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REPORT

on the Commission's eighteenth annual report on monitoring the application of
community law (2000)

COM (2001) 309 – C5-0506/2001 – 2001/2197(COS))

and

on the Commission's nineteenth annual report on monitoring the application of
community law (2001)

COM (2002) 324 – C5-0483/2002 – 2001/2197(COS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Diana Wallis

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PROCEDURAL PAGE

By letter of 16 July 2001, the Commission forwarded to Parliament its eighteenth annual report on monitoring the application of community law (2000) (COM(2001) 309 – 2001/2197(COS)).

At the sitting of 22 October 2001 the President of Parliament announced that he had referred the report to the Committee on Legal Affairs and the Internal Market as the committee responsible and all the committees concerned for their opinions (C5-0506/2001).

The Committee on Legal Affairs and the Internal Market appointed Diana Wallis rapporteur at its meeting of 17 September 2001.

By letter of 6 September 2002, the Commission forwarded to Parliament its nineteenth annual report on monitoring the application of community law (2001) (COM(2002) 324 – 2001/2197(COS)).

At the sitting of 21 October 2002 the President of Parliament announced that he had referred the report to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Petitions and all the committees concerned for their opinions (C5-0483/2002).

The committee considered the Commission report and draft report at its meetings of 8 October 2002, 17 March and 28 April 2003.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Giuseppe Gargani chairman; Willi Rothley and Bill Miller, vice-chairmen; Diana Wallis, rapporteur; Paolo Bartolozzi, Luis Berenguer Fuster (for Carlos Candal), Michel J.M. Dary, Bert Doorn, Enrico Ferri (for The Lord Inglewood), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Piia-Noora Kauppi, Carlos Lage (for Maria Berger pursuant to Rule 153(2)), Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Manuel Medina Ortega, Marcelino Oreja Arburúa, Guido Sacconi (for François Zimeray pursuant to Rule 153(2)), Anne-Marie Schaffner, Marianne L.P. Thyssen, Theresa Villiers, Rainer Wieland, Joachim Wuermeling and Stefano Zappalà.

The opinion of the Committee on Petitions is attached.

The report was tabled on 30 April 2003.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission's eighteenth annual report on monitoring the application of community law (2000) (COM (2001) 309 – C5-0506/2001 – 2001/2197(COS))

and on the Commission's nineteenth annual report on monitoring the application of community law (2001) COM (2002) 324 – C5-0483/2002 – 2001/2197(COS))

The European Parliament,

- having regard to the Commission's eighteenth annual report (COM(2001) 309 - C5-0506/2001),
 - having regard to the Commission's nineteenth annual report (COM(2002) 324 - C5-0483/2002),
 - having regard to the Commission staff working paper (SEC(2002) 157),
 - having regard to Rule 47 (1),
 - having regard to the report of the Committee on Legal Affairs and Internal Market and the opinion of the Committee on Petitions (A5-0147/2003)
-
- A. whereas the annual Commission reports establish the state of transposition of directives by the Member States,
 - B. whereas a proper monitoring of application of Community law is not just an assessment of a percentage of transposition but also an evaluation of the quality of transposition and of the practices adopted in actually applying the law,
 - C. whereas the quality of existing and proposed legislation is a crucial element for the correct application of Community law,
 - D. whereas the number of complaints relating to infringements of Community law show that European citizens play a vital role in the application of Community law,
 - E. whereas the number of preliminary references is a result of the quality of Community legislation,
 - F. whereas effective legal protection and uniform application and interpretation are essential elements of Community law,
 - G. whereas an effective system for judicial review and uniform interpretation of law cannot exist while there is a limited jurisdiction of the Court of Justice in justice and home affairs,
 - H. whereas the Community institutions have a duty to ensure that the citizens of Europe can fully exercise their rights in the Union, in particular as regards access to justice,
-
- 1. Welcomes the improvements the Commission has announced to its administrative procedures with regard to infringements of Community law (COM(2002)141¹),

¹ JO C 244 of 10.10.2002, p. 5.

2. Calls on the Commission to keep complainants fully informed of the progress of their complaints and to copy to complainants all correspondence exchanged between the Commission and Member States in pursuance of their complaint,
3. Welcomes the Commission's intention to give priority to infringement proceedings under Article 228 EC, and to reinforce the machinery at its disposal for performing its task of monitoring the implementation of Community law,
4. Calls on the Commission to make every effort to shorten the relatively long period required for complaints or petitions to be dealt with,
5. Calls on the Commission to set short deadlines for the pre-litigation phase of the procedure for breach, which should be concluded by a predefined deadline, to be set right from the outset,
6. Recalls that petitions forwarded by individuals to the Commission, to the Ombudsman and to Parliament's relevant committees enable the European Union to assess the way in which Community law is being implemented at national and European level,
7. Reiterates its belief that close cooperation and monitoring arrangements between the Commission, the Council, the Ombudsman and to Parliament's relevant committees are essential to ensure effective intervention in all cases where the petitioner has justifiably complained of an infringement of Community law,
8. Reiterates the request for the Commission to include in future in its annual reports on monitoring the application of Community law a chapter devoted to the petitions forwarded to it by to Parliament's competent committees,
9. Reiterates the need to facilitate effective compliance of Community law by means of respect for the principles of transparency, accountability, and consistency; believes that such an approach will not only improve and simplify the regulatory environment, but also increase legal security,
10. Calls for increased cooperation between national parliaments and the European Parliament and their respective parliamentarians, so as to aid and increase effective scrutiny at the national level of European matters; considers that parliaments have a valuable role to play in the monitoring of the application of Community law, thus helping to strengthen the democratic legitimacy of the Union and bring it closer to the citizens,
11. Believes that as a rule the deadline for transposing directives should be clearly stated and should not be longer than two years,
12. Urges the Commission to send its annual reports on monitoring the application of Community law to the national parliaments, so that they are better able to monitor such application by the national authorities,
13. Calls on the Commission to work closely with national authorities providing appropriate assistance and guidance at the early stages to ensure effective transposition of directives,
14. Reiterates the request to the Commission to draw up a list of all the reports which relate to the application by the national authorities of the European Economic Area Member States of Community law, whether of a general or sectoral nature,
15. Welcomes the Commission's intention to monitor the area of freedom, security and justice in accordance with the principles of Community law; reiterates its call to the Commission to produce a report in future on the application of European Union law including second

and third pillar matters,

16. Observes that the courts of some Member States virtually never request preliminary rulings pursuant to Article 234 of the EC Treaty, and calls on the Commission to investigate the reasons for this,
17. Notes with concern that inadequate familiarity with Community law on the part of members of national judiciaries and lawyers seriously hinders full application of Community law,
18. Notes the efforts made by the Commission with regard to the training of members of the legal professions in the field of Community law so as to improve the knowledge and awareness of Community law but insists that these efforts are still not enough to ensure the even application of Community law in all the Member States,
19. Is aware of the enormous challenges that European lawmaking will have to overcome after Enlargement; points out that it will therefore be even more important to establish clear political priorities and goals and where possible to simplify legislation perhaps by greater use of framework directives thus in turn facilitating the implementation process,
20. Welcomes initiatives to facilitate out-of-court settlement of disputes such as the European Extra-Judicial Network and the Financial Services complaints Network; calls on the Commission to carefully monitor the progress of these bodies and report its results to the European Parliament as this process will constitute another helpful indicator of the application Community and access to justice,
21. Considers that coregulation and self-regulation, provided they are subject to clearly defined conditions, will have an important role to play in regulating certain sectors of the economy; points out that these instruments reduce the right of judicial review; stresses the danger of thereby creating rules that are uncertain, less binding and less secure, that may result in artificial approximation and random transposition into national legislation,
22. Believes that any coregulation measure, once deemed appropriate as a complementary measure, must be based on a legislative act jointly adopted by the Council and the Parliament on a proposal from the Commission and that there must be provision for a 'call-back' right, to ensure that the prerogatives of the democratic legislator are duly respected,
23. Believes that the basic legislative act should lay down the objectives and scope of co-regulation and provide for action by the Commission in the event of non-compliance with the agreements by any of the parties concerned; also believes that it is necessary to ensure that the organisations involved in co-regulation and self-regulation are representative,
24. Believes that the Commission ought to recognise an existing practice of self-regulation or recommend to the parties involved that such an agreement should be concluded only where the competent legislative authority, making a ruling under the terms set out by the Treaty, considers that recourse should be had to such an instrument,
25. Notes with concern that recent case law concerning individual applicants' right to institute proceedings before the Court of Justice fails to provide uniform interpretation and application of Community law),
26. Calls for work on the codification and consolidation of Community legislation, including treaties, to be stepped up in order to make laws clearer for the public;
27. Instructs its President to forward this resolution to the Commission, the Council, the Court of Justice, the Ombudsman, and to the parliaments of the Member States.

EXPLANATORY STATEMENT

The annual reports on monitoring the application of Community law are a snapshot of compliance with Community law. The annual reports 2000 and 2001 bear witness to the concern that compliance with law in the European Union is even more essential on the eve of enlargement.

The rapporteur's approach

Your rapporteur concentrates on the following areas: 1) implementation of Community law; 2) access to justice; 3) regulation and the challenges faced by Community law.

Implementation of EC law

The impact of Community rules depends to a large extent on the will and ability of Member States' authorities to ensure an effective, complete and timely transposition and application of Community rules.

The existing 'transposition deficit', i.e. the ineffective, belated and frequently non-existent transposition of directives into national law, is a major problem even in areas where integration has reached a highly advanced stage, such as the single market.

While the 98,5% transposition objective set by the Stockholm European Council is relevant, it is not the most important element of the picture. Sensitive areas such as the environment shows that it is crucial to move to an approach centred on the quality of transposition and of implementation by national authorities. An ill-transposed, ill-implemented directive affects EC law just as much as lack of transposition. As Advocate-General Jacobs mentioned, it is not sufficient to comply with a directive through simple transposition: directives must be properly applied and enforced. This may present increased challenges post enlargement.¹

Full implementation of Community law is directly related to quality of legislation. The Commission, holder of the right of initiative, plays an important role in the legislative procedure. More dialogue and assistance to national authorities should be organised by the Commission in order to prevent implementation problems instead of an approach that concentrates on detecting infringements. Early contacts between national parliaments and the European Parliament and their respective parliamentarians can play a vital role in preventing transposition problems, such dialogue should be encouraged.

The Commission notes that provisions of the Schengen acquis that have been allocated to the first pillar - such as visas, asylum and immigration, and legal cooperation in civil matters - are to be monitored in accordance with the principles of relevant Community law, and that the Commission acts in its capacity as guardian of the Treaties in relation to these aspects. The Commission should give particular attention to this area which deals directly with free movement of persons. However, the limited extension of the ECJ jurisdiction to justice and home affairs matters in the Amsterdam Treaty falls far short of an effective system for ensuring legal control and uniform interpretation of law.

¹ See A.G. Jacobs in Case C-237/90, *Commission v. Germany* [1992] ECR I-5973, 6001.

Access to justice

Complainants are a fundamental element in the EC legal system, since they bear witness to the effective monitoring and the correct application of Community law. Secure in the knowledge that they can lodge complaints, and have access to justice, citizens should be able to feel more connected with Europe, that Europe is their ally, there to protect and champion their rights..

The need for judicial review is inherent in every legal system based on the rule of law. In order to avoid a judicial - in addition to a democratic - deficit, there is a need for effective judicial control over the actions and inactions of the EU institutions. If this is not achieved the expansion of Community and EU competences would proceed at the expense of the legal protection of individuals.

The requirements that private individuals have to fulfil in order to bring actions before the ECJ or the CFI may be contrary to rights guaranteed by the ECHR. This issue is of particular relevance where the action or inaction of an institution threatens to prejudice an individual's civil or fundamental rights.

The 2002 communication on relations with the complainant with respect of infringements is a welcome framework setting out administrative measures which the Commission undertakes to comply with when handling complaints and assessing infringements. However, statistics regrettably show that, while the number of complaints has decreased, the speed in treating the complaints has not increased accordingly. It is essential that complainants are kept informed of the steps taken in response to their complaint, and receive copies of the correspondence exchanged between the Commission and the Member States.

Your rapporteur would also like to see the Commission do much more together with member States in raising public awareness of the existing EEJ-net and FIN-net.

Regulation and the challenges faced by Community law : Maintaining the Community legal order in a changing world

The Commission devotes most space and effort to emphasising its role in the classic "Community method" of decision-making and its own role in the process of initiating it as if the nature and scope of the problems facing the EU have not changed in the 50 years since it was first conceived.

Your rapporteur is sympathetic to the idea of increased use of co- and self-regulation. However, she is concerned that it may lead to a fragmentation of Community law, and in particular of the internal market. The underlying issue is that of publicity of rules and of transparency. How can a citizen of the Union be aware of rules adopted by businesses? How can a citizen of the Union go before a national court to enforce and/or declare such rules inapplicable, in case they affect significantly the individual's legal position? How is the Commission to monitor the transposition of Community law by private parties?

There is a risk that increased use of co- and self-regulation strategies weakens the rule of law and the corresponding right of access to a court. It also reduces the role of the Commission as guardian of the Treaties. These issues need to be carefully reflected upon.

Finally, the number of decisions against which there was no appeal and which were taken without a reference for a preliminary ruling is a serious cause for concern, particularly since

they are taken by courts from the earlier Member States¹.

This is mainly due to the fact that the experience of national judges' dealings with Community law does not, as yet, compare with those of the Community courts. In some cases, national judges have had very limited encounters with Community law. As a result, the national judges' reference(s) may be lacking the necessary details and may contain irrelevancies making it somewhat difficult for the ECJ fully to appraise the legality of the contested measure. In the final event, the reference could be held inadmissible. The Community law training budget for legal professions should be increased as it is a valuable means of exposing legal actors to Community law. Member States should also give more consideration as to how they can further increase knowledge and awareness of Community law.

The world is changing every day. The future role of Europe depends on the relationship between the EC legal system and the changes presently taking place.

As regards enlargement, the peculiar challenge for law in an enlarged European Union will be to maintain the law's distinctive contribution under new realities. The first step in focusing on solutions to the challenge of legislating and administering for a drastically enlarged European Union is to recognize that what has been done so far by way of law reform is valuable but far from sufficient. We are entering an era that reminds us that the law the European Union generates, and the processes by which it occurs, are just as important as the legal architecture of Europe itself. We need to avoid acting like the wizard who is so spell-bound with admiration of his own reflection that much of interest and significance taking place in the immediate environment is missed.

¹ The Eighteenth Annual Report (2000), Annex VI, at 2.3.1, mentions *inter alia* Germany, France, Italy and the Netherlands.

10 October 2002

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Legal Affairs and the Internal Market

on the Eighteenth annual report on monitoring the application of Community law
(COM(2001) 309 – C5-0506/2001 – 2001/2197 (COS))

Draftsman: Rainer Wieland

PROCEDURE

The Committee on Petitions appointed Rainer Wieland draftsman at its meeting of 22 November 2001.

The committee considered the draft opinion at its meeting of 7 - 8 October 2002.

In the course of that meeting it adopted the following conclusions unanimously.

The following were present for the vote: Vitaliano Gemelli, chairman; Astrid Thors, vice-chairman; Rainer Wieland, draftsman; Felipe Camisón Asensio, Michael Cashman, Marie-Hélène Descamps, Glyn Ford, Janelly Fourtou, Laura González Álvarez, Margot Keßler, Jean Lambert, Ioannis Marinos, Christian Ulrik von Boetticher, Eurig Wyn and Stavros Xarchakos.

SHORT JUSTIFICATION

The Commission has drawn up an annual report on monitoring the application of Community law ever since 1984, following the European Parliament's resolution of 7 February 1983. The current (eighteenth) report covers the year 2000, and is the first such report the Commission has issued since its reorganisation.

The report consists of a general introduction highlighting trends in infringements and Commission policy on the subject, followed by a sector-by-sector analysis and a list of proceedings relating to infringements of treaties, regulations and decisions, indicating the Member State concerned, the sector and the stage reached in proceedings, followed by a similar list relating to the non-implementation of directives. Under the applicable confidentiality rules, infringement proceedings are referred to only after a reasoned opinion has been sent. However, there are two exceptions: open procedures in the event of failure to notify national measures implementing directives or failure to implement judgements of the Court of Justice are mentioned as soon as a letter of formal notice has been issued.

No section of the report deals specifically with the petitions forwarded to the Commission by the Committee on Petitions.

The figures for the year 2000 show a slight decline in the number of complaints recorded by the Commission (down by 6.13% on the 1999 figure). Of all the cases opened, five were based on petitions (as against 10 in 1999), and 15 on parliamentary questions (as against 16 in 1999). Although the number of reasoned opinions issued in 2000 was the same as in 1999, the number of cases referred to the Court of Justice declined by 3.5%, which seems to reflect the improved efficacy of the pre-litigation procedure. Palpable efforts have been made to reduce procedural delays.

From the standpoint of the Committee on Petitions, it is worth emphasising the new approach adopted by the Commission as regards paying particular attention to individual complainants reporting cases of non-compliance with Community law by Member States. While the case law of the Court of Justice has consistently acknowledged the Commission's discretionary power in this area, the Commission expressly recognises the procedural rights of complainants at the pre-litigation stage. It is a sign of the importance which the Commission attaches to the complainant's role in infringements proceedings that complainants are able to submit their comments before any decision is taken to close a case. Previously, the complainant generally had no further bearing on the situation he had brought into being. Now the complainant's right to intervene is recognised and he has access to information, although everything is conducted in the strictest confidentiality.

The dialogue the Commission has established with complainants during the pre-litigation procedure is the outcome of the various criticisms which have led to greater participation of members of the public in monitoring the uniform application of Community law. The Commission's codification of existing administrative rules also facilitates contact between citizens and the Commission, as citizens now have clearer expectations.

The Committee on Petitions cares very much about the conception which citizens have of the activities of the European Union. If citizens are to accept and participate in the pursuit of the European idea, they must be given clear information which makes even complex, technical

subjects comprehensible. To that end, it is essential to pursue a policy of ensuring transparency, simplifying treaties and ensuring high standards of legislative drafting, as well as to step up codification and consolidation work.

Legislation must be comprehensible even to those who are not lawyers, and the basic treaties must be consolidated in such a way as to remove those parts that have lapsed. The legal distinction between the terms 'Community' and 'European Union' is, of course, well known. However, in connection with efforts to make legal texts simpler and easier to read, the standard use of the term 'European Union' may be regarded as more readily comprehensible to the public.

With regard to the commitology procedure, criticisms expressed concerning issues of legitimacy, transparency and cooperation continue to apply. The European Parliament still does not have genuine direct power of scrutiny over measures adopted by the committees.

The report also highlights the increased information available to the public through computerised data bases providing access to information on Community law.

The Committee on Petitions and the Commission play complementary roles in the detection of infringements of Community law, and they both encounter the same difficulties as regards cooperation with the Member States, which do not always make all the requisite efforts to comply with the rule of law. To achieve greater effectiveness, closer cooperation is required between Parliament, the Council and the Commission in line with new working methods.

CONCLUSIONS

The Committee on Petitions calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Congratulates the Commission on the work it has accomplished in this field, particularly the measures taken to improve relations with complainants during the pre-litigation stage of infringement proceedings;
2. Calls on the Commission to make even greater efforts to improve the information available to citizens by making its workings more transparent, so as to encourage citizens to become more involved in the process of European integration;
3. Calls for work on the codification and consolidation of Community legislation, including treaties, to be stepped up in order to make laws clearer for the public;
4. Calls, with a view to making the legislation in force more comprehensible to the public, for the term 'European Community' to be replaced by the term 'European Union';
5. Points out that the legitimacy of acts adopted under the commitology procedure can only be ensured by giving the European Parliament direct power of scrutiny over measures adopted by the committees;

6. Calls once again on the Commission to include, in future annual reports on monitoring the application of Community law, a section on petitions forwarded to it by the Committee on Petitions;
7. Recalls the Committee on Petitions' wish to establish a new interinstitutional agreement between the European Parliament, the Council and the Commission to enable the Committee on Petitions to intervene more effectively.