

24th Annual Report from the Commission on monitoring the application of Community law

European Parliament resolution of 21 October 2008 on monitoring the application of Community law – 24th annual report from the Commission (2008/2046(INI))

The European Parliament,

- having regard to the 24th annual report of the Commission of 17 July 2007 on monitoring the application of Community law (2006) (COM(2007)0398),
- having regard to Commission staff working documents SEC(2007)0975 and SEC(2007)0976,
- having regard to the communication from the Commission of 5 September 2007 entitled 'A Europe of results – Applying Community law' (COM(2007)0502),
- having regard to Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes¹,
- having regard to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC²,
- having regard to Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes³,
- having regard to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin⁴,
- having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation⁵,
- having regard to Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions⁶,
- having regard to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and

¹ OJ L 225, 12.8.1986, p. 40.

² OJ L 145, 19.6.1996, p. 4.

³ OJ L 46, 17.2.1997, p. 20.

⁴ OJ L 180, 19.7.2000, p. 22.

⁵ OJ L 303, 2.12.2000, p. 16.

⁶ OJ L 269, 5.10.2002, p. 15.

reside freely within the territory of the Member States¹,

- having regard to its resolution of 21 February 2008 on the Commission's 23rd Annual report on monitoring the application of Community law (2005)²,
 - having regard to Rules 45 and 112(2) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0363/2008),
- A. whereas the effectiveness of EU policies is largely determined by their implementation at national, regional and local levels; whereas compliance with Community legislation by the Member States must be rigorously controlled and monitored in order to ensure that it has the desired positive effects on the daily lives of citizens,
- B. whereas proper monitoring of the application of Community law involves not merely assessing transposition in quantitative terms but also evaluating the quality of transposition and of the practices adopted in applying Community law in the Member States,
- C. whereas after rising steadily in previous years to reach a total of 2 653 detected infringements in 2005, the total number of infringement proceedings initiated by the Commission fell slightly – to 2 518 – in 2006; whereas the accession of 10 new Member States seems not to have had any impact on the number of registered infringements,
- D. whereas, in respect of the EU-25, the number of proceedings initiated in 2006 for failure to notify transposing measures fell by 16% with respect to 2005, from 1 079 to 904 cases, owing to a reduction in the number of directives with a deadline for the year from 123 in 2005 to 108 in 2006 and to prompter notification by Member States,
- E. whereas the statistics for 2006 quoted by the Commission show that the courts in many Member States are reluctant to make use of the preliminary rulings procedure provided for in Article 234 of the EC Treaty; whereas this may be due to a still inadequate grasp of Community law,
- F. whereas the principle of equality before the law requires that Union citizens should enjoy equality in respect not only of European Union legislation but also of the national legislation transposing it; whereas it would therefore be highly expedient if, on expiry of the deadlines for transposing the European legislation, the Member States not only included an explicit reference in the transposition provisions but also indicated in their Official Journals which national provisions are intended to apply the legislation in question and which national authorities are responsible for their implementation,
- G. whereas citizens' complaints are not merely symbolic in building a 'people's Europe' but also constitute a measurable and efficient means of monitoring the application of Community law,
- H. whereas petitions to Parliament are a valuable means of detecting infringements of Community law in Member States, and whereas over recent years the number of petitions has increased significantly, with some 1 000 being submitted in 2006,

¹ OJ L 158, 30.4.2004, p. 77.

² Texts adopted, P6_TA(2008)0060.

- I. whereas the issues most commonly raised in petitions concern the recognition of educational and professional qualifications, taxation, the right to freedom of movement within the territory of the Member States and discrimination-related matters,
- J. whereas in 2006 the number of complaints lodged with the European Ombudsman remained stable at 3 830; whereas 75% of the complaints received fell outside the Ombudsman's sphere of competence, being matters for the national or regional authorities in Member States, and whereas, as in previous years, 70% of the inquiries opened by the Ombudsman concerned the Commission,
- K. whereas the principle of non-discrimination is one of the cornerstones of the European integration process and is directly linked to the operation of the internal market, with particular reference to the principle of the free movement of persons, services, goods and capital, and whereas it guarantees equal rights and opportunities for all Union citizens,
- L. whereas citizenship of the Union, as established in the Maastricht Treaty, guarantees citizens the right to move freely within the territory of the Member States, together with a number of political rights, and whereas the EU institutions stand as guarantors of those rights,
- M. whereas the deadline for transposing Directive 2004/38/EC, concerning the right of all citizens to move and reside freely within the territory of the European Union, was fixed at 30 April 2006,
- N. whereas students continue to experience difficulties in enjoying free movement or gaining access to higher education in other Member States of the European Union, such as administrative barriers or quota systems (which discriminate against foreign students wishing to register at universities) and whereas the EU can intervene only in the event of discrimination based on nationality,
- O. whereas Article 39 of the EC Treaty stipulates that the free movement of workers entails the abolition of any discrimination against workers from other Member States as regards employment, remuneration and other conditions of work and employment, and whereas secondary Community law includes a series of provisions designed to combat this type of discrimination effectively,
- P. whereas there is a direct link between the degree to which a Member State implements Community law, including in the field of environmental protection, and that Member State's ability to take up funding available for essential investment, infrastructure and modernisation projects,

Annual report for 2006 and action taken on Parliament's resolution of 21 February 2008

- 1. Welcomes the above-mentioned Commission Communication of 5 September 2007 and the Commission's undertaking to improve current working methods with a view to prioritising and accelerating the handling and management of existing proceedings; points out, none the less, that the Commission has not yet responded to or acted upon Parliament's abovementioned resolution of 21 February 2008, in which it calls on the Commission to provide specific information on various aspects of the implementation of Community law, with particular reference to the development of the abovementioned new working method;

2. Is deeply concerned that, under the new working method, which provides for complaints received by the Commission to be referred back to the Member State concerned (which is the party responsible for the incorrect application of Community law in the first place), the Commission may be failing to meet its institutional responsibility for ensuring the application of Community law as 'guardian of the treaties', in accordance with Article 211 of the EC Treaty; notes that the Commission is frequently the only remaining body to which citizens can turn to complain about the failure to apply Community law; urges the Commission to submit to Parliament a first report by November 2008 on the procedures followed and results obtained during the first six months of the pilot project which commenced on 15 April 2008 and which involves 15 Member States;
3. Stresses that, under Article 211 of the EC Treaty, the Commission is the institution responsible for ensuring that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied, and, under Article 226, is empowered to take action against any Member State failing to fulfil a Treaty obligation;
4. Urges the Commission to apply across the board the principle whereby any correspondence which may contain a complaint about a genuine breach of Community law must be registered as a complaint unless it is covered by the exceptional circumstances referred to in point 3 of the annex to the Commission communication of 20 March 2002 on 'relations with the complainant in respect of infringements of Community law' (COM(2002)0141); calls on the Commission to provide Parliament with details of how this principle is observed, including in cases where the new method is applied; urges the Commission to inform and consult Parliament on any changes to the exceptional criteria for failure to register complaints;
5. Notes that the main problems with the infringement procedure are its length (20.5 months on average from registration of the case within the specified time-limit to the sending of the letter of referral to the Court of Justice under Article 226 of the EC Treaty) and a limited use of Article 228; calls on the Commission to make every effort to shorten the relatively long delay in dealing with complaints or petitions and to find practical solutions to the problems presented by deciding, upon receipt of the case, whether alternative methods such as SOLVIT, which is still not promoted enough, are more appropriate;
6. Observes a significant increase in infringement cases with continued failure to comply with the Court's judgment reviewed in 2006 and highlights two cases in which penalty payments were imposed on Member States; calls on the Commission to apply Article 228 of the EC Treaty with greater firmness in order to ensure due compliance with judgments of the Court of Justice;
7. Calls on the Commission, in connection with the continuing problem of Member States failing to meet deadlines for the transposition of directives, to supply a list of the directives showing the lowest rate of implementation, together with details of the likely reasons therefor;
8. Commends the efforts made by some Commission Directorates-General, particularly DG Environment, to improve the conformity checks on the relevant directives, but is not satisfied with the Commission's reply regarding the confidentiality of the conformity studies; calls once more on the Commission to publish on its website the studies requested by the various Directorates-General on the evaluation of the conformity of national implementation measures with Community legislation;

9. Draws attention to the insufficient degree of cooperation with the Court of Justice by the national courts in most Member States, which remain reluctant to apply the principle of the primacy of Community law; points, furthermore, to the extremely important role played by the preliminary ruling procedure in the proper application of Community law;
10. Supports, in this connection, the Commission's efforts to determine the areas in which additional training in Community law could be useful for national judges, legal professionals and civil servants;

Interinstitutional cooperation

11. Believes agreements on monitoring the application of Community law and close cooperation between the Commission, the Council, the European Ombudsman and the relevant committees of the European Parliament to be essential in order to ensure effective action in all cases where a petitioner has justifiably complained of an infringement of Community law;
12. Points out that, although few of them (four in 2006) bring to light genuine infringements of Community law, petitions are an irreplaceable source of information on the fundamental requirements of Europe's citizens and should be used as a pointer by the Commission in connection with legislative measures;
13. Stresses the need for better provision of information to citizens with a view to directing anyone wishing to submit a complaint towards the body best qualified to deal with the matter at either national or Community level; believes that a culture of good administration and service should be fostered within the EU institutions with a view to ensuring that citizens are dealt with properly and are able fully to enjoy their rights;
14. Suggests that the Commission should continue to give consideration to the feasibility of using its Representations in Member States to observe and monitor implementation on the ground;
15. Emphasises the need to give consideration to the previously canvassed idea of a common access point for all citizens' complaints and problems relating to the monitoring of the application of Community law, given that the citizen is currently faced with a plethora of options (petitions, complaints, the Ombudsman, SOLVIT, etc.) and therefore some form of central signposting system could provide more targeted and timely results;
16. Welcomes the fact that the Commission's annual reports on the application of Community law are accompanied by annexes expanding on the information set out in the report and supplying essential statistics;
17. Recognises that Parliament's standing committees should play a more active role in monitoring the application of Community law; is convinced that the committees should be given adequate administrative support to enable them to play this role effectively; calls on the Working Party on Parliamentary Reform, the Committee on Budgets and other relevant Parliament bodies to examine the feasibility of a special task force within each committee's secretariat so as to ensure the continuing and effective monitoring of the application of Community law;

Cooperation between the European Parliament and the national parliaments

18. Calls for closer cooperation between the European Parliament and national parliaments with a view to promoting and increasing effective monitoring of the application of Community law at national, regional and local levels; considers that national parliaments have a valuable role to play in monitoring the application of Community law, thus helping to enhance the democratic legitimacy of the European Union and bring it closer to the people;
19. Points out that, under the protocol on the role of the national parliaments in the European Union annexed to the Treaty of Amsterdam, policies concerning the area of freedom, security and justice should entail special involvement by the national parliaments and the Conference of European Affairs Committees (COSAC); considers that this involvement should take place during both the decision-making phase and the implementation of European legislation to enable European and national legislators to adopt amendments and revisions which become necessary in sectors which are and will remain subject to shared competence; therefore invites the competent parliamentary committees at national and European level to establish permanent contacts on individual pieces of legislation, pooling all useful information in the interests of a more transparent and efficient legislative process at European and national level; welcomes the holding of special meetings between European legislators, such as the one recently held on 6 April 2008 with national parliaments to review the framework decision on combating terrorism, during which it was possible to assess not only the problems of implementing European legislation in force but also the relevance of proposed amendments under consideration by the Council;
20. Points out that the Lisbon Treaty arrangements for monitoring compliance with the subsidiarity principle would give the national parliaments a substantially enhanced role in Community law-making;

Combating discrimination in the European Union

21. Points out that the concept of citizenship significantly broadens the scope of the principle of non-discrimination;
22. Notes the recent increase in judgments of the Court of Justice based on the concept of EU citizenship and concerning the right to move freely, under which a Member State may not treat any of its nationals who have taken advantage of their right to move and reside in another Member State less favourably than those who have not;
23. Calls on the Member States to respect the rights deriving from EU citizenship, including the right to vote and stand as a candidate in elections to the European Parliament, which is of particular importance in the run-up to the 2009 elections;
24. Notes that Parliament has received petitions complaining of infringements of Directive 2004/38/EC by some Member States; draws attention to the fact that that directive is of fundamental importance to ensuring that EU citizens may move freely within the territory of the Member States; points out that the Commission is to submit a report in the second half of 2008 on implementation of the directive;
25. Calls on the Commission carefully to monitor the transposition of Directives 2000/43/EC and 2000/78/EC and whether the transposing legislation adopted by Member States is in keeping with the provisions of those directives, as well as to continue to put pressure on the Member States, by way of infringement and non-compliance proceedings, to meet their obligation fully to transpose the directives as soon as possible; believes that Parliament's

competent committee should play a role in the ongoing monitoring of Member States' obligations under those directives;

26. Welcomes the Commission's adoption on 2 July 2008, as provided for in the annual policy strategy for 2008, of the proposal (COM(2008)0426) for a horizontal directive implementing the principle of equal treatment outside the scope of employment and ensuring equal access to goods, services, housing, education, social protection and social advantages, and takes the view that this constitutes an important addition to the current anti-discrimination package;
 27. Calls on the Commission to conduct a thorough analysis of cases where Member States apply non-nationality-based restrictions on access to education by students from other countries, with a view to ensuring that students are able to move freely and are afforded equal treatment within the higher education systems of those Member States;
 28. Calls in particular on the Member States most eligible for structural funding under the multiannual financial framework for the period 2007-2013 swiftly to bring their national law properly into line with EU standards, particularly in the field of environmental protection, and to establish tendering procedures that are transparent to citizens, with a view to making effective use of available structural funding and boosting social and economic development at regional level;
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29. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice, the European Ombudsman and the governments and parliaments of the Member States.