



## **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**

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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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## 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.

### III. Conclusions

There is no single ‘right’ framework for ensuring effective, correct and timely transposition, implementation and enforcement of EU legislation throughout its 25 Member States. No one set of widely-acknowledged best principles and practices has, as yet, been identified, not least because of the constitutional and legal differences between Member States.

However, a number of general principles and good practices can be identified which, taken together, may underpin effective TIE – although it must be stressed at the outset that these practices need to be adapted to the relevant context and institutions (i.e. the EU institutions, national and regional administrations).

They have been developed on the basis of a review of official documents from the EU institutions; reports produced (or commissioned) by a number of EU Member States; a number of country reports produced by the Organisation for Economic Cooperation and Development (OECD) on national regulatory policies; academic literature on TIE in the EU; and interviews conducted by the EPC.

The practices recommended in this paper are interlinked and designed to change behaviours and the attitudes that nurture them. They are based on two assumptions:

- Good instruments and tools are unlikely to be effective unless they are applied in a consistent way within supporting structures;
- Changes in officials’ habits and cultures are more likely to occur if operational guidelines are supported by a clear political commitment and mechanisms that create incentives for compliance.

## IV. Recommendations

Based on the analysis provided in Chapter I, a structured programme of reform is proposed which aims at improving institutional structures, policies and guidelines, leading to higher TIE rates. The recommendations are grouped into six headings, with detailed proposals for achieving them listed where appropriate.

The key principles behind these recommendations are summarised as follows:

1. Beside the legal requirements for TIE already enshrined in the Treaties, high-level accountability and public political commitment to improving procedures is an integral part of effective regulatory policies. Clear, binding policies must apply to all levels of governance.
2. Written, government-wide, mandatory guidelines for TIE should be put in place at the national and supranational level, encompassing decisions taken by all the relevant departments involved in TIE at all stages of the process. The guidelines should cover planning, inter-institutional cooperation, consultation, drafting, notification and control, communication, review, reporting and infringement.
3. The role of each institution involved in the process and its political and operational responsibilities should be clearly defined and published, and a formal and structured decision-making process for TIE put in place, including mechanisms for oversight and evaluation.
4. Coordination and the exchange of information between all those involved in the TIE process, at European and national level, should be improved, with effective channels for dialogue established to enhance cooperation.
5. Training should be provided and adequate financial and human resources allocated to meet the requirements set out in the guidelines to all government officials involved in TIE.

### Detailed recommendations

#### 1. Political accountability and policy commitment

**1.1:** The European Council, Commission and Parliament should formally

commit the EU and the Member States to effective and timely TIE. The following initiatives would contribute to achieving this objective:

- Each EU Member State and EU institution should publish its programme for Better Regulation, outlining internal roles, responsibilities and procedures;
- The EU institutions should revisit and clarify the relevant articles of the ‘Inter-Institutional Agreement (IIA) on Better Law-making’ of 2003;
- The Commission President must bear overall political responsibility for TIE. However, the Commission Vice-President with responsibility for Better Regulation should ensure the effectiveness of the process within the institution and work to improve the system;
- A senior minister must bear overall political responsibility for the effectiveness of the process within each Member State, and for improving the system;
- Each Member State should establish, in accordance with its constitutional system, an appropriate structure to implement its national regulatory reform programme (or develop the existing one) and include TIE among its priorities;
- In each Member State, the unit responsible for negotiating a European legislative act should also be made operationally responsible for its TIE at national level;
- The Commission should encourage the work of the High-Level Group on Better Regulation, which has made TIE one of its priorities, as the main informal forum for the diffusion of best practice.

## **2. Oversight, cooperation and consultation**

**2.1:** Each Member State should ensure that ministries report to the relevant parliamentary assembly and, where appropriate, devolved governments or assemblies, before proposed transposition and implementation measures are adopted. The government should report regularly to its national parliament on progress in transposition.

**2.2:** The relevant parliamentary assembly should appoint or establish a specific committee to oversee transposition and scrutinise implementation



procedures and guidelines. This committee should respond to private parties and have the power to call on the relevant authorities to produce reports justifying specific cases, and to demand their reconsideration.

**2.3:** Coordination and exchange of information between European and national institutions should be enhanced. To achieve this:

- Each Member State should enhance existing internal structures, ensuring cooperation with the Council of Ministers in the adoption of EU legislative acts. This would be achieved, for instance, if relevant ministries in each Member State established a special task force, after the Commission had presented a legislative proposal to the Council, to work on this in parallel to Council formations;
- The European Parliament should encourage systematic dialogue with national parliaments with a view to facilitating the flow of information, especially during the adoption of European legislative acts. This would be enhanced by establishing joint committees of selected MEPs and national MPs on an *ad hoc* basis for major policy dossiers; and by using representatives of national parliaments to the European Parliament as the primary channels for communication and information.

**2.4:** Each Member State should establish or develop existing multi-stakeholder public-private mechanisms for monitoring the TIE of major legislative acts, to ensure full transparency, timeliness and accountability.

**2.5:** The role of the Commission's Secretariat-General should be significantly strengthened as the institution's central coordinating and oversight service. It should also ensure consistency in the regulatory approach across the Commission. The Commission's representative offices in the Member States could be used to collect and discuss information relating to TIE.

**2.6:** The Commission should encourage the greatest possible involvement of national and, wherever appropriate, regional administrations in TIE once EU legislation has been adopted. To achieve this, the Commission should:

- Identify effective formats and channels for cooperation among established fora. For instance, the practice of convening 'package meetings' at an early stage (rather than after an infringement procedure has been initiated against a Member State) should be extended throughout the Commission;

- Organise regular conferences of infringement coordinators and infringement desk-officers;
- Organise training sessions and promote the sharing of best practice both at the general and sectoral level.

**2.7:** The European Parliament (or its Committees) should exert considerably greater political pressure on the Commission to ensure compliance with the TIE principles and guidelines, including reporting on any directive for which TIE proves to be particularly problematic. To achieve this, the Parliament should:

- Include a ‘transposition (or implementation) question time’ in Committee sessions;
- Devote more resources to producing follow-up reports and regularly include them on its agendas.

**2.8:** The Parliament and the Council should ensure that a legal obligation is included in all directives requiring Member States to transmit ‘concordance tables’ of transposition measures to the Commission.

### **3. Operational guidelines**

**3.1:** Each Member State should undertake an extensive independent evaluation of all the mechanisms used for TIE, leading to the publication of guidelines to ensure a coherent approach throughout the administration. The guidelines should require the relevant ministries to:

- Engage in anticipatory planning with the Commission at an early stage and allocate, wherever possible, operational responsibility for the negotiating, drafting and translation phase of legislation and the subsequent TIE decisions to the same unit;
- Provide officials with minimum quality standards for effective, timely and full TIE;
- Promote close inter-institutional coordination, including the publication of information on draft proposals for transposition and implementation measures, timetables and progress on TIE in a systematic, complete and timely manner;

- Consult those affected by TIE decisions widely and formally, in particular by using modern information and communications technology. All ICT tools used for TIE should be made fully accessible;
- Avoid the addition of supplementary provisions that are not necessary for TIE and justify any derogation from this rule;
- Provide more and better information about rights and obligations both within their own administrations and to the general public;
- Publish regular and timely reports on the status of TIE (notably by means of the Internet and new technologies), including the reasons for any specific delay on individual directives;
- Monitor the effectiveness of the entire TIE process using clearly measurable indicators wherever possible.

**3.2:** Each Member State should include a specific section on transposing EU legislation in the national guidelines, establishing criteria for clarity in drafting.

**3.3:** Member States' transposition measures (and the related 'concordance tables'), and any implementing acts, should be notified and included in a central and publicly-accessible European electronic database in a complete and timely manner.

**3.4:** The Parliament and Council should require the Commission to produce guidelines on the implementation of EU legislation whenever necessary. These should be drawn up jointly with national and, where appropriate, regional representatives.

#### **4. Infringement procedure**

**4.1:** The Commission should revisit its application of the 'infringement procedure' (Article 226) with a view to reinforcing existing practices, and make those practices public. It should:

- Establish a coherent approach to TIE throughout the institution;
- Clearly allocate (and publish) responsibilities and define roles within each Directorate-General for the administration of the infringement procedure;

- Enhance the Secretariat-General's coordinating role, possibly by establishing a separate Better Regulation Unit reporting directly to the Commission President;
- Establish an internal managerial system to assess the importance and sensitivity of cases, with a view to linking the opening and following-up of cases to the Commission's strategic priorities and the potential setting of a legal precedent, and make this public;
- Encourage the choice of the most effective instrument to settle cases, including alternative or complementary mechanisms;
- Encourage smooth and effective handling of cases by, among other things, establishing a structured dialogue with Member State(s), respecting internal deadlines and grouping cases wherever possible;
- Convene internal Commission meetings to decide on infringement cases (so-called 'regular reports') on a monthly basis;
- Establish a set of principles for all TIE decisions.

**4.2:** The Commission should amend its 2002 Communication on 'Relations with the complainant in respect of infringements of Community law' with a view to increasing transparency. In particular, the following changes should be made:

- The Commission should provide written justification of any decision (formal notice, reasoned opinion, referral to the Court or closure of a case) to the complainant, including, if appropriate, recommendations on handling the case through alternative dispute settlement mechanisms;
- The current situation in which submissions by the complainant or the Member State generally remain confidential should be reversed. Requests for confidentiality from either party should only be granted when there are justified reasons for doing so;
- If steps are not taken to increase transparency, the deadline for complainants to submit comments on a Commission proposal to close a case should be extended beyond the current four weeks;
- The Commission should reduce the maximum deadline between the date

of registration of the complaint by the Secretariat-General and the decision to issue a formal notice or close the case; written justification should be provided to the complainant for any extension of this deadline;

- For each case, Directorates-General should set clear internal deadlines, communicate them to the complainants, and provide justifications for any extension during the infringement procedure;
- The Commission may complement but should not replace individual correspondence with the complainant with information published in the *Official Journal of the European Communities*;
- The Secretariat-General should be given the necessary human and financial resources to ensure full compliance with this Communication by all Commission services.

**4.3:** The Commission and the Member States should devote appropriate resources to the SOLVIT network and make sure that these resources are adequate to reflect the network's increasing workload. The Member States should promote the use of SOLVIT among their citizens and businesses, and the Commission should generalise its use throughout the institution.

## **5. Assessment and monitoring mechanisms**

**5.1:** The Commission should amend its 2005 Impact Assessment Guidelines to recognise the particular requirements for TIE. In particular, Commission Impact Assessments should:

- Include an analysis of the capacity of national and, wherever relevant, regional administrations to transpose, implement and enforce the proposed legislation;
- Include an analysis of how practical it would be for business to comply with the proposed legislation;
- Strengthen the analysis of impacts on regions, decentralised areas and disfavoured groups within the population (particularly disabled people and minorities);
- Be subject to public peer-review before the proposal is adopted.

**5.2:** The Commission should strengthen the ‘notification procedure’ outlined in Directive 98/34/EC. In particular:

- The Secretariat-General should be made the central communication and registration point, and should include all national measures which have been notified in a central and publicly-accessible electronic database;
- The Commission should have specific power to recommend amendments to draft national transposition measures contrary to EC law and request their reconsideration;
- The Commission should launch fast-track action under the Article 226 procedure automatically if a Member State disregards its obligations under the notification procedure.

**5.3:** The Commission should systematically carry out and publish *ex-post* evaluations of EU legislation, including major comitology decisions. It should draw up a set of binding guidelines describing minimum standards and methodologies for assessing the benefits, costs and effectiveness of legislation, including unintended consequences. *Ex-post* evaluations should include quantitative analysis wherever possible.

**5.4:** The Commission should set quality standards for its annual reports on the application of Community law, with a view to improving their analytical and policy-oriented content. In particular, the reports should:

- Address issues in specific sectors and Member States more directly;
- Provide explanations of the reasons for changes in compliance rates;
- Address, wherever possible, the reasons for failure to comply with obligations;
- Better report on individual actions undertaken by the Commission in the previous year;
- Be produced in a standardised format to make comparison and evaluation easier.

## **6. Resources and training**

**6.1:** The Member States and the EU institutions should commit sufficient

financial and human resources to ensure the effective TIE of European legislation and safeguard the rule of law.

**6.2:** All officials involved in TIE should receive specific training. Training for national judges should be increased.

## Endnotes

1. COM(2005) 12 final, p.5.
2. Presidency Conclusions, Lisbon European Council, 23-24 March 2000.
3. COM(2005) 12 final.
4. In April 2006, the Frassoni Report (A6-0089/2006) on 'Monitoring the application of Community law (2003-2004)', the Doorn Report (A6-0082/2006) on 'Better law-making 2004: application of the principle of subsidiarity', the McCarthy Report (A6-0083/2006) on 'The implementation, consequences and impact of the internal market legislation in force', and the Gargani Report (A6-0080/2006) on a 'Strategy for simplification of the regulatory environment' were presented at the European Parliament plenary in Strasbourg.
5. See Commission President José Manuel Barroso's speech 'Delivering quality in European regulation' delivered at the European Parliament plenary on 4 April 2006. The Commission is currently reviewing internal procedures and mechanisms and a report is expected by the end of 2006. The Secretariat-General of the Commission has set up a high-level Reflection Group (attended at Director level by all Directorates-General involved with infringement procedures) to discuss and initiate new policies to improve TIE.
6. See notably Brussels European Council 23-24 March 2006, 'Presidency conclusions', p.13 and 22; and Competitiveness Council on the Single Market, Industry and Research on 28-29 November 2005.
7. EESC Opinion (2005), p.2.
8. Ulf Sverdrup 'Implementation and European Integration: A Review Essay', *Arena Working Paper 25*, October 2005.
9. Ibid.
10. Law enforcement in the EU also comprises action under: Art. 81 and 82, in competition policy; Art. 87 and 88, in state aid policy (with the possibility for 'fast track' references to the ECJ under Art. 88(2)); Art. 104, for the control of excess national public deficit and debts; Art. 227, by one Member State against another (comparatively rarely-used); and Art. 230, for annulment (judicial review of administrative action). These actions are not reviewed in this paper. The focus on directives is dictated by the fact that almost 80% of the infringement proceedings before the ECJ concern directives. See Phedon Nicolaidis and Helen Oberg *The compliance problem in the European Union 4<sup>th</sup> Draft*, 21 April 2006, Maastricht: European Institute of Public Administration. p.2.
11. It was, however, not possible to carry out a thorough review of all 25 national systems, nor does the paper look into the Court system extensively.
12. In this paper, 'EU law' and 'Community law' are used as synonyms.
13. See Final Act, Treaty on the European Union, *Official Journal of the European Communities* C191, 29 July 1992, 'Declaration on the implementation of Community law', <http://www.europa.eu.int/eur-lex/en/treaties/dat/11992M/htm/11992M.html#0102000039>; see also Communication on 'Making most of the Internal Market. Strategic Programme', COM(1993) 632 final, 22 December 1993.
14. According to Article 10 TEC: "Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks."
15. COM(2005) 570, '22<sup>nd</sup> Annual Report on the Application of Community Law (2004)', Annex II, Procédures d'infractions – ventilation par étape, base juridique, Etat membre et secteur, Tableau 2.3, p.4. (Original in French): Infringements procedures – break down per stage reached, legal basis, Member State and sector, Table 2.3, p.4. [http://europa.eu.int/comm/secretariat\\_general/sgb/droit\\_com/pdf/XXII\\_rapport\\_annuel/annexe2\\_fr.pdf](http://europa.eu.int/comm/secretariat_general/sgb/droit_com/pdf/XXII_rapport_annuel/annexe2_fr.pdf).
16. Since the Maastricht Treaty, the ECJ has had the power to impose financial sanctions on a Member State that fails to take the necessary measures to comply with its rulings. Moreover, the European Commission has recently adopted a re-cast Communication on the 'Application of Article 228 of the EC Treaty' (SEC(2005) 1658 final), which clarifies and strengthens the Commission's policy to ask the ECJ to impose a periodic penalty payment and a lump sum on a Member State which fails to comply with a judgment of the ECJ. This development partly responded to EU enlargement and the ruling of the ECJ on 12 July 2005 in Case C-304/02, *Commission v French Republic*. It also reflected the Commission's evaluation of the need to strengthen its policy in this area.
17. For the administrative measures defining the relations between the Commission and the complainant, see COM(2002) 141 final.



18. Moreover, evidence shows that the Commission is mostly right to take action against one or more Member States: in 2004, the Court found that a Member State failed to fulfil its obligations in 144 cases out of a total of 155. See Phedon Nicolaidis and Helen Oberg *The Compliance problem in the European Union 4<sup>th</sup> Draft*, 21 April 2006, Maastricht: European Institute of Public Administration. p.1.
19. COM(2001) 428 final.
20. COM(2002) 725 final, p.11-12.
21. Further to ECJ case law (C-304/02, *Commission v French Republic* [2005]), the Commission introduced a new tougher policy to determine fines for non-compliance, committing the ECJ to impose both lump-sums and periodic penalties for each day of non-compliance. See SEC(2005) 1658 final.
22. See Cases C-213/89, C-221/93 and C-48/93.
23. See Cases C-6/90 and C-9/90, [1991] ECR I-5403.
24. See Case C-52/84 *Commission v Belgium*, [1986] ECR 89, point 16, and Case C-94/87 *Commission v Germany* [1999], [1989] ECR 175.
25. See Official Journal of the European Union (OJ) (2003/C 321/01) 31 December 2003.
26. See Annex to the Report from the Commission 'Better Law-making 2004' (12th report), SEC(2005) 364, p.10.
27. See COM(2005) 535 final of 25 October 2005.
28. OJ C 073 of 17 March 1999, p.1.
29. <http://www.europa.eu.int/eur-lex/en/about/techleg/index.html>.
30. Directive 83/189/EC, OJ L 109 of 26 April 1983, p.8, codified by Directive 98/34/EC.
31. In the CIA Security Case, the ECJ ruled that technical rules contained in national measures which had not been notified to the Commission, were inapplicable to individuals, cementing the Notification Directive's enforcement as an automatic sanction for non-notification. Case C-194/94, '*CIA Security International SA v. Signalson SA and Securitel SPRL*', [1996] ECR I-2201.
32. Directive 98/48 extended the scope of Directive 98/34 to information society services.
33. This remains a possibility, but it has practically never been used.
34. The procedure produced solutions that complied with Community law in 95% of cases in 2004. See COM(2005) 570 final, p.5.
35. Commission detailed opinions were particularly effective as they could facilitate the introduction of an infringement procedure against a non-compliant Member State. In 2001, however, the Commission was stripped of this important leverage after the ECJ ruled that a detailed opinion does not constitute a conditional formal notice (*Commission v France C-230/99* [2001]).
36. The Commission acknowledged the limited success of the mechanisms established by the 'Strawberry Regulation' in its Report on the Application of Regulation 2679/98/EC, COM(2001) 160 of 22 March 2001.
37. [http://www.europa.eu.int/comm/secretariat\\_general/sgb/droit\\_com/index\\_en.htm#calendar](http://www.europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#calendar). Commission reports on the application of directives provided for some Member States play a similar role. They helped to improve the overall results. The average transposition deficit for EU-25 fell from 7.1% in July 2004 to 3.6% in January 2005. See COM(2005) 570, p.7.
38. The latest 22<sup>nd</sup> Report (2004), COM(2005) 570 final.
39. For example, the independent national authorities in the fields of competition, data protection and public procurement set up by some Member States.
40. In 2004, ten new Member States joined the European Union. An integrated system for electronic notification of national measures for transposing the directives in the 25 Member States came into operation on 3 May 2004. All Member States are now using this system, as are Bulgaria and Romania for the pre-notification of the measures they are introducing to comply with the requirements of EU law as part of the accession process.
41. The Commission has set up such groups of government experts in the field of the directives on the posting of workers (96/71/EC) and the 'anti-discrimination' directives (2000/43/EC and 2000/78/EC). These groups met before the transposal date and provided a forum for discussion and the exchange of best practice. In the same way, Regulation (EC) 1408/71 set up the Advisory Committee on Social Security for Migrant Workers, made up of government experts, which is playing a very active role before the Commission presents its proposals for updating this Regulation. Another example is the network of contact points on professional qualifications. See COM(2002) 725 final.
42. See, for instance, the Council Regulation (EC) No 743/2002, 25 April 2002 establishing a general Community framework of activities to facilitate the implementation of judicial cooperation in civil matters and Council Decision of 28 June 2001 establishing a second phase of the programme of incentives and exchanges, training and cooperation for legal practitioners (Grotius II Criminal).

43. For example, interpretative communications on the major freedoms in the Internal Market and public procurement or on the removal of tax barriers to the cross-border provision of occupational pensions (OJ C165, 8.6.2001, p.4). See COM(2002) 725 final.

44. See <http://europa.eu.int/solvit>.

45. See SEC(2005) 543 and COM(2005) 570 final. In 2004, 289 cases were handled by the network (73% more than in 2003). 80% of the cases were resolved, compared with 73% in 2003. Enlargement accounted for three-quarters of the overall 72% increase in cases.

46. In 2005, the Report on the Application of Community Law reported that of the bulk of infringement procedures (1290 in 2003) 493 concerned the environmental sector and 314 the Internal Market. See <http://europa.eu.int/comm/environment/impel>.

47. The New Approach was launched at the Milan European Council in 1985 and seeks “the fixing of minimum standards, mutual recognition and monitoring by the country of origin” (European Council Conclusions, Milan, 28-29 June 1985, 1.2.5(2)).

## Executive summary

Achieving the goals laid down in the Lisbon Agenda requires a regulatory framework which is more conducive to economic growth and competitiveness in Europe.

This means creating an optimal regulatory environment which is capable both of ensuring effective market access and a level playing field for businesses, and protecting consumers, as well as taking other key issues such as environmental protection into account.

The European Commission's Better Regulation initiative was designed to achieve precisely this. So far, it has mainly focused on assessing the impact of planned legislation, cutting red tape and simplifying EU laws. Relatively little attention has been paid to ensuring that EU legislation is correctly applied and effectively enforced, and the initiative's limited success has undermined business confidence in the exercise.

Effective transposition, implementation and enforcement (TIE) of EU legislation is clearly essential not only to safeguard the rule of law in the Union, but also to ensure that both companies and citizens can reap the full benefits of the Internal Market and other EU policies.

While Member States are primarily responsible for TIE, responsibility for ensuring "the proper functioning and development of the common market" lies with the Commission. However, while the current procedure for tackling suspected infringements has helped significantly to deal with breaches of EU legislation through negotiations between the Commission and Member States, it has some flaws which need to be addressed.

These include the fact that the Commission does not have the resources to carry out systematic and comprehensive checks on the TIE of EU law – and no other body has a mandate to do this. The procedure for dealing with suspected infringements also lacks transparency and the lengthy nature of the pre-litigation phase of the process means much of the damage has been done by the time the Commission intervenes.

Additional legal provisions and mechanisms outside the legal process have been established to complement the procedures laid down in the Treaties. These have mostly focused on improving communication between the

Member States and the Commission through the exchange of information and good practices. However, while they have made a significant contribution to tackling the problem, more needs to be done.

In a Union of 25, there is no single ‘right’ framework to ensure effective, correct and timely TIE, and no one set of widely-acknowledged best principles and practice has, as yet, been identified. However, this paper identifies a number of general principles and good practices which lie behind the detailed recommendations it contains. They are:

- High-level accountability and public political commitment to improving procedures are an integral part of effective regulatory policies. Clear, binding policies must thus apply to all levels of governance;
- Written, government-wide, mandatory guidelines for TIE should be put in place at the national and supranational level, encompassing decisions taken by all the relevant departments involved in TIE at all stages of the process. The guidelines should cover planning, inter-institutional cooperation, consultation, drafting, notification and control, communication, review, reporting and infringement;
- The role of each institution involved in the process and its political and operational responsibilities should be clearly defined and published, and a formal and structured decision-making process for TIE put in place, including mechanisms for oversight and evaluation;
- Coordination and the exchange of information between all those involved in the TIE process, at European and national level should be improved, with effective channels for dialogue established to enhance cooperation;
- Providing training and allocating the adequate financial and human resources could go a long way towards meeting the requirements set out in the guidelines to all government officials involved in TIE.

The recommendations made in this paper are intended to contribute to the future debate and work on Better Regulation. That debate is vitally important. Not only are significant improvements in the regulatory environment vital to create a more competitive European economy, but they are also crucial to make European integration a reality. Without effective TIE, there is a serious risk that low levels of implementation and/or variations in performance between Member States will further undermine support for the integration process.

## Mission Statement

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