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REPORT

on the Commission's 23rd Annual report on monitoring the application of
Community law (2005)
(2006/2271(INI))

Committee on Legal Affairs

Rapporteur: Monica Frassoni

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
EXPLANATORY STATEMENT	10
OPINION OF THE COMMITTEE ON PETITIONS	11
RESULT OF FINAL VOTE IN COMMITTEE	15

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the Commission's 23rd Annual report on monitoring the application of Community law (2005)
(2006/2271(INI))**

The European Parliament,

- having regard to the Commission's 23rd Annual report on monitoring the application of Community law (COM(2006)0416),
 - having regard to the Commission's staff working papers (SEC(2006)0999 and 1005),
 - having regard to the Commission's Communication on “A Europe of results – Applying Community law” (COM(2007)0502),
 - having regard to Rules 45 and 112(2) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Petitions (A6-0462/2007),
- A. Whereas the effectiveness of EU policies is largely determined by their implementation at national, regional and local levels; whereas compliance with Community legislation by the Member States must be rigorously controlled and monitored in order to ensure that it has the desired positive effects on the daily lives of citizens,
- B. Whereas the number of complaints relating to infringements of Community law shows that European citizens play a vital role in its application, and that the ability of the EU Institutions properly to address citizens' concerns is important for the credibility of the European Union,
- C. Whereas the Commission may adapt the means it uses to carry out its mission effectively and make innovations designed to improve the application of Community law,

The 2005 Annual report and the follow-up of Parliament's resolution

1. Notes that the total number of infringement proceedings initiated by the Commission has constantly increased in the last years and reached 2 709 detected infringements in 2003 (for EU 15); further notes that the number of detected infringements dramatically decreased in 2004 (by 563) and increased again in 2005, albeit to a level which is lower than in 2003: 2 653 registered infringements (for EU 25);
2. Notes accordingly that the accession of 10 new Member States seems not to have had any impact on the number of registered infringements, and calls on the Commission to give Parliament some explanation and reassurance that this is not due to a lack of registration of complaints or/and to a lack of internal resources dealing with infringements within the Commission;
3. Welcomes the willingness of most of the relevant Directorates-General to provide

information on the resources allocated to infringements in their respective area as well as on the state of infringement proceedings; notes that each Directorate-General has its own way of dealing with the application of Community law and with the allocation of resources and that there is no precise overview and public general evaluation of the way these different approaches work;

4. Commits itself to support the Commission via increased budget appropriations for an increase of resources, as requested by most of the relevant Directorates-General;
5. Welcomes the fact that some Directorates-General have developed specific mechanisms to supplement the use of infringement proceedings with a view to achieving an effective monitoring and consolidation of the application of Community law; notes that, in the 2002 regulatory framework for electronic communications, the notification procedures in respect of draft national legislative measures were established, permitting collaboration among the national regulatory authorities of the Member States and the Commission within a short time frame; calls on the Commission to consider the systematic application of this preventive mechanism to other sectors;
6. Considers that the sharing of best practices between the Member States, for example in the form of package meetings and transposition workshops organised by the Commission to facilitate the application of Community law, should be encouraged; calls on the Commission to consider means of involving Parliament in such processes;
7. Welcomes the efforts made by some Directorates-General of the Commission – and notably DG Environment – to improve the conformity checks on the relevant directives, but is not satisfied with the Commission's answer concerning the confidentiality of the conformity studies; calls once more on the Commission to publish on its website the studies requested by the various Directorates-General on the evaluation of the conformity of national implementation measures with Community legislation;
8. Welcomes the inclusion in the Annual Report and its related annexes for the first time of particulars of the specific and detailed treatment of infringements relating to petitions;
9. Encourages the practice of sending fact-finding missions to various Member States to investigate issues raised by petitioners; regards this as a pragmatic way of solving problems directly with Member States in the interests of the citizen; believes that such missions are all the more necessary in the light of the Commission's lack of “inspection” powers for verifying the practical implementation of EC law, for example in the area of the environment;
10. Welcomes the Commission's commitment as a rule to include citizens' or peoples' summaries in future legislative proposals and requests concrete examples of such summaries as well as clarification that they form an integral part of the legal act concerned, as called for in paragraph 19 of Parliament's resolution of 16 May 2006 on the Commission's 21st and 22nd Annual reports on monitoring the application of Community law (2003 and 2004)¹;

¹ OJ C 297 E, 7.12.2006, p. 122.

11. Believes that the Commission should be more proactive in monitoring national events which may disclose a breach of Community law; calls on the Commission, therefore, to make more intensive use of its Representation Offices to prevent or remedy infringements;
12. Calls on the Member States to go beyond a purely formal transposition of Community legislation and to avoid, as far as possible, the fragmentary transposition of directives with a view to making legislation simpler and more transparent;
13. Welcomes the fact that, in its Communication entitled “A Europe of results – Applying Community law”, the Commission addressed some of the main policy issues raised in Parliament's above-mentioned resolution of 16 May 2006; notices, however, that some important issues are still pending and were not fully answered, notably those concerning the resources allocated to deal with the infringement cases, the length of the infringement procedure and the limited use of Article 228 of the EC Treaty, and the evaluation of the application of the priority criteria; asks the Commission to provide an answer with regard to these important issues;

The Commission's 2007 Communication on "A Europe of results – Applying Community law"

14. Welcomes the fact that, in its recently adopted Communication, the Commission attaches value to, and takes duly into account, the issue of the application of Community law: “if laws are not being properly applied, European policy objectives risk not being attained and the freedoms guaranteed by the Treaties may only be partially realised”²; encourages the Commission to achieve concrete and visible results through the following-up of the commitments listed in that Communication and to keep Parliament constantly informed on those results;
15. Notes that the examination of petitions has revealed what appear to be structural weaknesses in the implementation by Member States of various norms of Community law; is of the opinion that, in order to ensure the consistency and coherence of Community law, infringements of Community law must be consistently brought before the Court of Justice, at least in nationally important cases which set a precedent for national case-law and future practice; takes the view that consistency on the part of the Commission in this respect could significantly reduce citizens' subsequent need to complain to the Commission and petition the European Parliament on analogous issues;
16. Notes that the main obstacle to the effectiveness of the infringement procedure (Articles 226 and 228 of the EC Treaty) remain its length and the limited use of Article 228; insists that the time target proposed by the Commission in respect of the non-communication of transposition measures (no more than 12 months from the sending of the letter of formal notice to the resolution of the case or the Court being seised of the matter) and in respect of proceedings to ensure compliance with an earlier judgment of the Court (between 12 and 24 months) must in no case be exceeded, and, to that end, calls on the Commission to carry out, within that time-limit, periodic monitoring of the progress of infringement procedures and to inform the citizens concerned thereof;

² COM(2007)0502, p. 2.

17. Calls on the Commission to be more firm in applying Article 228 of the Treaty in order to ensure that judgments of the Court of Justice are properly complied with;
18. Welcomes the Commission's intention to improve current working methods with the aim of prioritising and accelerating the handling and management of existing procedures as well as to commit and formally involve the Member States; notes that, under the proposed new working method, enquiries and complaints received by the Commission will be directly transmitted to the Member State concerned “where an issue requires clarification of the factual or legal position in the Member State. (...) The Member State would be given a short deadline to provide the necessary clarifications, information and solutions directly to the citizens or business concerned and inform the Commission”³;
19. Is deeply concerned that, by referring back to the Member State concerned (which is the party responsible for the incorrect application of Community law in the first place), the new working method could present a risk of repudiation by the Commission of its institutional responsibility for ensuring the application of Community law as the “guardian of the Treaty” in accordance with Article 211 of the EC Treaty; observes that the Commission is often the only body left to which citizens can turn to denounce the non-application of Community law;
20. Calls on the Commission, therefore, to clarify the following issues when setting up the new working method:
- to clearly define the cases to which the new method will apply;
 - to confirm that the new working method is not an alternative mechanism to the infringement procedures;
 - to guarantee that the new method will not further delay the initiation of an infringement procedure the duration of which is already extremely lengthy and indeterminate, as well as to show no indulgence vis-à-vis Member States when it comes to meeting the deadlines fixed by the Commission itself in order to find a solution for the citizen;
 - to clarify the moment of the registration of complaints under the new method (before or after the reaction of the Member State concerned) and to indicate who is to take the decision to register a given complaint; to guarantee that the principle of collegiality within the Commission will be respected when registering a complaint;
 - to specify who is to provide an answer to the complainant (the Commission or the Member State);
 - to inform Parliament about the specific measures the Commission intends to take in order to guarantee that, during the transitional period leading up to full implementation of the new system and in the event that the new system does not deliver the expected results, it will fully perform its role as guardian of the Treaty;
21. Welcomes the Commission's suggestion that a pilot exercise, involving some Member

³ COM(2007)0502, p. 7.

States, be set up to test the new working method in 2008, which could, after evaluation of the first year of operation, be extended to all Member States;

22. Asks the Commission to focus the proposed pilot exercise on those Member States in which the application of Community law remains problematic as a result of a lack of cooperation on the part of national authorities, especially at regional and local level; asks the Commission to verify through the pilot exercise if and where more resources are needed within the Commission to handle and manage complaints following the setting-up of the new working method;
23. Given that petitions and complaints from citizens and businesses facilitate the detection of a very substantial number of infringements, and in order to avoid confusion in contacting the various problem-solving bodies, urges the Commission to investigate the possibility of clear signposting or the creation of an on-line one-stop-shop in order to assist citizens;
24. Welcomes the Commission's decision to "introduce more frequent decision-taking for most procedural steps to allow for quicker progress"; notes that the Commission organises four formal meetings a year to decide on infringement procedures, and welcomes the Commission's decision to have more frequent decision-taking on infringements; regrets that the Communication did not define stronger political and organisational measures to tackle these new commitments;
25. Notes that the annex to the Communication contains a list of areas of Community law proposed for evaluation, and calls on the Commission to provide an explanation of the scope of that list;
26. Regrets that the Commission did not respect its commitment, announced in its 2002 Communication on "Better monitoring of the application of Community law", that "the application of the priority criteria will be assessed annually, when the report on the monitoring of the application of Community law is discussed"⁴; welcomes its new commitment to "describe and explain its action on these priorities in its annual reports, from 2008"⁵;
27. Notes that Parliament has continued to receive petitions alleging persistent breaches by Member States of the petitioners' human and fundamental rights **and** deeply regrets that the criteria for violations of the human rights or fundamental freedoms enshrined in substantive Community law have disappeared from the new list of priority criteria; recalls that the EU Treaty gives Parliament the power to initiate the procedure laid down in Article 7(1) of that Treaty;
28. Urges the Commission to extensively apply the principle that all correspondence which is likely to denounce a real violation of Community law should be registered as a complaint, unless it falls within the exceptional circumstances referred to in point 3 of the Annex to the Communication on "Relations with the complainant in respect of infringements of Community law"⁶; notes that the European Ombudsman has recently found the

⁴ COM(2002)0725, p. 12.

⁵ COM(2007)0502, p. 9.

⁶ COM(2002)0141.

Commission responsible for “maladministration” for not having registered a complaint in accordance with that Communication; urges the Commission to inform and consult Parliament on any changes in the exceptional criteria for the non-registration of complaints;

29. Urges all services of the Commission to keep complainants fully informed of the progress of their complaints at the expiry of each pre-defined deadline (letter of formal notice, reasoned opinion, referral to the Court), to provide reasons for their decisions and to communicate those reasons in full detail to the complainant in accordance with the principles stated in its Communication of 2002;
30. Welcomes the Commission’s intention to take action to ensure free access to its electronic database and encourages it to act on that commitment as soon as possible;
31. Welcomes the Commission's commitment to provide summary information on all stages of infringement proceedings from the letter of formal notice as they progress; considers that, in the interests of transparency and better application of Community law in the national courts, the Commission should make available the content and timing of contacts with Member States once the relevant issues are no longer under investigation;
32. Welcomes the Commission's forthcoming publication of an explanatory document on the case-law of the Court of Justice concerning claims for damages for breach of rights under Community law; further suggests that the Commission should investigate the possibility of acting as *amicus curiae* in relevant damages cases before national courts, in accordance with national procedural law, as is already the case for domestic litigation involving EC competition law issues⁷;

The role of the European Parliament and national parliaments in the application of EU law

33. Considers that Parliament’s standing committees should take a much more active role in monitoring the application of Community law in their fields of competence and, to that end, should receive support and regular information from the Commission; suggests that, wherever possible, Parliament’s rapporteur for a particular file or his/her appointed successor should play a central and continuing role in the ongoing review of Member States’ compliance with Community law; notes that regular sessions on the application of Community law organised by the Committee for the Environment, Public Health and Food Safety are a practice that should be extended to all Parliament’s committees and that the Commission should be systematically involved;
34. Notices, however, that the Commission's reluctance to provide precise information on the issues where infringement proceedings have started greatly reduces public interest in, and the effectiveness of, these sessions; calls on Parliament's committees to envisage, where appropriate, including representatives of the relevant Member States or of the Council in the list of invitees to the sessions on the application of Community law;

⁷ Commission Notice on the co-operation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC (OJ C 101, 27.4.2004, p. 54), paragraphs 17 to 20.

35. Believes that Parliament's committees (including the Committee on Petitions) should be given sufficient administrative support to carry out their mission effectively; asks the Working Party on parliamentary reform, the Committee on Budgets and other relevant Parliament bodies to submit concrete proposals dealing *inter alia* with the aforementioned ongoing role of rapporteurs and to assess the feasibility of a special task force within each committee's secretariat to guarantee the continuing and effective monitoring of the application of Community law;
36. Calls for increased cooperation between national parliaments and the European Parliament and their respective parliamentarians, in order to promote and increase effective scrutiny of European matters at national level; considers that national parliaments have a valuable role to play in monitoring the application of Community law, thus helping to strengthen the democratic legitimacy of the European Union and bring it closer to the citizens;
37. Recalls the commitment on the part of the Council to encourage the Member States to draw up and publish tables illustrating the correlation between directives and domestic transposition measures; insists that such tables are essential to enable the Commission to carry out an effective scrutiny of implementing measures in all Member States; calls on Parliament as co-legislator to take all steps necessary to ensure that provisions regarding those tables are not removed from the text of Commission proposals during the legislative process;
38. Notes that national courts play an essential role in applying Community law and fully supports the Commission's efforts to identify supplementary training for national judges, legal practitioners and officials within the national authorities;
39. Calls on the Commission to improve monitoring of compliance by Member States' judicial authorities with Parliament's decisions on parliamentary immunity and, where the Commission finds a failure to comply with those decisions, to inform Parliament of the action it intends to take;
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- ◦
40. 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 evaluates the Commission's monitoring of the application of Community law in 2005. It also analyses the Communication on "A Europe of results - Applying Community law" COM(2007)0502 that the Commission adopted recently.

The report is the result of extensive meetings the rapporteur held with the Commissioners responsible for the application of Community law in their sectors of competence. Moreover, extensive contacts were maintained with the different services of the Commission dealing with the management and the enforcement of Community law.

In the framework of this report, a public hearing on the application of Community law was organised on 3 May 2007, where representatives of national parliaments, national judges, practitioners and representatives of national governments shared their experience and expertise and contributed to the conceptualisation of the report. The report also draws on a Comparative study on the transposition of EC law in the Member States prepared by the Policy Department of the European Parliament in co-operation with the European Centre for Parliamentary Research and Documentation.

The report takes into account the experience of other parliamentary committees in the application of Community law and recognises the important role the European Parliament should play in contributing to the correct application of the EC law.

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Legal Affairs

on monitoring the application of Community Law (2005) – 23rd annual report
(2006/2271(INI))

Draftsperson: Diana Wallis

SUGGESTIONS

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

The 2005 Annual Report and the Report of the Equitable Life Committee of Inquiry

1. Welcomes the inclusion in the Annual Report and its related annexes for the first time of particulars of the specific and detailed treatment of infringements relating to petitions; agrees with the Commission that petitions represent a valuable source of information in detecting violations of Community law; welcomes the Commission's stated intention to increase the strategic nature of the issues discussed in its Annual Reports;
2. Encourages the practice of sending fact-finding missions to various Member States to investigate issues raised by petitioners; regards this as a pragmatic way of solving problems directly with Member States in the interests of the citizen; believes that such missions are all the more necessary in the light of the Commission's lack of "inspection" powers for verifying the practical implementation of EC law, for example, in the area of the environment;
3. Welcomes the Commission's commitment as a rule to include citizens' or peoples' summaries in future legislative proposals and requests concrete examples of such summaries as well as clarification that they form an integral part of the legal act concerned, as called for in paragraph 19 of Parliament's resolution of 16 May 2006 on the Commission's 21st and 22nd Annual reports on monitoring the application of Community law (2003 and 2004)⁸;

⁸ OJ C 297 E, 7.12.2006, p. 122.

4. Considers that, where petitions and practical experience provide evidence of the effects of a particular piece of Community legislation not living up to its stated objectives, Parliament, the Council and the Commission should consider revision of the law as a matter of priority;
5. Recalls the commitment on the part of the Council to encourage the Member States to draw up and publicise tables illustrating the correlation between directives and domestic transposition measures⁹; supports the Commission's continuing efforts to that end;
6. Believes that the Commission should be more proactive in monitoring national events which may disclose a breach of Community law and in reinforcing scrutiny of the implementation process in the Member States; calls on the Commission, therefore, to make more intensive use of its Representation Offices to prevent or remedy infringements;

The Commission's 2007 Communication on "A Europe of Results – Applying Community Law"

7. Welcomes the Commission's forthcoming publication of an explanatory document on the case-law of the Court of Justice concerning claims for damages for breach of rights under Community law; further suggests that the Commission should investigate the possibility of acting as *amicus curiae* in relevant damages cases before national courts, in accordance with national procedural law, as is already the case for domestic cases involving EC competition law issues¹⁰;
8. Welcomes the Commission's intention to improve current working methods and notes the proposed pilot exercise directly involving Member States in the management of enquiries and complaints;
9. Believes that such a new approach, operating at the point geographically closest to the citizen, should not:
 - as regards files which are transmitted to the Member States, lead to a reduced level of cooperation with the European Parliament, which represents the peoples of the States brought together in the Community, and in particular through its Committee on Petitions;
 - result in a diminution of rights for any complainant vis-à-vis the Commission;
 - be used by Member States to take undue credit for successes commonly achieved at European Union level, or be used to delay the initiating of an infringement procedure;
10. Considers that, whenever a petition is submitted to the European Parliament in parallel with a complaint dealt with under the new approach envisaged in the pilot exercise, the

⁹ Interinstitutional Agreement on better lawmaking (OJ C 321, 31.12.2003, p. 1). See also Commission Communication COM(2006)0689.

¹⁰ Commission Notice on the co-operation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC (OJ C 101, 27.4.2004, p. 54), paragraphs 17 to 20.

Member State concerned should actively and directly engage with the Committee on Petitions, in a spirit of loyal cooperation;

11. Notes that the examination of petitions has revealed what appears to be structural weaknesses in the implementation by Member States of various norms of Community law; is of the opinion that, in order to ensure the consistency and coherence of Community law, infringements of Community law must be consistently brought before the Court of Justice, at least in nationally important cases which set a precedent for national case-law and future practice; takes the view that consistency on the part of the Commission in this respect could significantly reduce citizens' subsequent need to complain to the Commission and petition the European Parliament on analogous issues;
12. Notes that Parliament has continued to receive petitions alleging persistent breaches by Member States of the petitioners' human and fundamental rights; recalls that the EU Treaty gives Parliament the power to initiate the procedure laid down in Article 7(1) of that Treaty, which can lead to the appointment of independent persons to report on the risk of a serious breach of the principles on which the European Union is founded, including respect for human rights as guaranteed by European Convention for the Protection of Human Rights and Fundamental Freedoms;
13. Considers that, if the enquiry or complaint reveals a breach of Community law, it is of paramount importance that the Member State offer a remedy; considers furthermore that the latter term should be construed widely and that the mere discontinuation of the breach may sometimes not be a sufficient remedy;
14. Given that petitions and complaints from citizens and businesses facilitate the detection of a very substantial number of infringements¹¹, considers that these should be encouraged and dealt with through the most appropriate channels in order to avoid confusion; given the bewildering nature of the current variety of bodies dealing with complaints and problem-solving, which may further increase with the proposed pilot exercise, urges the Commission to investigate clear signposting or the creation of an on-line one-stop-shop in order to assist citizens;
15. Welcomes the Commission's commitment to provide summary information on all stages of infringement proceedings from the letter of formal notice as they progress; considers that, in the interests of transparency and better application of Community law in the national courts, the Commission should make available the content and timing of contacts with Member States once the relevant issues are no longer under investigation;
16. Considers that there is an urgent need to improve the administrative resources of its Committee on Petitions in order to increase Parliament's capacity to conduct independent investigations of petitions addressed to it.

¹¹ See Annex I, pages 4 to 8, of the Annual Report; see also Commission Staff Working Document: Situation in the Different Sectors, SEC(2006)999, pages 23 to 26.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	3.10.2007
Result of final vote	+ : 21 - : 1 0 : 0
Members present for the final vote	Simon Busuttil, Luis Herrero-Tejedor, Carlos José Iturgaiz Angulo, Mairead McGuinness, Manolis Mavrommatis, Gay Mitchell, Marie Panayotopoulos-Cassiotou, Radu Țirle, Michael Cashman, Proinsias De Rossa, Alexandra Dobolyi, Lasse Lehtinen, Miguel Angel Martínez Martínez, Maria Matsouka, Marian Harkin, Diana Wallis, Marcin Libicki, Margrete Auken, David Hammerstein, Kathy Sinnott
Substitute(s) present for the final vote	Carlos Carnero González, Lidia Joanna Geringer de Oedenberg
Substitute(s) under Rule 178(2) present for the final vote	

RESULT OF FINAL VOTE IN COMMITTEE

Date de l'adoption	20.11.2007
Résultat du vote final	+: 24 -: 0 0: 0
Membres présents au moment du vote final	Carlo Casini, Bert Doorn, Cristian Dumitrescu, Monica Frassoni, Lidia Joanna Geringer de Oedenberg, Neena Gill, Othmar Karas, Piia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Diana Wallis, Tadeusz Zwiefka
Suppléant(s) présent(s) au moment du vote final	Mogens N.J. Camre, Charlotte Cederschiöld, Vicente Miguel Garcés Ramón, Luis de Grandes Pascual, Kurt Lechner, Eva Lichtenberger, Marie Panayotopoulos-Cassiotou, Gabriele Stauner
Suppléant(s) (art. 178, par. 2) présent(s) au moment du vote final	Toine Manders, Tomáš Zatloukal