

26th Annual Report on Monitoring the Application of European Union Law (2008)

European Parliament resolution of 25 November 2010 on the 26th Annual Report on Monitoring the Application of European Union Law (2008) (2010/2076(INI))

The European Parliament,

- having regard to the Report from the Commission entitled ‘EU Pilot Evaluation Report’ (COM(2010)0070),
 - having regard to the 25th Annual Report from the Commission on Monitoring the application of Community law (2007) (COM(2008)0777),
 - having regard to the Commission staff working documents SEC(2009)1683, SEC(2009)1684, SEC(2009)1685 and SEC(2010)0182,
 - 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 its resolution of 21 February 2008 on the Commission’s 23rd Annual report on monitoring the application of Community law (2005)¹,
 - having regard to its resolution of 9 July 2008 on the role of the national judge in the European judicial system²,
 - having regard to Rule 119(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Petitions (A7-0291/2010),
1. Regrets that the Commission has not responded to the issues raised by Parliament in its previous resolutions, in particular the aforementioned resolution of 21 February 2008; notes the lack of improvement with regard to transparency, particularly with reference to the ‘EU Pilot’ project and the issue of human resources;
 2. Notes that through EU Pilot the Commission is aiming to increase ‘commitment, co-operation and partnership between the Commission and Member States’³ and is considering, in close cooperation with national administrations, how to deal with the application of European Union law; considers that this initiative responds to the new need for cooperation

¹ OJ C 184 E, 6.8.2009, p. 63.

² OJ C 294 E, 3.12.2009, p. 27.

³ EU Pilot Evaluation Report, p. 2.

between all Institutions of the European Union in the interests of a well functioning, citizen-focused Union following the adoption of the Lisbon Treaty; underlines the obligation on the Commission laid down in Article 17 TEU to ‘ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them’;

3. Notes that on the one hand citizens are portrayed as having an essential role in ensuring compliance with EU law on the ground¹, whilst on the other – in EU Pilot – they are even further excluded from any subsequent procedure; considers that this is not in line with the Treaties’ solemn declarations that ‘decisions are taken as openly as possible and as closely as possible to the citizen’ (Article 1 TEU), that ‘the Union institutions ... shall conduct their work as openly as possible’ (Article 15 TFEU) and that ‘[I]n all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions’ (Article 9 TEU);
4. Notes that in order to make the EU Pilot operational, the Commission has created a ‘confidential on-line database’² for communication between Commission services and Member State authorities; calls on the Commission to give Parliament meaningful access to that database in order to enable it to perform its role of scrutiny of the Commission’s discharge of its role as guardian of the Treaties;
5. Highlights that the active role of the citizens of the European Union is clearly stated in the Treaty on European Union, particularly with reference to the European Citizens’ Initiative; considers that the possibility for citizens to set the legislative agenda is also directly connected with their current essential role in ensuring the correct application of, and compliance with, European Union law and the transparency and reliability of the related procedures;
6. Notes that in the Commission’s summary of monitoring the application of Community law, more emphasis is placed on transposition than on actual application. Calls on the Commission to properly acknowledge the role of petitions in monitoring the actual application of Community law; petitions are very often first indicators that, beyond transposition, the Member States are lagging behind in implementing legal measures;
7. Is of the opinion that, in their present form, the Commission’s annual reports ‘on monitoring the application of European Union law’ do not give citizens or the other institutions sufficient information about the true state of application of EU law, as the Commission only makes reference to formal proceedings being opened against Member States that have not transposed EU law into their national legal systems; considers however that it would also be very much in the interest of citizens and Parliament to be informed when the Commission opens infringements for the incorrect or bad transposition of EU law, with details of those infringements also being supplied;
8. Wishes to ensure that the Commission continues to produce detailed data on all types of infringement, and that the entirety of this data is made freely available to Parliament to enable it to perform its role of scrutiny of the Commission’s discharge of its role as guardian of the Treaties; points out that the collation and categorisation of such data should be consistent with previous annual reports in order to assist Parliament in making

¹ Commission 2002 Communication, p. 5: ‘the Commission has regularly acknowledged the vital role played by the complainant in detecting infringements of Community law’.

² Report from the Commission ‘EU Pilot Evaluation Report’ COM(2010)0070, p. 2.

meaningful assessments of the progress being made by the Commission, regardless of whether the infringement has been processed via the EU Pilot or the original infringement procedure;

9. Notes that delays in correctly applying, transposing and enforcing European Union law directly affect the daily lives of citizens and businesses and the enjoyment of their rights, resulting in legal uncertainty and preventing them from enjoying the full benefits of the internal market; highlights the high costs deriving from non-compliance with, and non-application of, EU law and the consequent lack of trust in the European Institutions;
10. Deplores the fact that some Member States underestimate the value of the correct and timely application of EU law; urges them to give suitable priority to transposition and application, in order to avoid delays;
11. Calls on the Commission to propose a ‘procedural code’ in the form of a regulation under the new legal basis of Article 298 TFEU, setting out the various aspects of the infringement procedure, including notifications, time-limits, the right to be heard, the obligation to state reasons, etc., in order to enforce citizens’ rights and transparency; reminds the Commission that its 2002 Communication represents an important point of reference for the drafting of such a ‘procedural code’;
12. Recalls that its Legal Affairs Committee recently launched a Working Group on EU administrative law with the aim of examining whether a codification of EU administrative law is possible and what such a project would involve in practice; considers that the conclusions of this Working Group should be taken into account when discussing a European administrative code;
13. Recalls that its Legal Affairs Committee recently unanimously adopted a letter in support of a petitioner’s views calling for a standard administrative procedure for supervising and enforcing EU law which, while respecting the Commission’s discretion as to when and against whom to instigate proceedings, would restrict that discretion to within the boundaries of good administration practice¹;
14. Recalls that the Commission has a primary role as the guardian of the Treaties in ensuring the correct and timely application of European Union law by the Member States; encourages the Commission to use all the competences granted to her by the Treaties, especially the new provisions of Article 260 TFEU concerning Member States’ failure of notification of transposition measures of directives;
15. Recalls the Parliament’s resolution of 9 February 2010 on a revised Framework Agreement between the European Parliament and the Commission² in which it calls on the Commission ‘to make available to Parliament summary information about all infringement procedures based on the letter of formal notice, including, if so requested by Parliament, ... on the

¹ ‘Discretion may be a necessary evil in modern government; absolute discretion coupled with an absolute lack of transparency, however, is fundamentally contrary to the rule of law’ - Frassoni Report (2005/2150(INI)) on the Commission’s 21st and 22nd Annual Reports on Monitoring the application of Community law (2003 and 2004), p. 17 of the Explanatory Memorandum.

² Texts adopted of that date, P7_TA(2010)0009.

issues concerned by the infringement procedure'¹;

16. Takes the view that EU citizens should expect the same level of transparency from the Commission whether they are making a formal complaint or exercising their right of petition under the Treaty; asks, therefore, for its Committee on Petitions to be provided with clear information on the stages reached in infringement procedures also covered by an open petition. Calls on the Commission, furthermore, to clarify the circuits for dealing with enquiries and complaints for the benefit of the Committee on Petitions and the public at large;
17. Endorses the measures planned by the Commission for 2009 and beyond to ensure compliance by Member States with European legislation and asks to be associated in the infringement procedures in cases where petitions are pending, such as in the cases of Campania on the subject of waste legislation and Spain on the subject of water management legislation.
18. Calls on the Commission to supply Parliament with relevant data to enable an analysis to be made of the added value EU Pilot brings to the existing process of managing infringement files, which would justify extending the project further; considers that this data should, for example, allow Parliament to check whether the 10 weeks granted to a Member State to find a solution to a concrete case have not further delayed the initiation of an infringement procedure, the duration of which is already extremely lengthy and indeterminate;
19. Notes with particular interest the Commission's commitment to deliver systematically an evaluation of the reply to a complaint provided by a Member State; calls on the Commission to provide such an evaluation with the greatest attention and after prompt analysis of the dossier; calls for a clarification of the role of complainant in the evaluation process;
20. Asks the Commission to allocate sufficient resources to be able to monitor fully the implementation of EU law, initiate own cases and develop priorities for stronger and systematic actions; calls on the Commission to provide Parliament, as has been repeatedly requested, with clear and exhaustive data on the resources earmarked for processing infringement cases in the various Directorates-General and on those allocated to the EU Pilot project; reminds the Commission that Parliament committed itself to supporting the Commission via increased budget appropriations for increased resources;
21. Asks the Commission to consider innovative mechanisms, such as the mutual evaluation procedure envisaged in the Services Directive, to ensure more effective application of EU law;
22. Welcomes the nascent one-stop shop for citizens seeking advice or recourse or making complaints through 'Your Europe'². With the addition of the widely publicised Citizens' Initiative (Art 11(4) TEU) to the list of instruments for citizens' participation, the need for explanation and guidance has increased exponentially. The European Parliament would like to be involved in the development of this website in order to ensure coherence with its own plans for providing better guidance for citizens;

¹ *Idem*, paragraph 3(e) point 5.

² <http://ec.europa.eu/youreurope/>

23. Recalls the Council's pledge to encourage Member States to draw up and publish tables illustrating the correlation between directives and national transposition measures; stresses that such tables are essential in order for the Commission to be able to monitor implementation measures in all Member States effectively;
24. Urges that Parliament's role in the areas of the application, enforcement and monitoring of single market rules be strengthened; supports the idea of an annual Single Market Forum;
25. Stresses the key role of the Internal Market Scoreboard and the Consumer Market Scoreboard in the context of the more effective use of monitoring and benchmarking instruments, which constitute an important indirect disciplinary mechanism; calls on the Commission and Member States to provide adequate financing and staffing so as to ensure that the Consumer Market Scoreboard can be further developed;
26. Notes that the national courts play a vital role in applying European Union law and fully supports the EU's efforts to enhance and coordinate judicial training for national judges, legal professionals, officials and civil servants in the national administrations;
27. Is of the opinion that when the Commission starts an infringement procedure against a Member State, it should also issue a communication stating that the act which infringed EU legislation can be challenged by the citizens affected in the Member State in question before their national courts;
28. Recalls its resolution of 17 June 2010 on judicial training in civil and commercial matters; takes the view that it is of fundamental importance that judicial training be enhanced, *inter alia* in the context of the Action Plan implementing the Stockholm Programme;
29. 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.