



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION STAFF WORKING DOCUMENT**

**setting out the approach for assessing the conformity of solutions proposed by the  
SOLVIT network with Community law**

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### setting out the approach for assessing the conformity of solutions proposed by the SOLVIT network with Community law

#### *1. Purpose of this document*

The SOLVIT network currently deals with over 200 cases per year. With enlargement and as awareness of SOLVIT grows, the case flow can be expected to increase significantly. In this context, the aim of this document is to set out in operational terms how the Commission, in its role as the guardian of the Treaty, intends to meet its responsibilities under Article 211 of the EC Treaty to ensure that solutions proposed by SOLVIT – the Internal Market problem-solving network – are in conformity with Community law.

#### *2. Basis for SOLVIT*

The Internal Market offers exciting opportunities to citizens who want to live and work in another Member State and to companies who want to expand their markets. While the Internal Market generally functions well, practical problems sometimes arise from the misapplication of Internal Market rules by public authorities.

In November 2001, the Commission, in close co-operation with Member States, launched the SOLVIT network as an informal means of resolving Internal Market problems.<sup>1</sup> The network is designed to deal with problems of misapplication by Member States when national rules themselves conform to Community law. The aim is to improve the functioning of the Internal Market by resolving problems, where possible, without the need for legal action. Each Member State has set up a SOLVIT Centre within its national administration.

In December 2001, the Commission adopted a Recommendation<sup>2</sup> which defines responsibilities and establishes clear principles for the SOLVIT Centres to follow when dealing with cases within the network. This concerns for example the responsibilities of SOLVIT Centres in relation to the applicants and the commitment to find practical solutions within a deadline of 10 weeks. The Commission's role is to provide technical support to the network, in particular in the form of an on-line data management system. This database allows SOLVIT Centres to record information on individual cases and to exchange it quickly among themselves. The Commission has access to the information contained in the database, but it is not involved in the problem-solving process on individual cases.

Section G.1 of the Recommendation states that SOLVIT Centres have to ensure that all proposed solutions are in full conformity with Community law. It also states that the Commission reserves the right to take action against Member States whenever it considers that this may not be the case.

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<sup>1</sup> Communication on Effective Problem Solving in the Internal Market of 27 November 2001, COM (2001) 702

<sup>2</sup> OJ 15.12.2001, L 331, page 79

In March 2002, the Internal Market Council fully endorsed the SOLVIT network and its working principles by means of Council Conclusions.

### *3. Referral of complaints to SOLVIT by Commission services*

In December 2002, the Commission adopted a Communication on the Better Monitoring of the Application of Community Law.<sup>3</sup> In view of the enlargement of the European Union and the Member States' responsibility for enforcing and applying Community law the Commission introduced two new elements as regards the handling of infringements:

- a) It decided to give priority to serious infringements and to take formal actions more rapidly in such priority cases.
- b) It decided to make increased use of complementary instruments, such as SOLVIT, when a case does not qualify as a priority case.

The Commission will fully respect the rights of complainants as set out in its Communication of March 2002 to the European Parliament and the European Ombudsman<sup>4</sup> when it refers to SOLVIT complaints that it received directly from the public. This includes ensuring that the complainant is kept informed about progress achieved and checking that the solution proposed is acceptable to the complainant.

### *4. Member States must ensure that Community law is respected*

Member States are responsible for ensuring that solutions they propose in the context of SOLVIT are in conformity with Community law. The Commission as the guardian of the Treaty reserves the right to assess the conformity of any solution proposed by the SOLVIT network, and to take action when Community law is not respected. It is established case law of the Court of Justice that the Commission has discretionary power in relation to infringements and is the sole judge of when to bring proceedings concerning the application of Community law.

### *5. The SOLVIT system provides additional safeguards to ensure conformity with Community law*

The nature of the SOLVIT system, and the way it has been set up, contribute to ensuring the legality of solutions and the respect of legal rights of applicants:

- a) The SOLVIT network is based on a bilateral and transparent problem-solving process with a strong political commitment of all Member States to work according to agreed principles. Experience with SOLVIT so far shows that Member States take their commitments seriously. Furthermore, SOLVIT Centres are required to describe proposed solutions and provide an assessment of the case in the database. This provides a reasonable and proportionate safeguard that proposed solutions are in conformity with Community law.

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<sup>3</sup> COM (2002) 725

<sup>4</sup> COM (2002) 141

- b) The parties to the proposed solution retain all their legal rights including the possibility of complaining to the Commission that they are not satisfied with the proposed solution or lack of solution.
- c) The Commission retains the right to take action against a Member State if from the information at its disposal in the SOLVIT database it considers that a solution is not in conformity with Community law.

*6. Against this background, the Commission services will take the following additional steps to ensure that proposed solutions are in conformity with Community law:*

- a) Cases which Member States have entered directly into SOLVIT
  - (i) The Commission services will check without exception the conformity with Community law of all proposed solutions in which either one of the Member States concerned or the person who submitted the problem to SOLVIT complains to the Commission that the solution is unacceptable on the grounds of incompatibility with Community law.
  - (ii) When the Commission services are made aware in the context of SOLVIT of a possible breach of Community law they may decide to exercise the right to take action.

- b) Cases which Commission services have referred to SOLVIT

For non priority suspected infringements, the Commission services can decide to refer complaints it has received to SOLVIT with a view to finding a rapid and pragmatic solution on the condition that complainants have accepted beforehand that their identity will be divulged to the SOLVIT Centres involved. It will inform complainants at the time of the transfer of the case to SOLVIT that their complaint is formally maintained.

In such cases and without prejudice of the twelve months rule for the examination of the complaint, the Commission services will be particularly careful that the complainant is indeed satisfied with the solution proposed by SOLVIT. In case SOLVIT does not solve the problem and the Commission services decide to pursue the case as a possible infringement, the period within which the Commission will decide on whether or not to initiate formal proceedings (twelve months) will start from the day that the complaint was formally lodged with the Commission.

- c) Monitoring

DG MARKT will organise periodic evaluations of the performance of the SOLVIT network including the range of solutions implemented in particular to check for any evident problems. This includes identifying patterns of misapplication of Community law which may, for example, be caused by incorrect implementation of an EU directive. The Commission reserves the right to take appropriate action against Member States in such cases.