June 2006**

In strategic partnership with the King Baudouin Foundation  
and the Compagnia di San Paolo



With the support of the European Commission

**GROWTH AND JOBS**



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*Foreword by Pavel Telička*

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## **TABLE OF CONTENTS**

<b>Acknowledgements</b>	<b>5</b>
<b>Foreword</b>	<b>6</b>
<b>Introduction</b>	<b>8</b>
<b>I. A critical mapping of TIE in the EU</b>	<b>12</b>
<b>II. Key factors influencing TIE</b>	<b>20</b>
<b>III. Conclusions</b>	<b>23</b>
<b>IV. Recommendations</b>	<b>24</b>
<b>Endnotes</b>	<b>33</b>
<b>Executive summary</b>	<b>36</b>

### **About the author**

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## Foreword

*by Pavel Telička*

European integration is a truly unprecedented project. It has maintained peace across the continent, brought prosperity to many previously underdeveloped regions in Europe, created new opportunities for the EU's citizens and boosted Europe's competitiveness.

While the Union's outstanding achievements are widely recognised by the public, enthusiasm for the project among EU citizens and business is giving way to fatigue and concern about where Europe is heading.

Although many of these concerns have their roots in domestic politics and the failure – in some countries at least – to tackle structural and other problems, the blunt truth is that the confidence of some sections of the public in the EU has been shattered.

Business is also becoming critical of certain aspects of European integration – or rather of the performance of the European institutions and the regulatory environment. These complaints may not always be legitimate, but they cannot be ignored.

At a time when new visions, ideas and political leadership (and the courage and ability to deliver on key issues) are in short supply, people's expectations about the functioning of the EU institutions and improvements in the regulatory environment have understandably – and legitimately – risen.

The current uneasiness that these expectations are not being met is being seized upon by the Union's critics to present better regulation, not in terms of strengthening the regulatory environment in Europe, but as a means of achieving large-scale deregulation, and weakening and loosening the Union. That is what makes the Lisbon Agenda, which rightly identifies the needs and goals for the coming years, so important if the EU is to achieve its ambition of creating a more competitive, knowledge-based economy.

Equally correctly, better regulation has been recognised as an important part of the Lisbon Agenda. That said, there are signs that it has become more a fashionable and popular 'buzzword' that goes down well with the

general public and with business than a genuine concept which is being vigorously implemented.

While the European Commission has addressed a number of important aspects of better regulation and created a basis for future work, it has not managed to create the necessary dynamics inside the institution or to get sufficient support from the Member States for the process. At the same time, the initiative's limited success has undermined business confidence in the exercise.

The strong and growing demand for more progress in this area was one of the reasons why the EPC decided to establish a Task Force on Better Regulation and invited a wide range of stakeholders to take part in its work. Close interaction with the EU institutions has been achieved by having Commission officials present at its discussions as well as through dialogue with MEPs.

In these discussions, overwhelming support emerged for the transposition, implementation and enforcement (TIE) of EU legislation to be the aim of future work, with business and other stakeholders recognising this as the most crucial aspect of better regulation.

This is an issue which has been relatively neglected by the Commission and the Member States so far. However, the Commission and the European Parliament clearly intend to pursue further initiatives in this area, and address issues which should contribute to a significant improvement in the regulatory environment, and thus to a more competitive European economy, in the coming years.

The recommendations set out in this paper, which are based on thorough research and nearly a year's work by stakeholders in the EPC's Better Regulation Task Force, are intended to contribute to the future debate and work on this issue.

The importance of this debate cannot be over-emphasised: better regulation clearly cannot be achieved without serious attention to TIE.

**Pavel Telička is Chair of the EPC's Better Regulation Task Force**

*“Failure to apply European legislation on the ground damages the effectiveness of Union policy and undermines the trust on which the Union depends. The perception that ‘we stick to the rules but others don’t’, wherever it occurs, is deeply damaging to a sense of European solidarity...Prompt and adequate transposition and vigorous pursuit of infringements are critical to the credibility of European legislation and the effectiveness of policies.”*

**European Commission’s Strategic Objectives 2005-2009<sup>1</sup>**

## Introduction

The Lisbon Strategy set the ambitious objective of turning the European economy into “the most dynamic, competitive and knowledge-based economy by 2010”.<sup>2</sup> As part of this, EU leaders acknowledged the need to develop a regulatory framework more conducive to growth and competitiveness in Europe.

Achieving the macroeconomic goals and social objectives laid down in the Lisbon Agenda requires an optimal regulatory environment that both ensures effective market access and a level playing field for businesses, and protects consumers. It was this which gave rise to the ‘Better Regulation’ initiative, cited in both the European Commission’s White Paper on ‘European Governance’ in 2001 and the Barroso Commission’s Strategic Objectives for 2005-2009<sup>3</sup> as a key driver for improving the regulatory environment and thereby boosting growth and jobs.

The Commission has successfully launched a series of specific initiatives designed to achieve this. Its efforts so far have focused on impact assessment, on reducing ‘red tape’ and on simplification, as well as improving consultation and risk-management processes.

While these efforts are laudable and necessary, they have failed to encompass a major element of Europe’s regulatory process: the pressing need to ensure the effective transposition, implementation and enforcement of EU law (TIE). The Commission’s 2002 Communication on ‘Better monitoring of the application of Community law’ was a welcome step forward, but more should be done to follow this up with concrete action.

The reports on this subject debated recently in the European Parliament contributed to pushing the issue up the political agenda.<sup>4</sup> Commission President José Manuel Barroso used the occasion to reaffirm his institution’s

strong commitment to pursue the Better Regulation agenda.<sup>5</sup> Recent European Council conclusions have also stressed the importance of regulatory reform in general, and improving the TIE record in particular.<sup>6</sup>

Today, a majority of all new regulations applicable in the EU's Member States are adopted through the Union's decision-making process. Effective TIE not only safeguards the rule of law in Europe, but also ensures that both companies and citizens can reap all the potential benefits of the Internal Market and other EU policies.

A 'good' law is clearly an enforceable law,<sup>7</sup> and even regulation of the highest quality is useless unless it is properly enforced. Delays or shortcomings in the TIE process substantially affect the functioning of the Union.<sup>8</sup> They hinder the completion of the single market and reduce legal certainty, and thus deter trade, investment and entrepreneurship.

Not only is good TIE vital to the creation and smooth functioning of the Internal Market, but economic reform and social, environmental and regional policies are also largely dependent on the willingness and capacity of governments to implement EU decisions in a timely and effective manner.

In addition, the politics of transposition, implementation and enforcement are important indicators of the shifting balance of power between different levels of governance in Europe.

In recent years, the historic enlargement of the Union to encompass ten new Member States and the major rethinking of the Treaties within the framework of the constitutional process have led the EU to reflect on its nature, scope and functioning as never before in its history. However, relatively little attention has been paid to improving the implementation of EU law.

TIE involves striking a balance between securing the homogeneous implementation of EU law, on the one hand, and allowing Member States to exercise some discretion, on the other. Changes in this balance – through, for example, the introduction of new implementation tools and instruments, the greater use of regulations (which are directly applicable in Member States) rather than directives (which have to be transposed), or of 'soft law' – are therefore important for understanding changes in European governance.

Finally, the TIE process contributes greatly to making European integration a reality. There is, therefore, a serious risk that low levels of implementation or



variations in performance between Member States will further undermine support for European integration.<sup>9</sup>

## **Scope of the report**

This Working Paper is intended to contribute to the ongoing debate on Better Regulation. Its analysis of the application of EU legislation suggests that there are many reasons for non-compliance. These include administrative weaknesses in Member States, poor-quality drafting of legislation, differing bureaucratic and institutional contexts and traditions, political resistance and weak enforcement mechanisms.

The paper concludes with a series of detailed recommendations for improving the process of transposing, implementing and enforcing EU law, focusing on possible changes which do not require amendments to the EU Treaties.

The recommendations focus primarily on European legislation related to the Internal Market and, in particular, the implementation of EU directives.<sup>10</sup> The paper reviews the competences and duties at both Member State and Community levels, as well as the mechanisms currently in place to ensure the transposition, implementation and enforcement of EU law.<sup>11</sup>

## **How our research was conducted**

This report results from an intensive brainstorming and analytical exercise carried out from June 2005 to April 2006. The EPC's Better Regulation Task Force was set up in June 2005 and is composed of major stakeholders (see Acknowledgements). It was assisted in its work by a Steering Group, which was also established in June 2005.

From January to March 2006, the EPC's Better Regulation team conducted a series of interviews with stakeholders, including officials of the European Institutions and advisory bodies, MEPs, Permanent Representations of the Member States and regional representations to the EU, and representatives of business and civil society. In order to ensure frank discussions, these interviews were confidential.

## **Definitions of terms used in this paper**

*Transposition* is defined as the process whereby European directives are incorporated into national law in order to make their objectives,

requirements and deadlines directly applicable in the EU's 25 Member States.

*Implementation* is defined as the process whereby EU law is applied at national and subnational levels.

*Enforcement* is defined as the process whereby full compliance with EU law is monitored and secured, and non-compliance is systematically sanctioned by national and supranational courts.

# I. A critical mapping of TIE in the EU

## I. 1. Provisions enshrined in the Treaties

One of the fundamental assumptions underpinning the EU is that its laws<sup>12</sup> should be “applied with the same effectiveness and rigour as national law”.<sup>13</sup>

Article 10 of the EU Treaties makes Member States primarily responsible for the transposition, implementation and enforcement of EU legislation<sup>14</sup> – a point emphasised in the White Paper on ‘European Governance’ published by the European Commission in 2001. This means that it is up to national courts to uphold rights conferred on EU citizens by the EU Treaties, regulations and directives, with the European Court of Justice (ECJ) providing guidance to national courts on the interpretation of the rules and dealing with cases of non-compliance.

However, responsibility for ensuring “the proper functioning and development of the common market” lies with the Commission. Through the infringement procedure laid down in Article 226 of the EU Treaties, the Commission can initiate a series of formal and informal steps if it detects mismanagement or a failure to apply EU law correctly, or if it receives complaints.

The primary objective of infringement proceedings, particularly in the pre-litigation phase, is to encourage Member States to comply voluntarily with EU law as quickly as possible. Many cases are settled through negotiations between the Commission and the Member State concerned, avoiding the need for court action. The ‘22<sup>nd</sup> Annual Report on the Application of Community Law’ shows that of the 4,489 infringement cases being dealt with on 31 December 2004, proceedings had been launched in 2,681 (59.72%) cases, a reasoned opinion had been sent in 995 (22.17%), and just 454 (10.11%) had been referred to the ECJ.<sup>15</sup>

Suspected infringements are recorded in a single register irrespective of how they come to light. The Commission should decide whether to initiate the formal process by sending a ‘letter of formal notice’ to the Member State, or to close the case, within a year of it being registered. The Member State is given a specified period in which to respond to the issues raised in the letter of formal notice.

The Commission can send a ‘reasoned opinion’ if, after this first deadline, it still considers that the country concerned is in breach of its obligations. If the

Member State fails to comply with the reasoned opinion within a specified time frame, the Commission may then refer the matter to the ECJ under Article 226 of the EU Treaties. The ECJ's judgment closes the procedure.<sup>16</sup> At any stage in the process, the dispute can be settled and proceedings terminated.<sup>17</sup>

If the ECJ decides that there has been an infringement of EU law, the Member State is then legally obliged to correct it. The Commission will normally send the Member State an 'administrative letter' within one month of the judgment, asking for information on the content and timing of the measures to be taken to correct the infringement.

If it is not satisfied with the response, the Commission can then proceed through the same steps, from a second letter of formal notice to a reasoned opinion and reference to the ECJ again, under Article 228 of the EU Treaties. This time, the Commission can ask the ECJ to sanction the Member State for its failure to comply with the Court's first ruling. Again, the ECJ's judgment closes the procedure.

The infringement procedure has helped significantly to deal with breaches of EU legislation through negotiations between the Commission and the Member States.<sup>18</sup> However, it has some flaws.

First, the Commission does not have the resources to carry out systematic and comprehensive checks on the transposition, implementation and enforcement of EU law.

Second, the process by which the Commission decides to open or close infringement proceedings lacks transparency. Following the 2001 White Paper on 'European Governance',<sup>19</sup> the Commission published a Communication setting out three priority criteria which would be used in deciding when to act, "reflecting the seriousness of the potential or known failure to comply with legislation".<sup>20</sup> These are: infringements which undermine the foundations of the rule of law; those which hamper the smooth functioning of the EU's legal system; and those relating to a failure to transpose, or the incorrect transposition, of directives.

In practice, where an alleged infringement is deemed to meet these criteria, proceedings will be launched immediately. However, the Commission's discretionary power to decide whether or not to pursue an infringement case has often given the impression that roles and responsibilities are not clearly assigned within the institution.

Third, because of the lengthy nature of the pre-litigation stage of the process, much of the damage has already been done by the time the Commission intervenes. Despite improvements introduced via ECJ case law,<sup>21</sup> there is also often little incentive for Member States to take corrective action promptly. Indeed, there have been cases where a Member State clearly relied on the length of the procedure and took advantage of this to deliberately delay transposition.

Finally, action under the infringement procedure aims only at an objective finding of a failure by a Member State to comply with its obligations – not at an examination of the reasons why that shortcoming occurred. In other words, there is no Treaty provision setting out how Member States must comply with ECJ rulings, and therefore no systematic and mandatory assessment of how to prevent similar infringements in the future.

In particular, the fact that it is not clear precisely what power the Commission and the ECJ have to stipulate what measures must be taken to comply with reasoned opinions and judgments, respectively, means that the obligation on Member States to do so also remains vague.

### **European Court of Justice case law**

The European Court of Justice has, through its judgments, contributed significantly to consolidating the EU as a 'Community of law', where this is the central feature of an integrated legal system. This is reflected in the concepts of 'direct effect' and the 'supremacy' of EU law, developed in the *van Gend en Loos* (1962) and *Costa v ENEL* (1964) cases.

The *Factortame* (1990)<sup>22</sup> and *Francovich* (1991)<sup>23</sup> rulings underlined the importance of enabling those affected by a Member State's failure to comply with EU legislation to obtain redress. These two major cases opened up the possibility for private parties to get damages from a Member State if they could prove that they had suffered economic losses as a result of a breach of EU law.

Most importantly, the ECJ has confirmed the existence of an obligation to cooperate in the event of problems with the implementation of EU legislation.

This obligation includes the possibility for a Member State to ask the Commission to assess potential problems with the way it is applying an EU law.<sup>24</sup> The Commission uses a variety of methods – including bilateral

contacts, committee and expert group meetings, and ‘package’ meetings with individual Member States – to discuss any problems regarding transposition. Similar methods are used to discuss suspected infringements.

## I. 2. Other legal provisions

A number of specific legal provisions and instruments on TIE complement the rules laid down in the EU Treaties, such as the general commitment that all directives will include a binding time-limit for Member States to transpose them into national law, which should generally not exceed two years, as provided for in the ‘Inter-Institutional Agreement on Better Law-making’.<sup>25</sup>

Moreover, the Commission now systematically includes a specific legal provision in all its new proposals for legislation requiring Member States to provide ‘concordance’ tables, listing each article of the directive and the implementing measures designed to transpose it into national law. This mechanism is aimed at improving transparency and making it easier for the Commission to check whether national measures conform with the directive.<sup>26</sup> All too often, however, this requirement is scrapped at the demand of Member States during negotiations on the proposal in the Council of Ministers.

The Commission is also committed to systematically including review clauses in its proposals, with the dual aim of promoting better assessment of the benefits and costs of legislation after it has entered into force (*ex-post* evaluation), and facilitating simplification.<sup>27</sup>

High-quality drafting of EU legislation clearly contributes to improved TIE rates. To this end, the 1998 ‘Inter-Institutional Agreement on common guidelines for drafting Community legislation’<sup>28</sup> was revised and published as a ‘Joint practical guide for persons involved in the drafting of legislation’ in 2003.<sup>29</sup> Tools to harmonise and improve the basic presentation of legislative acts (such as LegisWrite) are also available in all the EU’s official languages.

### The ‘Notification’ Directive

The so-called Notification Directive (Directive 98/34/EC)<sup>30</sup> has proved to be a particularly successful instrument of cooperation. This Directive compels

Member States to notify the Commission of new technical regulations in some sectors at the drafting stage,<sup>31</sup> with the aim of preventing unjustified obstacles to the Internal Market being introduced. It encompasses industrial manufactured goods, agricultural products (including fisheries) and information society services.<sup>32</sup>

Once Member States have notified the Commission of the proposed regulation, other EU governments and the Commission have three months (after the text has been translated) to raise concerns about potential barriers to the free movement of goods. If they do not, the Member State concerned can adopt the measure (although the Commission retains the right to launch infringement proceedings at a later stage if it discovers that the measure is contrary to EC law).<sup>33</sup>

The notification procedure gives the Commission the chance to screen national measures at the drafting stage<sup>34</sup> and provides greater incentives for Member States to scrutinise each others' draft legislation, follow their regulatory work and learn from it.

However, it only applies to a limited number of sectors and limits Member States' legal obligation merely to notifying draft measures. If other Member States or the Commission raise concerns about them, the 'originating' Member State is required to take such comments into account as far as possible, but is not legally obliged to respond formally to them.<sup>35</sup> The procedure also lacks transparency, as detailed opinions and comments on the draft measures are only sent to the government concerned, and are confidential.

Although the resources and time invested in the notification process have helped to reduce the number of infringements cases, the procedure is time-consuming and costly.

### **The 'Strawberry' Regulation**

Following repeated disruption of the Internal Market by the erection of physical barriers – in the form of demonstrations and blockades – which impeded the free flow of goods, Regulation 2679/98/EC (also known as the 'Strawberry' Regulation) was introduced to try to make it possible to apply the principle of free movement of goods more quickly and efficiently.

This initiative got its nickname from the type of protests it was designed to

combat: the repeated destruction of Spanish strawberries by French farmers angry about what they saw as the ‘dumping’ of fruit on their market.

The Regulation led to the creation of an early warning system to prevent protests aimed at hindering the functioning of the Internal Market. It requires Member States to notify the Commission of the risk of a blockade, and to take the “necessary and proportionate” measures to ensure the free movement of goods.

In practice, however, its effectiveness has been limited. The information sent to the Commission generally arrives too late, as the obstacle has normally already disappeared by then; no fixed deadline is set for the infringing parties to remove the obstacle; and there is no indication of what possible sanctions Member States may face if they fail to act.<sup>36</sup>

### **I. 3. Complementary mechanisms: finding solutions outside the legal process**

In the course of the 1990s, the Commission’s ability to fulfil its role as ‘guardian of the EU Treaties’ was strained by the drive to complete the single market and by the increasing volume and complexity of EU legislation.

In response to this, a series of *ad hoc* initiatives were progressively developed to complement the procedures laid down in the Treaties and ease the burden on the Commission.

These ‘complementary mechanisms’ seek both to enhance cooperation between the Member States and the Commission, and to encourage Member States to act in response to peer pressure, by making it easier to monitor and compare individual performances in relation to the application of EU law. These include the regular publication of a ‘calendar for transposition’,<sup>37</sup> the Commission’s own Internal Market Scoreboard and an annual report on the monitoring of the application of Community law.<sup>38</sup>

The creation of independent and specialised national regulators in specific sectors, plus national and regional ombudsmen and mediators, has also helped to lighten the Commission’s workload.<sup>39</sup>

In the case of directives, infringements may result from a failure to notify the implementing measures. Electronic databases (such as Asmodée II) and



automatic notification systems (such as the Electronic Notification database) have been introduced to facilitate this process.<sup>40</sup>

Exchanges of information and good practice have also been fostered through the use of expert committees and networks to assist the Commission, and the creation of *ad hoc* groups of experts in specific fields.<sup>41</sup> Training, information and transparency campaigns have been developed for national administrations and judges,<sup>42</sup> combined with twinning arrangements for national administrations in the context of EU enlargement. Interpretative communications on specific issues related to both the EU Treaties and secondary legislation have also been published.<sup>43</sup>

Other initiatives have been aimed at anticipating regulatory problems in specific sectors. In the field of public procurement, mechanisms have been developed to anticipate difficulties with the organisation of major events, such as infrastructure projects for the Olympic Games. In the area of food and feed, animal health, the preservation of plants and animal protection, the Commission organises inspections carried out by the Food and Veterinary Office (FVO) with a view to improving the application of related EU legislation.

Informal networks are also helping to resolve issues arising from the complex regulatory environment without having to go through lengthy legal procedures.

## **SOLVIT**

The SOLVIT network<sup>44</sup> both complements the Commission's work in monitoring the application of EU law relating to the Internal Market and provides an alternative to legal action through national courts or lodging a formal complaint with the Commission.

Launched in 2002, SOLVIT is an online problem-solving network coordinated by the Commission through which EU Member States work together to address cross-border issues arising from the misapplication of Internal Market legislation by public authorities.

When citizens or businesses feel their single market rights have not been respected, they can complain to the SOLVIT centre in their Member State. If the centre deems that the complaint is valid, it then takes up the case with its counterparts in the country where the problem occurred. Both centres are committed to deliver a solution within ten weeks.

The Commission monitors progress through its online database, offers advice and assistance, and follows up when deadlines are not met. If a case cannot be solved through SOLVIT, the complainant can then take it to the national courts or make a formal complaint to the Commission, which can launch the normal infringement procedure.

This system has so far produced positive results,<sup>45</sup> not least because many of the cases reported to the SOLVIT centres would have probably ‘fallen through the cracks’ of the Article 226 procedure.

SOLVIT also provides information on EU policies and legislation, and the rights of citizens and business, thereby contributing to the empowerment of citizens. It provides a bridge between administrations at the national and supranational level; brings together expertise and knowledge of national and EU law; and, as a free and quick service, encourages both citizens and businesses to report alleged cases of the misapplication of EU law.

## **IMPEL**

In the field of environmental policy, the network for the Implementation and Enforcement of Environmental Law (IMPEL) seeks a more consistent approach to the implementation and enforcement of EU environmental legislation through exchanges of experiences and by helping to foster mutual understanding of national regulatory systems.<sup>46</sup>

IMPEL was established in 1992 and brings together the environmental authorities of all the EU’s Member States, plus Bulgaria, Romania, Croatia, Norway and Turkey. The network provides a forum where Commission officials, national environmental regulators and policy-makers can informally exchange information about environmental law and its practical implementation. The aim is to identify best practices and improve standards for inspection, monitoring, granting permits and enforcement in the EU.

IMPEL actively contributes to the preparation of new legislation. It assesses the content and impact of planned laws before a proposal is formally tabled; provides comments on the practicality and enforceability of existing EU legislation; and produces reports and studies on key issues which can be used as a basis for formal discussions in the EU institutions.

## II. Key factors influencing TIE

Transposition, implementation and enforcement is, by definition not a static concept. It is a process which involves a range of actors (public administrations, economic operators, civil society organisations and citizens) at national and supranational level, and a variety of decision-making systems.

A number of structural problems must be overcome in designing and developing a decision-making framework for effective, correct and timely TIE which works in both the supranational and the national context.

The following elements must therefore be taken into account:

- The existence of two (or more) clearly-defined layers of governance (the Community, national and subnational levels) with overlapping legal and political responsibilities, competences and partly contrasting agendas;
- The great diversity of institutional and bureaucratic settings, procedures and legal instruments in the EU's 25 Member States, which are deeply embedded in constitutional traditions and customs;
- The variety of cultural and socio-economic contexts at national and regional levels, and the need to preserve these differences;
- The fact that more than 20 languages are used in transposing EU legislation;
- The unique nature of the European Commission, which acts as both the initiator of EU legislation and the 'prosecutor' tasked with ensuring respect for Treaty provisions. The Commission does not have the competence to enforce EU law directly and its capacity to act as the central law-enforcement body (in particular its use of Article 226 infringement procedures) is limited and has reached saturation point;
- The lack, in many Member States, of a sense of belonging to a single legal area and, often, a sense of 'disconnection' between national administrations and supranational institutions.

All this gives rise to a number of considerations, including the specific problems raised by directives.

For historical, political and practical reasons, the EU Treaties intrinsically recognise, respect and promote different forms of TIE. Directives have been used as the main legal instrument for creating and consolidating the Internal Market. When transposing them into national law, Member States can decide how to do this, but must ensure that they comply with the terms of the legislation and meet the deadlines set.

However, there appears to be a substantial trade-off between giving Member States the maximum flexibility and autonomy possible, on the one hand, and ensuring there are no shortcomings in TIE, on the other.

As mentioned above, the Treaties give little indication of what constitutes effective TIE beyond strict legal requirements. ECJ case law binds Member States to ensure correct and detailed implementation, and makes it clear that they cannot cite provisions or practices in their internal legal systems to justify a failure to comply with obligations and deadlines laid down in EU directives.

Under the present regime, however, no authority has a clear mandate to assess the functioning and performance of national administrations in the TIE process, as long as there is no infringement of EU law.

It is also not clear what constitutes an acceptable degree of flexibility. It is up to legislators to decide how much margin for manoeuvre to give Member States in implementing a particular measure, but, ultimately, it is the ECJ which has responsibility for interpreting this. However, it only does so in selected cases (infringements). Beyond this, there are no agreed levels of acceptable TIE and a strictly legalist approach may not be sufficient in this respect.

All this triggers a more political consideration related to the tensions between approaches based on applying the principle of subsidiarity (which is designed to ensure that decisions are taken as close as possible to the citizen) and a stronger centralised (Community) mechanism.

Against this backdrop, and in the light of the political, economic and social goals set by the Lisbon Agenda and the greater emphasis on addressing risk-related concerns, the original drive and focus of the EU regulatory and enforcement activity has shifted.

Many of the issues addressed in the Lisbon Agenda – such as education and labour market flexibility – are, for example, ultimately a matter for national

governments, not the EU. They are therefore not subject to regulation and enforcement in the conventional sense.

The debate over whether the so-called ‘new approach’ to Internal Market legislation,<sup>47</sup> agreed in 1985, is still an effective integration tool or whether it should be re-thought also reflects the changing pattern of EU regulation.

The ‘new approach’ was based on minimum harmonisation of essential requirements, supplemented by mutual recognition of national rules and procedures. In recent years, the debate has centred on replacing ‘directives’ with ‘regulations’ or a greater use of ‘soft law’ and alternative regulatory methods. Moreover, the increasing complexity and technical nature of modern regulation results in a trade-off between transparency and accountability.

Therefore, the debate on TIE is most relevant in addressing the fundamental question of whether the Commission’s role as ‘guardian of the Treaties’ should be enhanced in the context of the overall discussions on the future of Europe and the balance of power between the EU institutions and the Member States.



































