

P7_TA(2012)0442

Monitoring the application of EU law (2010)

European Parliament resolution of 21 November 2012 on the 28th annual report on monitoring the application of EU law (2010) (2011/2275(INI))

The European Parliament,

- having regard to the 28th Annual Report on monitoring the application of European Union law (2010) (COM(2011)0588),
 - having regard to the report by the Commission entitled ‘EU Pilot Evaluation Report’ (COM(2010)0070),
 - having regard to the report by the Commission entitled ‘Second Evaluation Report on EU Pilot’ (COM(2011)0930),
 - having regard to the Commission communication of 5 September 2007 entitled ‘A Europe of results – applying Community law’ (COM(2007)0502),
 - having regard to the Commission communication of 20 March 2002 on relations with the complainant in respect of infringements of Community law (COM(2002)0141),
 - having regard to the Commission communication of 2 April 2012 entitled ‘Updating the handling of relations with the complainant in respect of the application of Union law’ (COM (2012)0154),
 - having regard to its resolution of 14 September 2011 on the 27th annual report on monitoring the application of European Union law (2009)¹,
 - having regard to its resolution of 25 November 2010 on the 26th annual report on monitoring the application of European Union law (2008)²,
 - having regard to the Commission staff working documents SEC(2011)0193, SEC(2011)0194 and SEC(2011)1626,
 - having regard to its resolution of 14 September 2011 on the deliberations of the Committee on Petitions during the year 2010³,
 - having regard to Rules 48 and 119(2) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Constitutional Affairs and the Committee on Petitions (A7-0330/2012),
- A. whereas the Treaty of Lisbon introduced a number of new legal bases intended to facilitate the implementation, application and enforcement of EU law;

¹ Texts adopted, P7_TA(2011)0377.

² OJ C 99 E, 3.4.2012, p. 46.

³ Texts adopted, P7_TA(2011)0382.

- B. whereas Article 298 TFEU states that in carrying out their missions the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration;
- C. whereas the environment, the internal market and taxation are the most infringement-prone policy areas and account for 52 % of all infringement cases;
1. Recalls that Article 17 TEU defines the fundamental role of the Commission as ‘guardian of the Treaties’; notes in this context that the Commission’s power and duty to bring infringement proceedings against a Member State that has failed to fulfil an obligation under the Treaties¹ is a cornerstone of the Union legal order and as such is consistent with the concept of a Union based on the rule of law;
 2. Emphasises the fundamental importance of the rule of law as a condition for the legitimacy of any form of democratic governance, and to fully guarantee citizens the enjoyment of their rights as provided by law;
 3. Endorses the Commission’s ‘smart regulation’ approach which focuses on integrating the monitoring of the application of EU law into the wider policy cycle, which the Committee views as a key preventive measure;
 4. Notes that the infringement procedure consists of two phases: the administrative (investigation) stage, and the judicial stage before the Court of Justice; considers that the role of citizens as complainants is vital in the administrative phase when it comes to ensuring compliance with Union law on the ground;
 5. Welcomes the fact that the Commission uses a large number of tools to make the transposition process smoother (transposition checklists, handbooks or interpretative notes) and encourages the Commission to follow even more closely the transposition of directives before the end of the transposition deadline, particularly as far as Member States with a ‘bad record’ are concerned, in order to be able to intervene swiftly;
 6. Draws attention to the direct applicability of the provisions of directives when they are sufficiently precise and unconditional (‘direct effect’), in accordance with the settled case law of the Court of Justice;
 7. Calls on the Commission and the Member States to act jointly and consistently to tackle the problem of ‘gold-plating’;
 8. Notes that the Commission has recently published a new communication on the handling of relations with the complainant in respect of the application of Union law (COM(2012) 0154), in which it has reviewed the conditions under which a complaint is registered and has therefore affected the infringement procedure as a whole; urges the Commission not to make use of soft law when dealing with the infringement procedure, but, rather, to propose a regulation², so that Parliament can be fully involved as co-legislator in this essential

¹ Articles 258 and 260 TFEU define the Commission’s powers as regards launching infringement proceedings against a Member State. More particularly, Article 258 states that the Commission ‘*shall* deliver a reasoned opinion’ if it considers that a Member State has failed to fulfil an obligation under the Treaties.

² See paragraph 7, calling for a ‘procedural law’.

element of the EU legal order;

9. Views as regrettable, however, the enormous number of non-communication cases (470 pending in 2010);
10. Deplores the absence in the above-mentioned new communication of any reference to EU Pilot, which is, as defined by the Commission itself, a ‘well-established working method’¹ which it uses to deal with complaints as a first step in the infringement procedure wherever there might be recourse to that procedure²; notes that EU Pilot is not even mentioned by name in the communication and that there is no reference to any of the rights or the protection accorded to the complainant under EU Pilot; concludes, therefore, that decisions taken by the Commission which precede or exclude the infringement procedure do not in these case obey the rules of transparency and accountability and are made at the Commission’s complete discretion alone;
11. Calls on the Commission to clarify the status of the EU Pilot system and to define clearly the framework and rules of its application in such a way that they will be understood by citizens;
12. Points out that the number of Member States participating in EU Pilot (18 by the end of 2010), and the large number of cases closed after the response from the Member State was assessed as acceptable (81% of cases); underscores the importance of the quality of these assessments, both in terms of valid and verified information and in terms of respect for the general principles of administrative law recognised by the Court of Justice;
13. Reiterates its view that the discretionary power conferred by the Treaties upon the Commission in dealing with the infringement procedure must respect the rule of law, the principle of legal clarity, the requirements of transparency and openness and the principle of proportionality, and that nothing must under any circumstances jeopardise the basic purpose of that power, which is to guarantee the timely and correct application of Union law³;
14. Notes the encouraging figures indicating that 88% of infringement cases closed in 2010 ‘did not reach the Court of Justice because Member States corrected the legal issues raised by the Commission before it would have been necessary to initiate the next stage in the infringement proceedings’; takes the view, however, that it is essential to continue to monitor Member States’ actions carefully, as some petitions refer to problems that persist even after a matter has been closed (see, for example, petitions 0808/2006, 1322/2007, 0492/2010, 1060/2010 and 0947/2011);
15. Emphasises, overall that additional efforts must be undertaken to increase transparency and reciprocity in communication between Parliament and the Commission; notes, for example, that greater access to information on complaints, infringement files and other enforcement mechanisms could be provided without jeopardising the purpose of investigations, and that an overriding public interest might well justify access to this information, particularly in

¹ Commission’s Second Evaluation Report on EU Pilot (SEC(2011)1626), p. 7.

² See the above mentioned report, p. 3. See the above-mentioned resolution of 25 November 2010.

³ Parliament stated, in its above-mentioned resolution of 25 November 2010, that ‘absolute discretion coupled with an absolute lack of transparency is fundamentally contrary to the rule of law’.

cases where danger to human health and irreversible damage to the environment may be at stake;

16. Notes that in order to make EU Pilot operational, the Commission has created a 'confidential on-line database' for communication between its services and Member State authorities; draws attention yet again to the lack of transparency vis-à-vis complainants in EU Pilot, and reiterates its request to be given access to the database where all complaints are collected, in order to enable Parliament to carry out its function of scrutinising the Commission's role as guardian of the Treaties;
17. Deplores the absence of any follow-up to Parliament's above-mentioned resolution on the 27th annual report, and in particular its call for a procedural law in the form of a regulation under Article 298 TFEU setting out the various aspects of the infringement procedure and the pre-infringement procedure, including notifications, binding time-limits, the right to be heard, the obligation to state reasons, and the right for every person to have access to her or his file, in order to reinforce citizens' rights and guarantee transparency;
18. Calls therefore once again on the Commission to propose a 'procedural law' in the form of a regulation under the new legal basis of Article 298 TFEU;
19. Notes in this context the Commission's reply to Parliament's request for a procedural law, in which it expresses doubts regarding the possibility of adopting any future regulation based on Article 298 TFEU, because of the discretionary power conferred by the Treaties on the Commission 'to organise the way in which it manages infringement proceedings and related work to ensure the correct application of EU law'; is convinced that such a procedural law would not in any way limit the discretionary power of the Commission, but would only guarantee that when exercising its power the Commission would respect the principles of an 'open, efficient and independent European administration' as referred to in Article 298 TFEU and the right to good administration referred to in Article 41 of the Charter of Fundamental Rights of the European Union;
20. Emphasises the importance of transparency in infringement procedures, not least in view of the possibility for Parliament to monitor the application of Union law; recalls in this context that in the revised Framework Agreement on relations with Parliament the Commission undertakes to 'make available to Parliament summary information concerning all infringement procedures from the letter of formal notice, included, if so requested, (...) on the issues to which the infringement procedure relates' and expects this clause to be applied in good faith in practice;
21. Points out that the petition is the proper instrument to be used by citizens, civil society organisations and enterprises to report on non-compliance with EU law by Member State authorities at different levels; calls on the Commission, in this context, to safeguard the transparency of ongoing infringement procedures by informing citizens in a timely and appropriate manner of the action taken in response to their request;
22. Points out that citizens and civil society organisations continue to use the petitions mechanism mainly to report on and complain about non-compliance with EU law by Member State authorities at different levels; emphasises, in light of this, the Committee on Petitions' crucial role as the effective juncture between the citizen, Parliament and the Commission;

23. Welcomes the specific section on petitions contained in the 28th annual report, as requested by Parliament, in which the Commission gives a breakdown of new petitions received; welcomes the Commission's report that 'petitions to the European Parliament led to infringement proceedings' in a number of areas; emphasises that, even when petitions do not concern infringements, they provide Parliament and the Commission with remarkable information about citizens' concerns;
24. Highlights the significant number of petitions received on issues related to environmental legislation, and notably with regard to waste management provisions; recalls the points underscored by the Chair of the Commission's Conference on the Implementation of EU Environment Law, held on 15 June 2011, which referred to the frequent lack of sound environmental impact assessments, disregard for public consultations and various other deficiencies in the operation of waste management systems;
25. Recalls that the original mandate for the Charter was to codify the fundamental rights enjoyed by EU citizens, and that the Heads of State and Government have on repeated occasions solemnly declared that the Charter sets out the rights of EU citizens; calls on all Member States to reconsider the necessity of Article 51 of the Charter and encourages them to unilaterally declare that they will not limit the rights of individuals within their jurisdiction on the basis of the provisions of that article;
26. Stresses that citizens, when submitting a petition to the European Parliament, expect to be protected by the provisions of the Charter, regardless of which Member State they reside in and whether or not EU law is being implemented; remains concerned, in this regard, that citizens feel misled about the actual scope of application of the Charter; considers it essential, therefore, to explain properly the principle of subsidiarity and to clarify the scope of application of the Charter from Parliament's perspective on the basis of Article 51 of the Charter;
27. Stresses that a significant number of petitions relating to fundamental rights concern the free movement of persons and that – as is clear from the 2010 report on citizenship of the European Union – the rights arising from EU citizenship are an important prerequisite for citizens to be able to make full use of the internal market; emphasises that this increased use by citizens can unlock the significant growth potential of the internal market and therefore, given the current economic challenges facing Europe, reiterates its call to the Commission and the Member States to make greater efforts to ensure the full and prompt transposition of EU law in this area;
28. Further stresses that citizens similarly feel similarly misled about the applicability of Community law in instances of late transposition; points to the distressing reality that citizens to whom an applicable community law is unavailable because it has not yet been transposed by the Member State in question find themselves without recourse to any redress mechanism;
29. Endorses the view of the European Parliament's Legal Service that, with regard to the admissibility of petitions, the fields of activity of the European Union are broader than its competences; underlines that this notion should serve as a basis for the handling of petitions by Parliament and the Commission;
30. Reiterates that individual complaints by businesses and members of the public remain the main source for the detection of breaches of European Union law and, subsequently, for the

initiation of infringement proceedings; calls, for this reason, for the introduction of more effective, legally binding administrative provisions to safely and reliably define the procedural relationship between the Commission and complainants before, during and after the infringement proceedings, above all to strengthen the position of the individual complainant;

31. Welcomes the new element contained in Article 260 TFEU which allows the Commission to ask the Court of Justice to impose financial sanctions on a Member State for late transposition of a directive when bringing a case before the Court under Article 258 TFEU;
32. Welcomes the Commission's undertaking to make use of Article 260(3) TFEU as a matter of principle in cases of failure to fulfil an obligation covered by this provision, which concerns the transposition of directives adopted under a legislative procedure;
33. Considers it of the utmost importance that the Commission make use of this possibility, together with all other possible means of guaranteeing that Member States transpose Union legislation in a timely and correct fashion; those who are lagging behind and have not implemented the laws on time should be named;
34. Draws attention to the fact that, since this report was issued, Parliament, the Council, the Commission and the Member States have reached an agreement on the issue of explanatory documents setting out the relationship between the components of a directive and the corresponding parts of national transposition instruments ('correlation tables'); notes that the three institutions and the Member States have agreed to include in directives a recital declaring that a correlation table should be delivered by the Member State concerned where, in a given case, this is necessary and proportionate;
35. Stresses that correlation tables are an invaluable tool to enable the Commission and Parliament to oversee the correct transposition and application of Union law by the Member States because the relationship between a directive and the corresponding national provisions is often very complex and sometimes almost impossible to trace back;
36. Calls on the Commission to transmit clear guidelines to the European Parliament on creating, incorporating and applying correlation tables in Community law, and also to carry out a transparent evaluation, which will significantly contribute to the assessment of the implementation of this law at Member State level;
37. Notes that the national courts play a vital role in applying EU law, and fully supports the EU's efforts to enhance and coordinate judicial training for legal, judicial and administrative authorities and legal professionals, officials and civil servants in the national administrations as well as regional and local authorities at European level;
38. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice, the European Ombudsman and the Parliaments of the Member States.