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REPORT

on Commission communication on better monitoring of the application of
Community law
(COM(2002) 725 – C5-0008/2003 – 2003/2008(INI))

Committee on Legal Affairs and the Internal Market

Rapporteur: Sir Neil MacCormick

CONTENTS

	Page
PROCEDURAL PAGE	4
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	5
EXPLANATORY STATEMENT	9

PROCEDURAL PAGE

By letter of 11 December 2002 the Commission forwarded to Parliament its communication on better monitoring of the application of Community law (COM(2002) 725), which had been referred to the Committee on Legal Affairs and the Internal Market for information.

At the sitting of 16 January 2003 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market had been authorised to draw up an own-initiative report on the subject under Rules 47(2) and 163 (C5-0008/2003).

The committee appointed Sir Neil MacCormick rapporteur at its meeting of 20 February 2003.

It considered the draft report at its meetings of 26 January 2004 and 24 February 2004.

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

The following were present for the vote: Bill Miller (acting chairman), Willi Rothley (vice-chairman), Sir Neil MacCormick (rapporteur), Uma Aaltonen, Maria Berger, Charlotte Cederschiöld (for Bert Doorn), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Hans Karlsson (for François Zimeray), Kurt Lechner, Klaus-Heiner Lehne, Arlene McCarthy, Manuel Medina Ortega, Angelika Niebler (for Lord Inglewood), Elena Ornella Paciotti (for Fiorella Ghilardotti), Anne-Marie Schaffner, Karin Scheele (for Carlos Candal pursuant to Rule 153(2)), Marianne L.P. Thyssen, Diana Wallis, Rainer Wieland and Joachim Wuermeling.

The report was tabled on 25 February 2004.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the Commission communication on better monitoring of the application of
Community law
(COM(2002) 725 – C5-0008/2003 – 2003/2008(INI))**

The European Parliament,

- having regard to the Commission communication on better monitoring of the application of Community law (COM(2002) 725) – C5-0008/2003),
 - having regard to the Commission's twentieth annual report (COM(2003) 669),
 - having regard to the Commission staff working paper (SEC(2003) 84),
 - having regard to Rules 47(2) and 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0109/2004),
- A. Whereas Commission's practice of reporting annually to Parliament about the application of Community law has now passed its twentieth anniversary,
- B. Whereas the series of reports makes it possible over the long run to judge how far the Community has genuinely committed itself to upholding the rule of law, both through the conduct of the Commission as guardian of the Treaties and through the conduct of the Member States as their ultimate masters,
- C. whereas in particular these Reports depict both the quality of Member States' performance in transposing directives, and the degree of their commitment to loyal fulfilment of their resultant Community obligations,
- D. whereas to monitor this properly requires both
- qualitative judgements concerning the practices adopted in actually applying the law, and
 - quantitative reporting on numbers of Directives whose transposition or effective implementation is delayed by reference to established deadlines or otherwise deficient,
- E. whereas much of the Commission's activity in securing the implementation of Community law originates from complaints that citizens make to the Commission about what they consider to be infringements,
- F. whereas the annual average number of complaints lodged by citizens has increased from 536 1983-89 to 1346 in 1999-2002,
- G. whereas over the whole period the leading areas of citizen complaint have been: single market (36% 1990-98, 27% 1999-2002); Environment (31% 1990-98, 40% 1999-2002); and Agriculture (14% 1990-98, 4% 1999-2002); hence environmental concerns are coming to predominate among activist citizens,
- H. whereas the increase in number of complaints illustrates the vital role that activist citizens play in the application of Community law,

- I. whereas in its Report on the Commission's eighteenth and nineteenth Reports about the Implementation of Community law, Parliament called 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,
 - J. whereas it appears that in general the Commission maintains a satisfactory degree of vigilance in upholding the rule of law in respect of the matters covered in the Twentieth Report and its predecessors, these Reports being themselves an essential tool for Parliament to play its role in scrutinising the performance of the executive,
 - K. whereas the number of preliminary references is a result of the quality of Community legislation,
 - L. whereas failure by the Community legislature to achieve good quality in law-making can itself be detrimental to the correct understanding and application of Community law, hence faithful observance of the recently signed Inter Institutional Agreement on Better Law-Making will be of very great importance and should be tracked in future reports in this series,
 - M. whereas Member States regularly fail to fulfil, or at least to fulfil timeously, some of the obligations that their Governments freely undertake as participants in the legislative process of the Community, and sometimes show a cynical disregard for their manifest obligations by deferring compliance till the latest possible stage in an enforcement process, or by using disregard for legal obligations (e.g. those under the Stability and Growth Pact) as a tool to procure *de facto* legal change,
 - N. 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 and as regards the implementation of rights that have been judicially declared and upheld after due process of law,
 - O. whereas the Commission has to undertake some responsibility for assisting Member State authorities to achieve timeous transposition and efficient implementation at regional and local as well as at central state level,
 - P. whereas the Commission has developed its SOLVIT system for solving certain politically uncontroversial problems of individual application of community law through a network of administrative agencies of member states, and this system is available to MEPs and their assistants,
- 1. Welcomes the improvements in monitoring that the Commission foreshadows in its recent paper on Better Monitoring the Application of Community Law (COM (2002) 0725);
 - 2. Welcomes the commitments the Commission has given in response to recommendations by the Ombudsman about its relations with complainants (COM (2002) 141 final), but regrets that these commitments fall short of keeping complainants fully informed of the progress of their complaints and copying to complainants all correspondence exchanged between the Commission and Member States in pursuance of their complaint;
 - 3. Welcomes the Commission's resolve, stated in SEC (2003) 804, to ensure, especially in case of environmental law, that Community rules are 'enforcement friendly', that

guidelines and interpretative texts are prepared in consultation with all stakeholders, that there is proactive contact with member States (including, it is hoped, their relevant regional authorities), and that use is made of the informal EU network on Implementing Environmental Law;

4. Generally, supports the Commission's efforts to solve transpositional problems proactively rather than reactively;
5. Repeats its desire to see enhanced cooperation between parliamentarians in the European Parliament and Parliaments of Member States, including where appropriate regional or other internal ones, to aid and increase effective scrutiny at the national level of European matters; considers that parliaments at all levels 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;
6. Therefore repeats its recommendation to the Commission to send its annual reports on monitoring the application of Community law to the national parliaments, also for further transmission as may be appropriate to relevant internal parliaments;
7. Deplores the fact that, notwithstanding assiduous activity by the Commission to ensure proper application of Community law, there remain glaring examples of drawn-out and pertinacious failure by Member States to comply with declared obligations, thereby undermining the ideal of the Union as a community-under-law;
8. 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;
9. Calls again 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;
10. 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;
11. Calls again on the Commission to make every effort to shorten the relatively long period required for complaints or petitions to be dealt with and to find practical solutions to the problems submitted by way of deciding upon receipt of the case whether alternative methods, such as package meetings or SOLVIT, or formal procedures are most appropriate;
12. Reiterates its belief that close cooperation and monitoring arrangements between the Commission, the Council, the Ombudsman and 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;
13. Strongly deplores the conduct of the Commission towards Parliament and in particular its competent committee in the case concerning Lloyd's of London, in relation to which there has been an obstinate refusal to communicate fully with Parliament on all questions it has raised;
14. Reiterates yet again 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;

15. 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;
16. Welcomes the steps the Commission has taken by way of monitoring the area of freedom, security and justice in accordance with the principles of Community law, and takes note of the contents of Section 2.15 of the present Report; but, in this context, 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;
17. Observes that the courts of some Member States virtually never request preliminary rulings pursuant to Article 234 of the EC Treaty, and repeats its call to the Commission to investigate the reasons for this and report on them to Parliament;
18. 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;
19. 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 of Community rules and access to justice;
20. In this connection warmly welcomes recent further development of the SOLVIT network; notes that generalised access for MEPs is now possible and that this should be made available on a systematic basis to all MEPs and their assistants; calls on the Commission and Member States to promote it widely to potential users and to devote adequate resources to ensure that it can deal with an increase in the case flow;²¹. Encourages reflection on how the role of national and regional Ombudsmen in monitoring the application of Community Law might be developed;
22. 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, and regrets that even the Draft Constitution takes only timid steps towards improving the situation in this regard;
23. 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 report for 2002 indicates the continuing worthy efforts of the Commission to monitor effectively the conduct of the states in transposing and implementing Community Law across all its competences. The Commission's performance is satisfactory on the whole, but the tasks involved are now almost at the point of expanding to cover the ten new Member States. This will doubtless occasion new problems, as the part of the current Report dealing with Enlargement already foreshadows.

Reports in this series provide the only synoptic monitoring device concerning the robustness of the Rule of Law in the European Union. This is of fundamental importance. The Union aspires to be a union under law. This requires meticulous respect both by the Union institutions and by the Member States for the laws enacted by the Union's legislature. Since the Council of Ministers is one branch of the Union legislature, representing Governments of the Member States, it ought not to be unduly burdensome to secure effective transposition and implementation of laws, since Governments have already assented to them. Nevertheless, there is a fairly steady incidence of transpositional delay and inefficiency, and the Commission's vigilance is much needed. For example, one might note with regret and a certain sense of irony that *"The period for transposing Directive 2000/35/CE on combating late payment in commercial transactions expired in August 2002. Only eight Member States transposed in time. The Commission accordingly opened infringement proceedings against the other seven. It then received national measures from Italy, Austria and the Netherlands, leaving four Member States still in an infringement situation."* (Twentieth Report, 2. 2. 7)

More seriously, there are extraneous indicators of a disturbing readiness to abuse the rule of law in individual cases. Some examples that may be cited here are the following: Italy has since 14 years past been adjudged to have failed to fulfil the Community entitlements of one group of university teachers (lecturers in foreign languages). This has several times been the subject of resolutions in the European Parliament, and, even more seriously, has been the subject of four adverse judgements by the European Court of Justice, most recently *Commission v Italy* (Case C-212/99, judgement reported in 2001), yet as of the end of 2003 no finally effective action has been taken by the Italian State to observe its legal obligations to the European citizens affected by its non-compliant conduct. Another shocking case was that of the French State's refusal to admit importation of beef from the United Kingdom after that had been declared free of BSE by the European authorities (*Commission v France*, Case C-1-00.). On the pretext of giving its national authorities a competence overriding the rule of law at European level, France illegally barred imports until the very eve of the conclusion of a process by the Commission, which was thereupon terminated. Similar pertinacity by a member State Government has lately been evinced by the UK in face of the Petition's Committee's inquiries on behalf of aggrieved 'names' at Lloyds of London. Whether in this case the Commission has acted as a wholehearted guardian of the Treaties and of secondary law is a question with which Parliament will in the coming months concern itself, as well as with the question whether the Commission has reported adequately to Parliament.

Not covered in this Report is the recent scandalous refusal of the French and German Governments to accept their obligations under the Growth and Stability Pact. Law reform achieved by a display of contempt for law by powerful states is profoundly dangerous. Governments should obey the law until it is changed by due processes. Monitoring the application of law in routine cases can be overshadowed by such grand violations.