Health & Consumer Protection DG SANCO/A2

EC legal instruments to ensure and to control the implementation of the EC legislation

The EC Treaty

- Contains Articles on the responsibilities of

    - the Member States
    - the institutions

    Contains Articles on enforcement

Responsibility of Member States

Article 10

- **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 abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.**

Responsibility of the Commission

Article 211

In order to ensure the proper functioning and development of the common market, the Commission shall:

- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied....

Responsibility of the Court of Justice

Article 220

The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed.

Specific enforcement rules

Article 226

- If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

- If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

Principle aim is to bring Member States in line with Community legislation

- *3 Procedural steps:*

- *letter of formal notice (= request for observations)*
- *reasoned opinion*
- *referral to the Court*

Article 228

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.
2. If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

Article 228

3. **If the Member State concerned fails to take the necessary measures to comply with the Court's judgment within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. <u>In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.</u>**

Again:

Principle aim is to bring Member States in line with Community legislation.

3 Procedural steps:

- letter of formal notice (= request for observations)
- reasoned opinion
- referral to the Court

Difference with Article 226: the Member State can be <u>sanctioned</u>

Example of sanctions

Case C-387/97 Greece Non respect of waste legislation (2000) EUR 20000/day

Case C-304/02 France Lack of control respect of fishery conservation techniques (2005) Lump sum EUR 20 000 000 + penalty EUR 57 761 250/6months

Until now no sanctions in food and feed safety cases

Article 249

Three types of binding acts:

- Regulations
- Directives
- Decisions

At this moment about 5200 pieces of legislation are applicable in the policy area of health and consumers.

A **Regulation** shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

No transposition measures required.

Applicable in the Member States at the same moment.

A **Decision** shall be binding in its entirety upon those to whom it is addressed.

A **Directive** shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

Member States have to transpose Directives by a certain date and to notify those measures to the Commission.

As Member States do not transpose all at the same date provisions of Directives may be applicable in the Member States at different dates.

Infringements to **Regulations and Decisions** are always for bad application

For **Directives** infringements possible for:

- failure to transpose
- incorrect transposition
- bad application

The Lisbon Treaty, amending the EC Treaty, will introduce more dissuasive provisions:

- **no reasoned opinion in Article 228**

- **for cases of failure to transpose Directives financial sanctions can be asked already in case of referral to the Court under Article 226**

Prevention and collaboration

The Commission does want to act as a "police man**"**

The aim is to achieve compliance with Community legislation

Therefore:

- prevention to avoid infringements
- collaboration to solve infringement cases

Legislation on controls

Regulation (EC) No 882/2004 provides rules on the official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

Directive 89/662/EEC laying down rules for veterinary checks in intra-Community trade with a view to the completion of the internal market
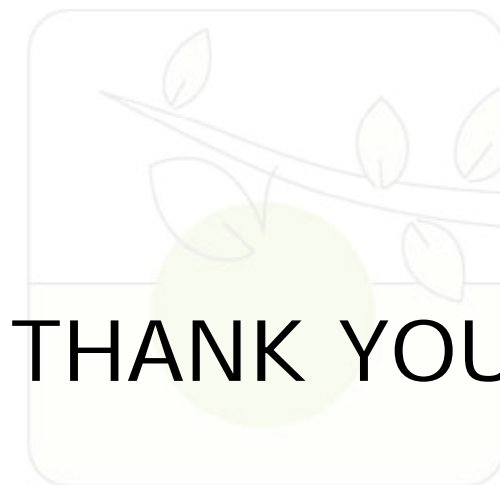
and Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the EU from third countries remain in place since they are very specifically designed for the organisation of the official controls on feed and food of animal origin.

More specific legislations provide for monitoring obligations

Some comments

- **Aim is to avoid infringements**

- **Thus, when the Member State complies with its obligation during the proceedings the Commission closes the case.**

- **Most infringement procedures are solved before reaching the stage of the referral to the Court.**

- **The Commission is not always right.**

- **The Commission may also intervene in cases which national courts submit to the European Court of Justice for interpretation.**

THANK YOU