Answer given by Mr Byrne on behalf of the Commission

(20 January 2004)

The current situation regarding Member States' transposal of Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements is as follows:

- five Member States transposed Directive 2002/46/EC within the time allowed: Belgium, Denmark, the Netherlands, Portugal and Sweden;
- on 6 October 2003 the Commission sent a letter of formal notice to the other ten Member States for not having given notification of their national measures for transposing the Directive;
- since then, Spain, Ireland and the United Kingdom have notified us of their national measures;
- seven Member States are currently behind schedule in transposing the Directive: Germany, Greece, France, Italy, Luxembourg, Austria and Finland (the delay in transposal concerns only the autonomous province of the Åland Islands);
- in light of the above, it is not possible to provide a meaningful description of the different ways in which the various countries have transposed the Directive;
- with regard to the areas or products for which this Directive does not provide harmonisation measures, movement of these goods in the single market remains subject to the general provisions of Community law and in particular to those relating to the free movement of goods (Articles 28 and 30 of the EC Treaty). These provisions will of course apply in the accession countries as of the date of accession;
- based on the implementing powers conferred on it by Article 5(4) of the Directive, the Commission will set the maximum amounts of vitamins and minerals in food supplements. This exercise is to take into account the work currently being done by the European Food Safety Authority on maximum safe levels of vitamins and minerals, which should be completed in the course of 2005;
- under Article 4(8) of the Directive, the Commission must submit to the European Parliament and the Council, not later than 12 July 2007, a report on the advisability of establishing specific rules concerning categories of nutrients or of substances with a nutritional or physiological effect, other than vitamins and minerals. The Commission has not yet begun this work.

(2004/C 78 E/0597) **WRITTEN QUESTION E-3482/03**

by Richard Corbett (PSE) to the Commission

(24 November 2003)

Subject: Legal privilege of documents between companies and their law firms

Does the Commission regard correspondence between companies and their law firms as 'legally privileged' in anti-cartel cases?

If so, what is to prevent companies arranging their cartels via their lawyers in order to avoid detection?

Answer given by Mr Monti on behalf of the Commission

(8 January 2004)

The Commission fully recognises that correspondence between companies and their law firms can be 'legally privileged'. This recognition is in accordance with the jurisprudence of the European Court of Justice and the Court of First Instance. The jurisprudence sets out the conditions for such privilege. Thus, according to the case law, the confidentiality of written communications between lawyer and client is protected provided that, on the one hand, such communications are made for the purposes and in the interests of the client's rights of defence and on the other hand, they emanate from independent lawyers, that is to say, lawyers who are not bound to the client by a relationship of employment.

The second part of the question of the Honourable Member is of utmost concern to the Commission in connection with the effective enforcement of Article 81 of the EC Treaty. To that effect, the above case law imposes conditions so as to avoid abuse of legal privilege by companies. Documents are only protected if they are written communications solely for requesting the lawyer's advice for the purposes of the rights of defence.

(2004/C 78 E/0598) **WRITTEN QUESTION E-3486/03**

by Karl von Wogau (PPE-DE) to the Commission

(24 November 2003)

Subject: Charges for bank transfers within the eurozone

Is the Commission aware that Regulation (EC) No 2560/2001 [1] on cross-border payments in euro is still not consistently applied in Spain? What steps does the Commission intend to take in this connection? How can members of the public obtain refunds of any charges made?

The incident which gave rise to the question was a transfer of EUR 10 which a member of the public made from his account with a local savings bank in Germany to a Spanish account which he had opened with the Caja de Ahorros del Mediterráneo. Only EUR 3,99 were credited to his Spanish account, although the money was transferred after 1 July 2003. Upon enquiry, the Spanish bank told him that a charge of 0,2 % is generally made on transfers from foreign banks, with a minimum charge of EUR 6,01, and that the charges are made by the Bank of Spain directly. Staff at his Spanish bank were not aware of Regulation (EC) No 2560/2001 on cross-border payments.

[1] OJ L 344, 28.12.2001, p. 13.

Answer given by Mr Bolkestein on behalf of the Commission

(19 January 2004)

Regulation (EC) No 2560/2001 of the Parliament and of the Council of 19 December 2001 establishes the principle of equality of charges between national payments and cross-border payments in euro. This principle applies to electronic payment transactions in euro since 1 July 2002 and to credit transfers since 1 July 2003, up to an amount of EUR 12 500. The Regulation specifies that the sending bank can request from its customer the IBAN (International Bank Account Number) and BIC (Bank Identifier Code) of the beneficiary, and may take additional charges when those are not provided.

In the case presented by the Honourable Member, a transfer of EUR 10 from Germany to Spain was charged EUR 6,01 to the beneficiary. According to the principle of equality of charges, this charge is only correct if it corresponds to the charge applied to a similar national transfer in Spain, and if IBAN and BIC were provided by the sender upon request. The fact that the employee of the bank was not aware of the Regulation and that the charge applied is said to be 'generally made on transfers from foreign banks', seems to indicate that this bank does not apply the same charges to credit transfers in euro in the Union as it does to national ones, as prescribed in the Regulation.

Should this be the case, the Spanish authorities should take appropriate measures in order to guarantee adequate and consistent application of the Regulation. Article 7 of the Regulation indicates that the compliance shall be guaranteed by effective, proportionate and deterrent sanctions. The Commission wrote to all Member States in September 2003 asking them the name of the responsible national authority and the measures they may take in this regard, and is in contact with the Banco de España in this respect, concerning cases of possible misapplication of the Regulation.