

## **P7\_TA(2014)0051**

### **29th annual report on monitoring the application of EU law (2011)**

#### **European Parliament resolution of 4 February 2014 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 Commission’s ‘EU Pilot Evaluation Report’ (COM(2010)0070),
  - having regard to the Commission’s ‘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 (A7-0055/2014),
- 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 51 E, 22.2.2013, p. 66.

- C. whereas according to Article 298 of the Treaty on the Functioning of the European Union (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, an online platform used by the Member States and the Commission to clarify the factual and legal background to problems arising in relation to the application of EU law, does not have any legal status, and whereas 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 of the Treaty on European Union (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 launch infringement procedures 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 in recent years, having opened 2900 such procedures in 2009, 2100 in 2010 and 1775 in 2011; notes, furthermore, that the annual report also shows an increase in late-transposition cases over the last few years (1185 in 2011, 855 in 2010, 531 in 2009), and that the four most infringement-prone policy areas are the environment (17 %), the internal market (15 %), transport (15 %) and taxation (12 %);
  3. Notes the decreasing proportion of infringement cases (60,4 %) closed in 2011 before reaching the Court of Justice, in comparison with 88 % of cases in 2010; believes that it is essential to continue to monitor Member States’ actions carefully, bearing in mind that some of the petitions to Parliament and complaints to the Commission refer to problems that persist even after a matter has been closed;
  4. Notes that in total 399 infringement cases were closed because the Member State demonstrated its compliance with EU law, making serious efforts to settle the infringement without court proceedings; also notes that the Court delivered 62 judgments under Article 258 TFEU in 2011, of which 53 (85 %) were in the Commission’s favour;
  5. Expresses its concern at the steady increase in late-transposition infringements by Member States given that 763 late-transposition cases were still open at the end of 2011, representing a 60 % increase on the equivalent figure for the previous year;

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<sup>1</sup> Articles 258 and 260 TFEU define the Commission’s powers to launch infringement procedures against a Member State. More specifically, 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> The Commission’s ‘29th annual report on monitoring the application of EU law (2011)’ (COM(2012)0714), p. 2-3.

6. Notes that in late 2011 the Commission referred the first late-transposition infringement to the Court of Justice with a request for financial sanctions under Article 260(3) TFEU;
7. Considers, nevertheless, that these statistics are not an accurate reflection of the actual deficit in compliance with EU law, 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>1</sup>;
8. Draws attention to the fact that the agreement among the EU institutions on declarations setting out the relationship between the components of a directive and the corresponding parts of national transposition instruments (‘correlation tables’) came into force on 1 November 2011, and that it has therefore not been possible to evaluate its implementation in this annual report;
9. Expects the Commission to provide an initial review of these declarations by 1 November 2014, as promised in its annual report;
10. Believes that, as regards the functioning of infringement procedures under Articles 258 and 260 TFEU, the Commission should ensure that petitions to Parliament and complaints to the Commission are treated with equal consideration;
11. Points out that petitions submitted by EU citizens refer to violations of EU law, particularly in the fields of fundamental rights, the environment, the internal market and property rights; considers that petitions are evidence that there are still frequent and widespread instances of incomplete transposition or of misapplication of EU law;
12. 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;
13. Notes that it is necessary, in complaint-handling procedures, systematically to use compliance-promoting tools and to exercise Parliament’s right of scrutiny;
14. Notes that the infringement procedure consists of two phases: the administrative (investigation) stage and the judicial stage before the Court of Justice; notes the Commission’s acknowledgement 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 Pilot platform<sup>2</sup>’;

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<sup>1</sup> Study commissioned by Parliament, Policy Department C, ‘Tools for Ensuring Implementation and Application of EU Law and Evaluation of their Effectiveness’, Brussels, 2013, p. 11.

<sup>2</sup> Commission report (COM(2012)0714), p. 7.

15. Notes, in this context, that the EU Pilot is defined as a platform for ‘bilateral discussions between the Commission and the Member States’<sup>1</sup> which ‘has no legal status but is a mere working tool in the framework of the Commission’s administrative autonomy’<sup>2</sup> within the pre-infringement procedure;
16. Deplores the EU Pilot’s lack of legal status and considers that ‘legitimacy can only be ensured by enabling transparency, participation of complainants and [of the European Parliament] in the EU Pilot’, and that legality can be ensured through the adoption as soon as possible of a legally binding act containing the rules governing the whole pre-infringement and infringement procedure, as stated in a recent Parliament study<sup>3</sup>; considers that such a legally binding act should clarify the legal rights and obligations of individual complainants and of the Commission, respectively, and strive to allow the participation of complainants in the EU Pilot, as far as possible, at least ensuring that they are informed of the different stages of the procedure;
17. Deplores, in this context, the fact that there has been no follow-up 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 procedure – 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 – so as to reinforce citizens’ rights and guarantee transparency;
18. Takes the view that the implementation of the EU Pilot platform needs to be enhanced in terms of transparency vis-à-vis complainants; requests access to the database in which all complaints are collected, in order to enable Parliament to carry out its function of scrutinising the Commission’s role as guardian of the Treaties;
19. Underlines the importance of good administrative practice and calls for the establishment of a ‘procedural code’ in the form of a regulation, with Article 298 TFEU as its legal basis, which sets out the various aspects of the infringement procedure;
20. Calls once again on the Commission, therefore, to propose binding rules in the form of a regulation under the new legal basis provided by Article 298 TFEU, so as to ensure full respect for citizens’ right to good administration as set out in Article 41 of the Charter of Fundamental Rights;
21. Recalls that, in the revised Framework Agreement on its relations with Parliament, the Commission undertakes to ‘make available to Parliament summary information concerning all infringement procedures from the letter of formal notice, including, if so requested by Parliament, on the issues to which the infringement procedure relates’, and expects this clause to be applied in good faith in practice;
22. 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

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<sup>1</sup> See passage quoted in the preceding paragraph.

<sup>2</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>3</sup> ‘Tools for Ensuring Implementation and Application of EU Law and Evaluation of their Effectiveness’, p. 13.

for specific acts or provisions'<sup>1</sup>, and that, while 'the Commission is entitled to refuse [the] 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>2</sup>;

23. Welcomes the fact that all the Member States are taking part in the EU Pilot; hopes that this will lead to a further reduction in the number of infringement procedures; calls for more to be done to inform citizens about the EU Pilot;
24. 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, to be an essential point to be put on the agenda in connection with a future interinstitutional agreement;
25. 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.

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<sup>1</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>2</sup> Ibid. The Commission already publishes a great deal of information in its annual report on monitoring the application of EU law.