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*Committee on Legal Affairs*

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# **DRAFT REPORT**

on the 29th annual report on monitoring the application of EU Law (2011)  
(2013/2119(INI))

Committee on Legal Affairs

Rapporteur: Eva Lichtenberger

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the 29th annual report on monitoring the application of EU Law (2011) (2013/2119(INI))

*The European Parliament,*

- having regard to the 29th annual report on monitoring the application of European Union law (2011) (COM(2012)0714),
  - having regard to the report from the Commission entitled ‘EU Pilot Evaluation Report’ (COM(2010)0070),
  - having regard to the report from 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 twenty-seventh annual report on monitoring the application of European Union law (2009)<sup>1</sup>,
  - having regard to the legal opinion of 26 November 2013 of the Legal Service of the European Parliament on ‘Access to information about pre-infringement cases in the context of the EU Pilot and the annual report on the monitoring of the application of EU law’,
  - having regard to the Commission staff working documents accompanying the 29th annual report on monitoring the application of EU law (SWD(2012)0399 and SWD(2012)0400),
  - having regard to Rule 48 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 (A7-0000/2013),
- A. whereas the Lisbon Treaty introduced a number of new legal bases intended to facilitate the implementation, application and enforcement of EU law;
- B. whereas Article 41 of the Charter of Fundamental Rights of the European Union defines the right of good administration as the right for every person to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions;

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<sup>1</sup> OJ C 051 E , 22.02.2013, p. 66.

- C. whereas according to Article 298 TFEU, 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;
- D. whereas according to the Legal Service of the European Parliament, the EU Pilot does not have any legal status, and according to the Framework Agreement on Relations between the European Parliament and the European Commission, the latter has to make available to Parliament summary information concerning all infringement procedures from the letter of formal notice, including on a case-by-case basis, and may only refuse access to personal data in the EU Pilot;
1. Reiterates its view 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 oversee the application of EU law and, inter alia, to bring infringement proceedings against a Member State that has failed to fulfil an obligation under the Treaties<sup>1</sup>, 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. Notes that, according to its annual report<sup>2</sup>, the Commission has decreased the number of new infringement procedures over the last years, having opened 2900 such procedures in 2009, 2100 in 2010 and 1775 in 2011; notes, furthermore, that the annual report shows as well an increase in late transposition cases over several years (1185 in 2011, 855 in 2010, 531 in 2009). The four most infringement-prone policy areas identified are: Environment (17 %), Internal Market (15 %), Transport (15 %) and Taxation (12 %);
  3. Considers, nevertheless, that these statistics do not give an accurate reflection of the actual EU law compliance deficit but ‘only represent the most serious breaches or the complaints of the most vocal individuals or entities; notes that the Commission currently has neither the policy nor the resources to systematically identify and enforce all cases of non-implementation’<sup>3</sup>;
  4. Calls on the Commission to make compliance with EU law a real political priority to be pursued in close collaboration with Parliament, which has a duty (a) to keep the Commission politically accountable and (b), as co-legislator, to make sure that it is itself fully informed with a view to constantly improving its legislative work;
  5. Notes that the infringement procedure consists of two phases: the administrative (investigation) stage and the judicial stage before the Court of Justice; notes that the Commission acknowledges that ‘citizens, businesses and stakeholder organisations make a significant contribution (...) by reporting shortcomings in the transposition and/or application of EU law by Member State authorities; notes, furthermore, that once detected, problems are followed up by bilateral discussions between the Commission and the Member States concerned in order to remedy them, to the extent possible, using the EU

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<sup>1</sup> Articles 258 and 260 TFEU define the Commission’s powers to launch infringements procedures 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.

<sup>2</sup> Report from the Commission, 29th annual report on monitoring the application of EU law (2011) (COM(2012)0714), p.2-3.

<sup>3</sup> Study commissioned by the European Parliament, Policy Department C, ‘Tools for Ensuring Implementation and Application of EU Law and Evaluation of their Effectiveness’, Brussels 2013, page. 11.

Pilot platform'<sup>1</sup>;

6. Notes, in this context, that the EU Pilot is defined as a platform for ‘bilateral discussions between the Commission and the Member States’<sup>2</sup> that ‘has no legal status but is a mere working tool in the framework of the Commission’s administrative autonomy’<sup>3</sup> within the pre-infringement procedure;
7. Deplores the lack of legal status and legitimacy of the EU Pilot and considers that ‘legitimacy can only be ensured by enabling transparency, participation of complainants and European Parliament in the EU Pilot and legality can be ensured through the adoption of a legally binding act containing the rules governing the whole pre-infringement and infringement procedure’<sup>4</sup>; considers that such a legally binding act should clarify the legal rights and obligations of individual complainants and the Commission, respectively, and should strive to allow participation of complainants into the EU Pilot, as far as possible, at least ensuring that they are informed of the different stages of the procedure;
8. Deplores, in this context, that no follow-up has been made to its previous resolutions, in particular its call for binding rules in the form of a regulation under Article 298 TFEU setting out the various aspects of the infringement and pre-infringement procedures – 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 his or her file – in order to reinforce citizens’ rights and guarantee transparency;
9. Calls, therefore, once again on the Commission to propose binding rules in the form of a regulation under the new legal basis of Article 298 TFEU, so as to ensure full respect for the citizens’ right to good administration as set out in Article 41 of the Charter of Fundamental Rights;
10. Recalls 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;
11. Reiterates, therefore, that Parliament is entitled to receive ‘detailed information on specific acts or provisions raising problems of transposition, as well as on the number of complaints for specific acts or provisions’<sup>5</sup>, and that, while ‘the Commission is entitled to refuse European Parliament access to personal data of the EU pilot data base’, Parliament is ‘entitled to request information in anonymous form in order to be fully aware of all relevant aspects in the implementation and application of Union law’<sup>6</sup>;

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<sup>1</sup> Report from the Commission (COM(2012)0714), p. 7

<sup>2</sup> See the passage quoted in the preceding paragraph.

<sup>3</sup> ‘Access to information about pre-infringement cases in the context of the EU Pilot and the annual report on the monitoring of the application of EU law’, legal opinion of 26 November 2013 of the Legal Service of the European Parliament.

<sup>4</sup> ‘Tools for Ensuring Implementation and Application of EU Law and Evaluation of their Effectiveness’, p. 13.

<sup>5</sup> ‘Access to information about pre-infringement cases in the context of the EU Pilot and the annual report on the monitoring of the application of EU law’, p. 4.

<sup>6</sup> ‘Access to information about pre-infringement cases in the context of the EU Pilot and the annual report on the

12. Considers the question of the EU Pilot and, more generally, of infringements of EU law and Parliament's access to relevant information relating to the pre-infringement and infringement procedure, as an essential point on the agenda for a future Interinstitutional Agreement;
13. 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.

## EXPLANATORY STATEMENT

This report sets out the rapporteur's views on several recent communications from the Commission on the application of EU law and notably the 29th Annual Report on monitoring the application of European Union law for 2011.

The report refers particularly to a study commissioned by Policy Department C entitled 'Tools for Ensuring Implementation and Application of EU Law and Evaluation of their Effectiveness'. The aim of the study is to assess key aspects of the implementation of EU law and the effectiveness of certain tools developed to tackle the compliance deficit more systematically and consistently throughout all EU policies.

Reference has also been made to an opinion of the Legal Service of the European Parliament which has provided its analysis on the 'Access to information about pre-infringement cases in the context of the EU Pilot and the annual report on the monitoring of the application of EU Law'.