



2017/2273(INI)

21.3.2018

OPINION

of the Committee on Constitutional Affairs

for the Committee on Legal Affairs

on monitoring the application of EU law 2016
(2017/2273(INI))

Rapporteur for opinion: Kazimierz Michał Ujazdowski

PA_NonLeg

SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Emphasises that the EU was set up as a Union based on the rule of law and respect for human rights (Article 2 of the TEU); highlights that careful monitoring of Member States' and EU institutions' actions and omissions is of the utmost importance;
2. Stresses that effective implementation of EU law is essential in order to enhance citizens' trust in EU policies and institutions; recalls that Article 197 of the TFEU states, in this respect, that 'effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest'; maintains that the citizens of the Union will feel confident about Union law when it is implemented in the Member States in an effective manner;
3. Recognises that the primary responsibility for the proper implementation and application of EU law lies with the Member States; notes, however, that this does not absolve the EU institutions of their duty to respect primary EU law, in particular when they produce secondary EU law;
4. Welcomes this first report on the monitoring of the application of EU law following the entry into force of the Better Regulation Agenda in 2015; recalls that the principles of better law-making encompass the requirement to demonstrate the need to legislate at EU level, in a way that is strictly proportionate to the aims of the legislative action, and to ensure that the legislation is correctly implemented at the right level; stresses, therefore, the importance of upholding the principles of conferral, subsidiarity and proportionality pursuant to Article 5 of the TEU, as well as legal certainty and equality before the law in view of better monitoring of the application of EU law;
5. Regrets that timely and correct application of EU legislation in the Member States remains a matter of serious concern, as shown by the large number of infringement procedures; deplores the high number of negative trends revealed in the current report, notably the substantial increase in the opening of infringement cases, representing a 67.5 % increase over the past year and a five-year peak, together with a recorded increase in complaints and a decrease in rates of resolution; notes that according to the breakdown of the infringement cases open at the end of 2016, the four policy areas in which the greatest number of transposition infringement proceedings were opened against Member States were the internal market, environment, financial stability, financial services and capital markets union, and mobility and transport;
6. Notes that the Commission's commitment to be more strategic in enforcing EU law recently led to the closure of infringement cases for political reasons; calls on the Commission, therefore, to explain the considerations behind such decisions in future monitoring reports;
7. Welcomes the decrease in the total number of new EU Pilot files, reaching its lowest level since 2011; notes the Commission's aim, in line with its communication entitled

‘EU law: Better results through better application’¹, to make use of the EU Pilot mechanism only where it provides effective added value in the infringement resolution process; points out, however, that EU Pilot is a working tool that has no legal status and that gives a discretionary power to the Commission that does not comply with the proper standards of transparency and accountability; considers that these shortcomings could be addressed through the adoption of a regulation that should clarify the legal rights and obligations of individual complainants and the Commission;

8. Welcomes the fact that the report acknowledges the role of Parliament in calling the Commission’s attention to shortcomings in the application of EU law in Member States by means of parliamentary questions and petitions; points out that closer scrutiny by national parliaments of their respective governments when the latter are involved in the law-making process will foster a more effective application of EU law as envisaged in the Treaties;
9. Stresses the crucial importance, besides efficiency, of transparency and accountability in the drafting and application of EU law by the EU institutions, meaning that EU legislation has to be clear, understandable, consistent, precise and immediately available to citizens, while also taking into consideration the case law of the Court of Justice of the European Union, which insists on the need for foreseeability and predictability in EU rules of law²;
10. Underlines that EU citizens, as of right, must be the first to be made aware in a clear, effectively accessible, transparent and timely manner whether and which national laws have been adopted in transposition of EU laws, and which national authorities are responsible for ensuring they are correctly implemented; recognises the essential role that social partners and civil society organisations play in monitoring and enhancing effective redress of EU law;
11. Reiterates the provision in the Interinstitutional Agreement on Better Law-Making that calls on Member States when transposing EU directives into national law, where they choose to add elements that are in no way related to that Union legislation, to make these additions identifiable either through the transposing act or through associated documents;
12. Expresses concern that given the incongruent translations of many directives into the EU’s official languages, it is likely that different language versions cause differing interpretations of the respective texts and differences in their transposition in the Member States; deplors, therefore, that such differing transposition and legal interpretations of directives may not be uncovered systematically, but only when clarified by rulings of the Court of Justice of the European Union;
13. Recalls that national parliaments have an essential role to play in both pre-legislative scrutiny of draft EU legal acts and post-legislative scrutiny of the correct implementation of EU law by the Member States; calls on national parliaments to

¹ C(2016)8600, OJ C 18, 19.1.2017, p. 10.

² Judgment of the Court of Justice of 10 September 2009, Plantanol GmbH & Co. KG v Hauptzollamt Darmstadt, C-201/08, ECLI:EU:C:2009:539, paragraph 46.

pursue this role proactively;

14. Calls on the Commission to effectively monitor the fulfilment of national courts' responsibility to seek preliminary ruling by the Court of Justice of the European Union, as stated in Article 267 of the TFEU; calls on the Commission, therefore, to consider establishing a register containing all national court rulings pertaining to the interpretation of EU law where preliminary ruling by the Court of Justice of the European Union has not been sought;
15. Emphasises the principle of transparency as enshrined in the EU Treaties, as well as the right of EU citizens to justice and good administration, as stipulated in Articles 41 and 47 of the Charter of Fundamental Rights of the European Union; points out that those rights and principles require citizens to be given adequate and easy access to drafts of the legal acts that concern them; recalls that those rights and principles should also be of paramount importance to the Member States when proposing draft acts aiming at implementing EU law;
16. Calls for all EU institutions engaged in the legislative process to commit to enhancing the drafting quality of legislative texts, in line with the commitment undertaken in the Better Law-Making Agenda; recalls that the 1998 Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation needs to be adapted in order to deliver on that objective;
17. Welcomes the Commission's commitment to actively helping Member States transpose and implement legislation by preparing implementation plans for certain directives and regulations; calls on the Commission to provide enhanced guidance and assistance to Member States via concrete tools, in order to achieve a better record of the implementation of EU law; encourages the Commission to assist Member States that might face *a priori* implementation and transposition challenges and address these accordingly by enhancing the institutional capacity of public authorities at a technical level;
18. Underlines the importance of the role of the social partners, civil society organisations and other stakeholders in creating legislation and in monitoring and reporting shortcomings in the transposition and application of EU law by Member States; suggests that this role be encouraged by national authorities and European institutions;
19. Recalls the need for Parliament to also be able to monitor the Commission's enforcement of regulations in the same way that it does with directives; therefore urges the EU institutions to cooperate more effectively and efficiently, in line with Article 13(2) of the TEU; reiterates its request to the Commission to ensure that the data on the implementation of regulations is clearly provided in its future annual reports on the monitoring of the application of EU law; reminds Member States of the obligation to submit national legislation transposing or implementing regulations to the Commission in accordance with the principle of sincere cooperation enshrined in Article 4(3) of the TEU;
20. Reiterates its call for the creation, within the relevant Directorates-General (DG IPOL, DG EXPO and DG EPRS), of an autonomous system for ex-post assessment of the impact of the main EU laws adopted by Parliament under codecision and in accordance

with the ordinary legislative procedure;

21. Reiterates that all EU institutions, even if they act as members of groups of international lenders, are bound by the EU Treaties and the Charter of Fundamental Rights of the EU;
22. Calls on the Commission to pay particular attention to its control over the implementation of EU legislation laying down rules against corruption practices that directly affect the functioning of the internal market, and to take the appropriate measures to tackle such phenomena.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	21.3.2018
Result of final vote	+: 23 -: 1 0: 0
Members present for the final vote	Gerolf Annemans, Michał Boni, Mercedes Bresso, Elmar Brok, Fabio Massimo Castaldo, Pascal Durand, Esteban González Pons, Danuta Maria Hübner, Alain Lamassoure, Jo Leinen, Morten Messerschmidt, Maite Pagazaurtundúa Ruiz, Markus Pieper, Paulo Rangel, Helmut Scholz, György Schöpflin, Pedro Silva Pereira, Barbara Spinelli, Claudia Țapardel, Kazimierz Michał Ujazdowski
Substitutes present for the final vote	Max Andersson, Pervenche Berès, Sylvia-Yvonne Kaufmann, Jérôme Lavrilleux, Cristian Dan Preda, Jasenko Selimovic, Rainer Wieland

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

23	+
ALDE	Maite Pagazaurtundúa Ruiz, Jasenko Selimovic
ECR	Morten Messerschmidt, Kazimierz Michał Ujazdowski
EFDD	Fabio Massimo Castaldo
GUE/NGL	Helmut Scholz, Barbara Spinelli
PPE	Michał Boni, Elmar Brok, Esteban González Pons, Danuta Maria Hübner, Alain Lamassoure, Markus Pieper, Paulo Rangel, György Schöpflin
S&D	Pervenche Berès, Mercedes Bresso, Sylvia-Yvonne Kaufmann, Jo Leinen, Pedro Silva Pereira, Claudia Tapardel
VERTS/ALE	Max Andersson, Pascal Durand

1	-
ENF	Gerolf Annemans

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention