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Governance through Cooperation: Solvit System and its Role in the Correct Implementation of the European Law by the National Public Administrations

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***Abstract*—**The Implementation of the Union law faces major challenges today. If for a long period of time, the Community and the Union have persevered in their legislative vocation, now one can notice that this large legislative quantity has complicated the task of knowledge and of application the European standards. Under these circumstances, it became necessary, in order to give effectiveness to the European legislation, the development of some operational application criteria and the generation of some new implementation tools. The correct application of the European Union legislation by the national public administrations was considered by the European Commission as being crucial for further integration and proper functioning of the internal market. Among the initiatives launched in the past years to promote the exchange of good administrative practices in the correct application of European Union legislation, SOLVIT net has proved to be one of the most effective.

***Keywords*—**Cooperation, European law, informal mechanisms, internal market, SOLVIT.

I. Introduction

THE European Union membership involves, among others, the necessity to give a full effect to the European norms. European Union legal order is based on complementarity between the different levels of authority - the European authorities and the national ones. European Union law does not deprive the member states of the power to decide, but on the contrary, they play a key role in implementing the Union law.

As a general title, one can say that the enforcement of the Union law is, mainly, dependent on the competence of the member states, which exerts it accordingly to the institutional and procedural autonomy principles developed in the communal case law, but with the compliance of the cooperation and loyalty obligations, but according to which their execution competence must not be far from the common rules. The implementation method of the European legislation restates a basic principle - the decentralization principle, establishing an "executive federalism", borrowed from the federal structures (such as the Germany or Switzerland cases) where the local administrative authorities have just the task to apply the measures prescribed by the federal state. According to this, if the legislative function is mainly controlled by the institutions, the execution of the legislative acts regards, mainly, under some own or delegated competences (when it is about an exclusive communal competence), the member states. National authorities involved in the application of the Union law always act, accordingly to the assessment made by the Court of Justice in Simenthal case (referring to the national judge), "as the bodies of a member state". Considering this state characteristic, they are not subject to any hierarchical power of the European institutions, thus the latter not being able to transmit instructions or to replace them, to amend or to cancel the decisions adopted by the states authorities [1].

The timely and correct implementation of the European legislation is crucial in order to maintain solid bases of the European Union and to ensure the achieving of the expected impact of European policies. Building an autonomous legal order of the European Union, articulated with the national legal systems and also building of a highly complex and coherent case law have not been sufficient to ensure the effective application of Union law. In order to do this further efforts are required in this direction from the European Union institutions and from the member states.

The Implementation of the Union law faces major challenges today. If for a long period of time, the Community and the Union have persevered in their legislative vocation, gradually deepening their normative production and giving it an imperative character on the member states territory, hoping that in this way they will get closer to the accomplishment of the required objectives, now one can notice that this large legislative quantity has complicated the task of knowledge and of application the European standards, making that the legal communal system to become too complex and, to some extent, inapplicable. Under these circumstances, it became necessary, in order to give effectiveness to the European legislation, the development of some operational application criteria and the generation of some new implementation tools. It is mainly about the limitation of the legislative production and the improvement of the effectiveness, simultaneously creating for the member states extended obligations according to the European Union [2].

For the internal market, the most important and ample European project, which brought many benefits to the

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European citizens, to the consumers and the business entities, are raised the most problems related to the adopting and the implementation measures necessary for its achievement. Governed today by extremely dense prescriptive framework, the internal market is still quite fragmented and has not reached its full operating capacity, still facing major challenges like the significant delays in the transposition of the directives or a large number of complaints from citizens and businesses for the violation of the rights that are conferred by Union legislation.

In this context, the European Commission has undertaken in the last years with a comprehensive and ambitious approach to improve the application of the Union legislation, in which it suggested a better coordination of the various instruments of the European governance without resorting to additional regulations, being focused on the enhancing, in partnership with the member states, of the preventative measures, of the more effective use of the infringement procedure of the legislation, of the dialogue and transparency emphasis between the European institutions and the improving of the briefing procedures for public information and, not least, of the introduction of some new tools to facilitate the informal problem-solving.

In the debates context regarding the relaunch of the internal market in order to meet the current challenges and to provide its full potential to individuals and to businesses, the simplification and the acceleration of the cross-border administrative cooperation between national administrations, which would give to the citizens the opportunity to enjoy their rights in the single market more easily, is an important goal in mind, since the single market relaunch requires the active support of all the European institutions, of all the member states and of all stakeholders.

II. The Cooperation between Public Administrations in the Correct Application of the European Union Legislation And The Assurance of an Individual Effective Protection

The exactingnesses of the proper functioning of the internal market require, among the correct transposition of the European Union law, the proper application of the European norms. Administrative application of the communal law requires that, with few exceptions (such as the competition domain, the management of a part of the structural funds or certain research programs), the management of communal policies to be the responsibility of the national administrations.

The correct application of the European Union legislation by the national public administrations was considered by the European Commission as being crucial for further integration and proper functioning of the internal market [3]. Among its proposals for a new "European governance" [4], the Commission specify the consolidation of the administrative capacity at national level as a key part of its strategy for a better implementation of the European Union legislation.

Lisbon Treaty introduces a new title dedicated to the administrative cooperation (Title XXIV from TFEU), stating that the effective implementation of Union law by the member states, which is essential for the proper functioning of the Union, is a matter of common interest. In this regard, the European Union can support member states' efforts to improve their administrative capacity to implement the Union law. This action may include, especially the facilitation of the exchanges of information and of civil servants, as well as the supporting of the training schemes. No member state is enforced to use this support. The European Parliament and the Council, deciding by means of regulations in accordance with the ordinary legislative procedure, establish the necessary measures to this end, excluding any harmonization of the acts with law power and of the and administrative norms of the member states (Article 197 TFEU).

Member states have the obligation to prevent public administrations from violating European Union legislation. For this, starting from the need to develop a common administrative culture that provides a high level of the services and to enable the speedy resolution of the problems, independent of the formal dedication of the administrative cooperation at European level, the Union and the national administrations have developed new forms of administrative interaction. It is about a new type of cooperation between the Union and the national administrations, cooperation that involves innovative and very diversified methods, which takes the form of an "administrative associations" (*Verwaltungsverbund*) [5] and that, under the influence of the new information and communication technologies, has facilitated the exchanges between all levels of administrations. Mainly based on communication and information exchange between the member states administrations, the administrative cooperation has thus become a key element of the unique European Governance [6], preventing the adoption of decisions that deprives citizens and businesses to take full advantage of the freedom of movement within the internal market.

The effectiveness of the Union norms depends, as with any other norms, on the existence of some penalization mechanisms that intervene whenever the administration took an infringement decision of the European Union legislation and to allow the enterprise or the citizen, whose rights have been affected, to benefit of an efficient and adequate repairing mechanism of the suffered injuries.

The protection of the rights which the persons subjected to the justice acquire as a result of the communal dispositions is provided in the national legal systems also through the internal legal instruments. The national jurisdictions must ensure the application of the European Union law with an effective and a rigorous enforcement equivalent to those required for the appliance of the national law. In other words, the national procedural norms that regulate the actions of protection of the people's rights from the Union legislation should not practically make impossible or excessively difficult the exercise of these rights and the same norms must not be less favorable than those that govern similar internal actions [7].

All in all, an effective protection requires, among other things, that citizens and undertakings are provided with alternatives to the Courts; in other words, with mechanisms for

the informal (even though non-binding) resolution of disputes (out-of-court problem-solving mechanisms), as the enactment of a Directive on ADR in civil and commercial matters (Directive 2008/52/EC of the European Parliament and of the Council, of 21st May 2008, on certain aspects of mediation in civil and commercial matters - O J L 136) plainly shows [8].

In considering the necessity of an effective protection of the individual rights and under the conditions of the judicial slowness procedures (*infringement* procedure regulated by the article 258 TFEU, which lasts, on average, two years) and relatively high costs of such a procedure, the Commission continuously developed new ways to improve the implementation of the European Union legislation. These procedures do not aim to replace the jurisdictional character procedures, but they represent complementary *alternative mechanisms*, addressing to some specific issues such as the incorrect application of the Union law or as the foreseeable violations of European norms. Their goal is to enable the European citizens to fully benefit from the advantages of the internal market and to provide those affected by the incorrect application of the European rules a quick repair, without necessarily having a legal claim.

III. The SOLVIT Net – A Pre-Contentious Mechanism of Solving the Problems of the Internal Market

A. The efficiency of the SOLVIT activity

SOLVIT system represents an online network for solving problems faced by citizens and businesses as a result of the improper implementation of the legislation regarding the internal market by the public authorities. In the SOLVIT network, which is operational since July 2002 [9], the European Union member states (and also Norway, Iceland and Liechtenstein) work together to solve in a pragmatic and non-contentious manner the complaints submitted by citizens and businesses.

The network consists of 30 national SOLVIT centers which are part of the national administration and are committed to provide real solutions to the problems presented within a ten weeks term. Services provided by SOLVIT are free.

Operation of the centers is provided by the member states, but the European Commission is coordinating the network, which, through its specialized structure (SOLVIT-EC), counsels the national SOLVIT centers during the process of resolution the cases, administrates the central database and website, that includes links to the national websites and a standardized complaint form and publishes annually, based on data provided by the SOLVIT centers, a report regarding the network functioning.

To ensure the network coherence and the uniform treatment of the cases, the Commission organizes biannual workshops of the network and provides training and discussions on current themes. The formal complaints received by the Commission, for which a real possibility of being solved otherwise than by law is seen, are also sent to SOLVIT.

SOLVIT interferes, in principle, for any cross-border problem from an enterprise or of a citizen on one hand and a national public authority, on the other hand, where there is the possibility that the communal legislation may have been improperly applied.

The political areas SOLVIT most commonly treated are: the professional recognition of the qualifications and of the diplomas, the access to education, residence permits, the voting rights, the social security, the employment rights to a job, the driving licenses, the registration of the motor vehicles, the border control, the market access for products, the market access for services, the establishment as independent, the public acquisitions, the taxation, the free circulation of the capitals and of the payments. But being an informal mechanism of solving the problems, SOLVIT can not intervene if a jurisdictional proceeding is already underway.

When a case is submitted by an individual or a SOLVIT firm, the SOLVIT center in his country of origin (called "home" SOLVIT Centre) first checks the data of the request, in order to ensure that it actually regards an incorrect application of the internal market rules and that all the necessary information was made available. The file is then placed in a computerized database and will be automatically sent to the SOLVIT centre in the member state where the problem occurred and which is responsible for its solution (called "responsible" SOLVIT center). The "responsible" SOLVIT Centre must confirm within a week whether it accepts the case, the file being dependent on the centre appreciation regarding the based character of the application and if it considers that the file can be solved in a pragmatic way. The two SOLVIT centers cooperate to solve the problem and the complainant is kept informed by the SOLVIT home center on the development of his case and with the proposed solution. The term in which SOLVIT aims to find a solution to the problems submitted to it is ten weeks, with the possibility that, exceptionally, the responsible center may request an extension of that period with up to four weeks if it considers that within this period of time the solving of the case is possible.

Although the individual cases handled by SOLVIT differ significantly, SOLVIT centers have adopted in December 2004 a set of *common standards of quality and performance* in order to ensure a high quality of the services across the network, to provide the guarantees of fairness and impartiality required by the functioning of an informal problem solving mechanism, so without penalty.

Although the main task of SOLVIT is to solve problems caused by the improper implementation of the Union legislation, it appears that sometimes in order to solve the subjected problem some structural changes in the behavior of the public authorities are required, some cases even requiring a formal legal action of amending the legislation, the guidelines or the other official measures of implementation, at national level.

Despite the fact that the SOLVIT mandate allows SOLVIT centers to refuse to take such cases because they are difficult to solve by informal means or within ten weeks, and some of these centers are facing serious problems of staff, an increased number of SOLVIT centers follow these so-called SOLVIT + cases. Thus, in 2008, a record number of 17 SOLVIT centers (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Finland,

France, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden) were occupied with a total number of 32 cases SOLVIT +, half of which are already solved. Thus, not only that there are solved the individual problems of the applicants, but also future similar problems are prevented. Furthermore, many SOLVIT centers often try to help applicants even if the case does not fall within the scope of SOLVIT (for example, the cross-border issues which are not related to EU legislation), in 2007 a special non-SOLVIT category was created within the SOLVIT database to record cases of this type.

SOLVIT is therefore a mechanism for resolving disputes faster than the introduction of a formal complaint. The solution proposed to solve the case is not compulsory and can not be formally appealed to the SOLVIT level. If a problem could not be solved or the proposed solution is not considered to be acceptable by the petitioner, he has at hand the legal proceeding before the national courts or the formal complaint to the European Commission.

SOLVIT has been working for eight years, during which the number of treated cases increased more than tenfold, and the centers are required to treat more and more various cases, sometimes even exceeding the strict mandate that they have. Since its establishment until today, SOLVIT has received a growing number of complaints. Their number increased by 60% until 2006 (from 467 cases), following that in 2008 to reach 1000, almost doubling itself.

According to the 2010 report of SOLVIT, in 2009 the number of cases considered as belonging to the SOLVIT activity reached almost 1600, following that in 2010 this number to decrease to 1363 (of the nearly 3800 cases that have been subjected to it almost 60% being considered not related to the SOLVIT activity). On average, two thirds of the cases are submitted by citizens and a third by the companies. The average resolution of these cases was of 82% in 2006, following that in 2010 to reach 91%, of which more than three quarters are resolved within the prescribed period of ten weeks. Since 2007, the number of SOLVIT cases was consistently higher than the number of infringement procedures for the unique market legislation. In the European Parliament report on SOLVIT adopted on 02nd March 2010 (2009/2138 (INI)), it is estimated that SOLVIT activities resulted in a significant reduction of costs for the citizens and European businesses, only for 2008 the reduction amounting to about 32, 6 EUR millions.

Romania SOLVIT Centre works in the Department for European Affairs of the Romanian Government (DEA) - The European Law Direction and Legislative Harmonization, this inter-ministerial position being able to alleviate the solving of some problems.

Through its position in the Department for European Affairs it is thought to have additional valences from its perspective of identifying mechanism and deficiencies correcting of the transposition and implementation of the European legislation, as DEA, in consideration of its institutional competence, may request to the competent authority to promote some governmental decrees of modification, designed to ensure the compliance with the communal law on the mentioned issue.

To facilitate the cooperation between Romania SOLVIT Centre and the national public administration authorities to efficiently solve SOLVIT cases was established, since December 2006, also a net of "contact points" within the national authorities responsible for implementing the communal law on internal market domain, the contact persons helping to solve SOLVIT cases and to promote the center in the respective administrative structures.

The number of cases handled by SOLVIT Romania has been increasing constantly. If in January 2007 - December 2008 period, the Centre received 252 complaints, of which 160 were rejected for not having the SOLVIT criteria, only in 2009 the number of the received petitions was of 276 (of which 87 accepted), so that in 2010 this number to decrease slightly, a number of 262 complaints being registered, but the acceptance rate of the cases has increased, 120 petition being accepted, increasing also the rate of their solution (only 10 cases not being solved in 2010, compared to 14 in 2009).

The strong growth in the flow of petitions in recent years is founded, according to the activity report SOLVIT Romania January-June 2009, on three reasons: increasing the perception of Romania's status as a member state of the European Union and the increase of the mobility and interactions of the Romanian citizens and of the other member states with the public administrations, including that of Romania; the increased population receptivity to such a service, justified by the gratuitousness of the assistance, the informal way of working and the customized solutions, service effectiveness in resolving the complaints. The recognition of the professional qualifications, the social security and the free circulation of the persons are the main areas covered by the petitions addressed to SOLVIT Romania.

Although it has grown significantly in the past years, the SOLVIT network is not yet used to its full capacity, each national center administering, on average, less than one case per week. Taking into account that it is based on centers administrated by the national administrations, the network faces some shortcomings such as the lack of the adequate staff, the insufficient oversight by the Commission and the utilization of a wide range of procedures and quality assurance standards. But the strengthening of the SOLVIT network is part of the larger strategy to relaunch the internal market, the European Commission's initiative regarding the adoption of the *Unique market act* (COM (2010) 608) containing, among the 50 proposals, and the commitment that, in partnership with the member states, will strengthen the informal problem-solving tools, in particular by improving and strengthening the "EU Pilot" project, the SOLVIT network and the European consumer centres networks. With regard to SOLVIT, the Commission will make concrete proposals in 2011, based on an assessment made in 2010.

The envisaged measures concern mainly the adoption of a clearer legal basis for SOLVIT activity, the introduction of norms regarding the personal resources and ensuring of a co-financing of the activity centres by the European Commission.

B. The Impact of the SOLVIT Activity on the National Public Administrations

Although SOLVIT interfere ex post, to resolve, through informal procedures, some cases of non-application or incorrect application of internal market norms after their violation have occurred, the influence of the SOLVIT activity exceeds actual framework of solving an individual case [10]. Through the SOLVIT activity are often identified the more general structural problems in the unique market.

The network, mainly through the annual reports, provides valuable information, in addition to those transmitted by other means (including the formal ones) about the difficulties faced by each state in the application of the internal market norms. His activity has an important preventive role, particularly through the SOLVIT + cases accepted ever more frequently to be resolved, for whose solution are required structural changes in the administrative practices or even of the legislation, and, if they manage to be materialized, prevents the emergence of some new cases of non-compliance with the European regulations.

However, most of the times, the SOLVIT activity involves solving the cases with which the centres are invested through the collaboration between structures of the national public administrations, regional and even local, promoting common agreements on issues related application of the internal market norms, common definitions of the problems and common methods of working.

These forms of cooperation contribute to shape the actions of the national administrations, to correct some faulty administrative practices, and therefore, to the professionalization of public administrations of the member states. Through the pressure they put on the national administrations to comply with internal market regulations, the SOLVIT activity can thus contribute, ultimately, to the process of Europeanization of the public administrations.

Thus, if we refer only to the SOLVIT Romania experience, the reports presented by this centre identify a number of *horizontal issues of the national public administration* that can be drawn from the cases that have been submitted for resolution:

- the lack of information structures within the qualified authorities that can provide to the applicants the needed information;
- the lack of stable and transparent procedures to establish both the elements of administrative procedure and clear deadlines and also the possibility of contesting the decision and terms of settlement of the appeals;
- the lack of possibility to contact the representatives of the qualified authorities (in approx. 75% of cases, the complainants entail the lack of dialogue with the competent authorities and the negative consequences of this fact: the extension of the documents release term, misled by information posted on the institution website but that are not updated and, in some cases, the damage of the labor relations of the applicants).

IV. Conclusion

In accordance with the treaties' dispositions, the application of the European Union legislation is one of the main responsibilities of the member states and the European Commission, as guardian of the treaties, has the authority and the responsibility to ensure the correct application of legislation. Starting from the finding that the effective implementation of the Union norms, especially of those concerning the internal market, still faces major challenges, like the significant delays in the transposition of directives or a high number of complaints from citizens and businesses as their object the violations of their rights that are conferred by the Union legislation, the Commission continuously developed new means for a better implementation of the legislation.

Most of these new mechanisms of control are informal tools, with a non-legislative character, but through which it is seeking to increase the compliance degree of the mandatory legislation.

These procedures do not aim to replace the procedures with jurisdictional character, but represent complementary *alternative mechanisms*, addressing to specific issues such as the incorrect application of the European Union law or foreseeable violations of the European Union rules.

Their purpose is to enable citizens to fully benefit from the advantages of the internal market and to provide those affected by the incorrect application of the European Union norms a quick repair, in order to remedy, whenever possible, in an early stage, the violation situations of the European Union legislation, without the need to apply infringement procedures of the European law.

The application of these new control mechanisms requires the increase cooperation and coordination between the administrations of the member states and between the member states themselves and the European Commission, this enhanced interaction contributing not only to solve the immediate problems of implementing the European legislation, but also to develop a mutual trust between the authorities of the member states and a single market more viable on long-term (the European dimension of the public administration in member states). They have been delegated by the Commission to interfere, in principle, ex post, in order to solve the cases of non-application or incorrect application of the norms, which represent forms of legislation violations more difficult to detect by the Commission than the cases of delayed transposition.

Among the initiatives launched in the past years to promote the exchange of good administrative practices in the correct application of European Union legislation, SOLVIT net has proved to be one of the most effective.

The techniques and the methods used in the SOLVIT operating have managed to put pressure on the authorities of the member states to achieve a better compliance of the internal market regulations. National authorities have come to borrow from the way of thinking (mainly in terms of the interpretation and enforcement of the internal market legislation) and of action of these informal structures, which led to a less formalization of the work practices from national administrations.

At the same time, by putting in contact different national administrations that work together to solve a problem related to the implementation of the internal market legislation, the exchange of best practices among these administrations is favoured, contributing to a more uniform interpretation and application of that legislation. SOLVIT system has some advantages that justify the encouragement of its expansion to other areas. Basically, it allows *a greater flexibility and greater speed of intervention* than the jurisdictional proceedings, allowing the release of the judicial courts and thus contributing both to save public funds, but especially to reduce the workload, often in excess of the court device court, which can then focus on issues of essence of the European judicial system operating.

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