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Monitoring the application of EU law 2017, 2018 and 2019

European Parliament resolution of 20 January 2021 on monitoring the application of Union law 2017, 2018 and 2019 (2019/2132(INI))

The European Parliament,

– having regard to the Treaty on European Union (TEU), and in particular Articles 2 and 3 thereof,


– having regard to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘Strengthening the rule of law within the Union – A blueprint for action’ (COM(2019)0343),

– having regard to its resolution of 14 June 2018 on monitoring the application of EU law in 2016¹,

– having regard to its resolution of 9 June 2016 for an open, efficient and independent European Union administration²,

– having regard to its resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union³,

– having regard to the Commission communication of 21 December 2016 entitled ‘EU law: Better results through better application’⁴ (C(2016)8600),

– 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 the Interinstitutional Agreement between the European Parliament, the

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¹ OJ C 28, 27.1.2020, p. 108.
Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making\(^1\),

- having regard to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘2020 Rule of Law Report. The rule of law situation in the European Union’ (COM(2020)0580),


- having regard to the communication from the Commission to the European Parliament, the European Council and the Council entitled ‘Ninth progress report towards an effective and genuine Security Union’ (COM(2017)0407),


- having regard to Review No. 07/2018 of the European Court of Auditors entitled ‘Putting EU law into practice: The European Commission’s oversight responsibilities under Article 17(1) of the Treaty on European Union (Landscape Review)’,

- having regard to Review No. 02/2020 of the European Court of Auditors entitled ‘Law-making in the European Union after almost 20 years of Better Regulation’,

- having regard to Rule 54 of its Rules of Procedure,

- having regard to the opinions of the Committee on Constitutional Affairs and the Committee on Petitions,

- having regard to the report of the Committee on Legal Affairs (A9-0270/2020),

A. whereas pursuant to Article 4(3) TEU and Articles 288(3) and 291(1) of the Treaty on the Functioning of the European Union (TFEU), Member States have the primary responsibility for transposing, applying and implementing EU law correctly and within the time limits set, and for providing sufficient remedies to ensure effective legal protection in the fields covered by EU competences; whereas EU legislation is effective only in so far as it is, on the one hand, transposed in time, in a complete and accurate manner and, on the other hand, properly applied in national law by the Member States,

\(^1\) OJ L 123, 12.5.2016, p. 1.
\(^2\) OJ L 141, 5.6.2015, p. 73.
\(^3\) OJ L 156, 19.6.2018, p. 43.
which is necessary to guarantee the benefits of EU policies to all European citizens and a level playing field for businesses across the internal market; whereas EU legislation should respect the principles of sincere cooperation, conferral, subsidiarity and proportionality;

B. whereas it is necessary to recognise the importance of the active contribution of national parliaments to the proper functioning of the EU, and to ensuring respect for the principle of subsidiarity in accordance with the procedure enshrined in Protocol 2 TFEU on the application of the principles of subsidiarity and proportionality; whereas we should continue to foster closer cooperation with national parliaments in the law-making process; recalls that in 2019, 159 reports and no reasoned opinions were submitted out of a total of 4,918 reports and 439 reasoned opinions in the last nine years; whereas to date the ‘yellow card’ procedure has been activated only three times, and the ‘orange card’ has never been used;

C. whereas dialogue between the EU Institutions and national authorities has been instrumental to resolving 90% of infringement procedures since 2014 without the involvement of the Court of Justice of the European Union (CJEU); whereas infringement procedures should be used as a measure of last resort; whereas, EU legislation should be formulated in a way that facilitates its transposition into national law;

D. whereas EU Pilot procedures have been introduced in order to quickly resolve potential breaches of EU law at an early stage in appropriate cases through a structured problem-solving dialogue between the Commission and Member States; whereas their use has declined since 2017 as it has been recognised that it added an additional bureaucratic layer to the procedure without adding real value; whereas the Commission has not yet responded to Parliament’s repeated calls to be kept informed about EU Pilot and infringements procedure initiated, especially when they result from petitions;

E. whereas in 2016 the Commission decided to prioritise the most serious breaches of EU law significantly affecting the interests of citizens and businesses in its work on infringement cases and complaints, and whereas 2017 was the first year in which the Commission applied this new, more targeted approach;

F. whereas infringement procedures, together with other implementation and compliance-promoting mechanisms, guarantee that EU citizens and businesses are not negatively affected by the late or incomplete transposition or incorrect application of EU law by Member States; whereas infringement procedures are unfair insofar as they make citizens bear the cost of the incomplete transposition or incorrect application of European law by Member States; whereas more effective interinstitutional cooperation is desirable, both at national and EU level, and to introduce a new mechanisms or review the existing mechanisms to guarantee the correct application of EU law;

G. whereas respect for the rule of law is the cornerstone of democracy, and underpins fundamental rights; whereas upholding the rule of law is a prerequisite for upholding all rights and obligations deriving from the Treaties and secondary legislation; whereas the EU has a role to play in resolving rule of law issues wherever they appear; whereas national courts in Member States ensure that the rights and obligations provided for under EU law are enforced effectively; whereas independent and effective justice systems in Member States are the basis for mutual trust, which is the bedrock of the
common area of freedom, security and justice, an investment-friendly environment, the sustainability of long-term growth, and the protection of EU financial interests;

H. whereas the protection of fundamental rights and civil liberties, impartial and independent courts, freedom of expression, media pluralism and independence from political influence or pressure, the respect of legality by subnational entities, and the fight against corruption and the infiltration of the legal economy by organised crime, are essential to guaranteeing equal treatment before the law, protecting citizens’ rights, preventing abuses and ensuring accountability of public office-holders; whereas media freedom, pluralism and independence are essential components of the right to freedom of expression, and whereas independent and free media play a crucial role in a democratic society, as specified in the Charter of Fundamental Rights of the European Union (‘the Charter’) and the TEU; whereas disinformation campaigns aimed at misleading the public about the EU’s activities also target the measures undertaken in order to ensure the proper application of EU law in Member States;

I. whereas Article 21 of the Charter prohibits any form of discrimination, including on the basis of disability; whereas numerous legislative acts aimed at concretely implementing this fundamental principle are still not being correctly implemented in several Member States;

J. whereas Europol found that between 0.7% and 1.28% of the EU’s annual gross domestic product was used for suspect financial activity, such as the laundering of illicitly obtained funds, and whereas the Commission has launched infringement proceedings against most Member States for failing to properly transpose the Anti-money Laundering Directives, in particular 4AMLD and 5AMLD;

K. whereas some Member States have introduced schemes that either directly or indirectly sell EU citizenship, and whereas there are serious concerns that such schemes could be open to abuse, giving rise to issues relating to security and transparency, undermining citizens’ trust in EU values and principles, and facilitating terrorism, organised crime and money laundering;

L. whereas, according to the Commission report, Council Framework Decision 2008/841/JHA on the fight against organised crime¹ does not achieve the necessary minimum degree of approximation as regards directing or participating in a criminal organisation on the basis of a single definition of such an organisation; whereas the Framework Decision enables the Member States not to introduce the concept of criminal organisation into their national law, but to continue to apply current national criminal law by having recourse to general rules on participation in and preparation of specific offences, and whereas this may have the effect of creating additional disparities in the framework decision’s practical implementation;

M. whereas the refugee crisis has demonstrated the need for urgent reform of the common European asylum system and for more effective burden sharing among Member States; whereas the mandatory schemes for the emergency relocation of asylum seekers from Italy and Greece have proved ineffective, involving, in particular, serious physical and mental abuse;

psychological consequences on minors, and especially unaccompanied minors; whereas the Commission has launched infringement procedures against Czechia, Poland and Hungary for refusing to comply with relocation decisions;

N. whereas the Schengen Borders Code allows internal border checks to be reinstated temporarily only in exceptional circumstances and as a last resort; whereas many Member States have breached the rules by keeping border checks in place without due justification; whereas the Commission has not seen fit to bring infringement procedures against these Member States;

O. whereas media freedom, pluralism and independence are essential components of the right to freedom of expression, and whereas the media play a crucial role in a democratic society, as specified in the Charter and the TEU;

P. whereas the aim of the Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms is to limit the damage caused by the impact of economic crises on public budgets, restricting through bail-ins the effects of bank defaults on shareholders, bond holders and holders of current accounts with more than EUR 100 000; whereas current account holders, and hence savers, risk having to pay for mismanagement that causes banks to default, under the provisions of the Bank Recovery and Resolution Directive (BRRD), and in particular the bail-ins provided for by it;

Q. whereas in 2019 the Commission continued to monitor Member States’ implementation of the Capital Requirements Directive IV, the Deposit Guarantee Schemes Directive, the BRRD and the Bank Creditor Hierarchy Directive; whereas in 2019 infringement procedures were launched against 12 Member States for not adopting the measures necessary for the full transposition of the Bank Creditor Hierarchy Directive;

1. Welcomes the Commission’s 2017, 2018 and 2019 reports on monitoring the application of EU law, including the country-specific reports; recognises that these annual reports, the right of petition and the European Citizens’ Initiative are valuable tools for enabling EU legislators to identify potential issues; welcomes the Commission’s commitment to attaching great importance to the contribution of citizens, businesses and other stakeholders in detecting breaches of EU law; urges the Commission to enhance public debate on its annual reports;

2. Notes a significant number of petitions expressing citizens’ concerns over alleged violations of the rule of law in the Member States, and welcomes the participation of citizens in exercising their rights; takes the view that monitoring is essential for identifying and precluding risks to the rule of law and the rights and freedoms of EU citizens before they require a formal response; welcomes, in this regard, the Commission’s first yearly Rule of Law Report as a new preventive tool and as part of the new annual European Rule of Law Mechanism; reiterates its support for the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, to be governed by an interinstitutional agreement;

3. Recalls that every year Parliament receives a significant number of petitions from concerned citizens expressing dissatisfaction with the state of implementation of EU law in the Member States; is particularly concerned about the practice of referring a significant number of petitioners to other bodies; reiterates its concern that this
approach may cause citizens to believe that their voice goes unheard by the EU institutions; emphasises the important role played by civil society and other stakeholders, in particular whistleblowers, in monitoring and reporting on the application of EU law;

4. Is concerned that, in 2019, the Commission launched 797 new infringement proceedings, which is more than in 2018 (644) and 2017 (716); is also worried that in 2019 the Commission sent 316 reasoned opinions, compared to 157 in 2018 and 275 in 2017; notes, however, that in 2019, 1,564 non-compliance proceedings were still open, a slight decrease compared to the 1,571 procedures still open at the end of 2018, and a slight increase compared to those still open in 2017 (1,559); welcomes the fact that the number of procedures for non-compliance with timely transposition obligations still open in 2019 has fallen to 599, 21 % fewer than the number of procedures still open at the end of 2018 (758);

5. Underlines the crucial role of CJEU as the sole institution in charge of ruling on the validity of EU law, thus ensuring its correct interpretation and application by EU institutions and Member States; recalls that the preliminary ruling procedure is a fundamental mechanism of EU law that helps to clarify how EU law is to be interpreted and applied; encourages national courts to refer questions to the CJEU in the event of doubt, and thereby prevent infringement proceedings;

6. Points out that, in 2019, infringement proceedings were opened in the following main policy areas, ranked from high to low according to the number of cases: environment, internal market, industry, business and SMEs, mobility and transport; notes with regret that environmental legislation generated the largest number of transposition and enforcement issues in 2019 while in comparison in 2018 the environment was in third place in terms of number of new infringement procedures;

7. Notes that, according to these reports, the fields in which the greatest number of transposition infringement proceedings were opened against Member States in those years were the environment, mobility, transport and the internal market;

8. Emphasises that a lack of enforcement not only undermines the efficiency of the internal market, but also has a direct impact on individual rights, and thus affects the credibility and image of the Union; considers that the large number of infringement procedures shows that ensuring the timely, correct and effective application of EU law in the Member States remains a serious challenge and priority; calls on the Commission to provide more information on the criteria applied under the new methodological approach applied from 2017 aiming to determine the most serious infringement cases and complaints about EU law; regrets that the growing number of procedures has led to the average time taken to investigate potential breaches of EU law to increase continuously since 2017; calls on the Commission to reduce the average time for dealing with complaints and infringement procedures; calls on the Commission, when appropriate, to drastically reduce the time taken to bring a Member States before the Court pursuant to Article 258 TFEU and Article 260 TFEU;

9. Notes with concern that the average transposition time in the EU has increased, with directives in 2019 taking three months longer to be transposed into national legislation than in 2018; calls for legislative procedures to be timed appropriately in order to provide sufficient time for transposition; underlines that EU law needs to be formulated
in a clear, understandable way, respecting the principles of legal clarity, transparency and legal certainty; calls for appropriate ex-ante and ex-post impact assessments of EU law; recalls that the legislation which gives rise to the most serious infringement proceedings is the result of directives; recalls that regulations are directly and compulsorily applicable in all the Member States; calls on the Commission, therefore, to make use of regulations as far as possible whenever it considers legislative proposals;

10. Stresses Parliament’s scrutiny role in drawing the Commission’s attention to shortcomings in the implementation of EU law in the Member States by means of petitions and questions; encourages the Commission to further enhance its oversight of the way EU law is applied in Member States, in line with the Landscape Review by the European Court of Auditors; stresses that a close and structured dialogue between the Commission and the Member States at an early stage is key to the effective and correct application of EU law, and also to tackling the issues related to ‘gold plating’ during the transposition and application of EU law; recalls the need to establish a common database and website for all parts of the legislative procedure in order to increase transparency in legislative discussions; calls on the Commission to promote compliance more consistently across different policy areas, and, where possible and appropriate, to enhance preventive instruments such as, for example, preparing implementation plans, road maps, explanatory documents, dedicated websites, and the exchange of good practices designed to help Member States identify transposition problems, address them at an early stage of the infringement procedures and help them find joined solutions and thus, enhance the effectiveness of EU legislation;

11. Acknowledges the work carried out by the European Commission and its respect for the principle of subsidiarity; highlights the crucial role of national parliaments, and, where relevant, regional parliaments, in the pre-legislative scrutiny of draft EU laws; notes that current forms of cooperation with national parliaments could be improved; regrets the current structure of the procedure for the subsidiarity control mechanism, which compels EU committees in national parliaments to dedicate excessive time to technical and legal assessments while having to comply with short deadlines; suggests a revision of these mechanisms in order to make them more functional and effective, and to allow for the development of a more political approach to subsidiarity control across the EU; suggests further involvement of the European Committee of the Regions, representing regional and local authorities, in subsidiarity control;

12. Is seriously concerned that many Member States have not yet implemented the Anti-Money Laundering Directives (4AMLD and 5AMLD); urges the Member States to urgently and duly transpose these directives; welcomes the Commission’s adoption of the communication entitled ‘Towards a better implementation of the EU framework on combating money laundering and terrorist financing’, which, together with a series of reports, can provide support to European and national authorities in better tackling money laundering, including the risk of terrorist financing;

13. Is concerned about the implications of certain investment and citizenship schemes recently adopted by some Member States; calls on the Commission to introduce legislation banning such practices;

14. Deplores the inconsistencies and shortcomings in European legislation designed to combat cross-border organised crime including, inter alia, drug trafficking or trafficking in human beings; calls on the Commission to continue monitoring the correct
transposition of the framework decision on the fight against organised crime, using its enforcement powers under the Treaties; calls on the Commission to present a legislative proposal for a directive based on Article 83(1) TFEU to revise Council Framework Decision 2008/841/JHA on the fight against organised crime, including an update of the definitions of criminal offences to emphasise the cross-border nature of criminal organisations, as repeatedly highlighted in the reports of the relevant European agencies, notably Europol and Eurojust, including higher penalties and adding the offence of criminal association, which in the mafia model is characterised by intimidation tactics, association with the deliberate intent to engage in criminal activity, and the ability to influence public bodies; would welcome, in this context, general European legislation on protecting those who cooperate with law enforcement authorities;

15. Stresses the importance of legislation which enables law enforcement authorities to take effective action against illicitly obtained assets, by preventing criminals from reaping the benefit of their offences and then ploughing the proceeds back into the legal economy or using them to finance other criminal activities; notes that European legislation is lacking in this regard, despite the forthcoming entry into force of Regulation (EU) 2018/1805; welcomes, therefore, the Commission’s commitment to reviewing the entire legal framework for freezing and confiscating instrumentalities and criminal proceeds in the EU, and to analysing the possible need for further common rules, with particular attention to the seizure or confiscation of criminal proceeds in the absence of a conviction, and the management of such assets;

16. Welcomes the Commission’s efforts to continue monitoring the full transposition of the procedural rights directives in the European area of freedom, security and justice; underlines, however, its concern about the persistent difficulties encountered in transposing Directive 2012/29/EU establishing minimum standards on the rights, assistance and protection of victims of crime\(^1\); underlines its concern in relation to the infringement procedures initiated against various Member States for failure to transpose Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings\(^2\);

17. Highlights the need to improve EU taxation legislation in order to make tax systems more transparent, accountable and effective, as well as to curb unfair competition between Member States, and the proliferation of tax havens; considers that fair taxation and determined measures to combat tax fraud, tax evasion, aggressive tax planning and money laundering have a central role to play in EU policies; calls on the Commission and Member States to develop a competitive, fair and robust taxation system fit for the digital era and new business models;

18. Regrets that the Commission has not decided to launch infringement procedures against the Member States that have breached Schengen rules;

19. Criticises the Member States for their failure to show solidarity and share responsibility for relocating asylum seekers;

20. Urges the Member States to transpose EU legislation on fighting serious crime and

\(^1\) OJ L 315, 14.11.2012, p. 57.
terrorism; points in particular to the transposition shortcomings in several Member States identified by the Commission in relation to the Directive (EU) 2017/541 on combating terrorism; notes that most Member States against which the Commission pursued infringement procedures in 2019 for the non-transposition of Directive (EU) 2016/681 on the use of passenger name record (PNR) have in the meantime notified the Commission about the adoption of the measures required to successfully transpose this act;

21. Calls on the EU institutions to guarantee the full implementation of the Charter in all their decisions, actions and policies, as a way of upholding media pluralism, media independence and media freedom; expresses concern at the media landscape in the EU; strongly condemns practices designed to intimidate or threaten journalists; reiterates, in this respect, its call on the Commission to come forward with a comprehensive proposal for a legislative act aiming to establish minimum standards against strategic lawsuits against public participation (SLAPP) across the EU; calls on the Commission to introduce measures to clamp down on the improper use of the courts to intimidate or undermine journalists;

22. Condemns the growing number of disinformation campaigns aimed at misleading the public about the EU’s activities, and also targeting the measures undertaken to ensure the proper application of EU law in Member States; calls on the Commission to counter this phenomenon, as it seeks to undermine the democratic process and citizens’ trust in the EU’s democratic institutions; calls on the Commission to implement a clear, comprehensive and broad set of actions to tackle the spread and impact of online disinformation in Europe, and to ensure the protection of European values and democratic systems;

23. Expresses concern at the serious gaps in the application of EU environmental and energy laws, particularly in the area of waste management and disposal, energy efficiency, the loss of biodiversity, the over-exploitation of natural resources and protected areas, the inadequate treatment of urban wastewater and air pollution, which also have serious impacts on human health; notes with concern that there are 19 ongoing infringement procedures for incorrect transposition of the provisions of the Environmental Liability Directive, which is essential to ensuring the correct implementation of the polluter pays principle and liability for environmental damage in general;

24. Notes, in particular, that the majority of Member States has persistently and systematically violated European standards on limit values for air pollutants; emphasises that ecosystem degradation and biodiversity loss are major issues across the EU; calls on the Commission to propose a new ecosystem restoration law that would build upon and go beyond existing obligations already in the Habitats Directive and other EU legislation; calls on the Commission to firmly guarantee the swift, complete and correct transposition of all EU environmental directives in all Member States, taking account of the priorities set out in its communication entitled ‘EU law: Better results through better application’;

25. Stresses that the lack of a coherent and comprehensive set of codified rules on good
administration applicable across the Union makes it difficult for citizens and businesses
to easily and fully understand their rights under Union law; emphasises, therefore, that
codifying rules on good administration as a regulation setting out the various aspects of
administrative procedures – including notifications, binding time limits, the right to be
heard and the right for every person to have access to their file – would be tantamount
to reinforcing citizens’ rights and transparency; believes that this regulation would
increase the effectiveness, efficiency and capacity of public administrations and
services, and in this regard respond to the need for investment and reform in the
European Union;

26. Reiterates its call for the adoption of a regulation on an open, efficient and independent
EU administration under Article 298 TFEU, and notes that there Commission has not
come forward with a proposal following up on this request; calls on the Commission
once again, therefore, to come forward with a legislative proposal on a European law of
administrative procedure, taking into account the steps taken so far by Parliament in this
field;

27. Takes note of the fact that there is a particular lack of transposition, implementation and
supervision of EU law on the area of freedom, security and justice, despite the
Commission and the Council’s insistence on the great urgency of these proposals during
the legislative process; calls on the Commission and national authorities to proactively
and comprehensively monitor and enforce the application of EU law in this area;

28. Recognises that in order to ensure the correct application of EU law and the proper
functioning of the internal market, citizens and entrepreneurs need to be informed about
questions arising from the everyday application of EU law; calls for stronger
cooperation in this field, including through the SOLVIT service;

29. Regrets the continuing lack of homogeneity between Member States in the effective
implementation of legislation aimed at building a social and inclusive Union, and
combating all forms of discrimination against vulnerable groups; is concerned about the
serious shortcomings and delays in the application of EU law under the European Pillar
of Social Rights, in particular in the application of legislation on the protection of
workers’ health and safety at work, the Working Time Directive1, and legislation on
equal treatment and salary between women and men; underlines the broad interpretation
given by the CJEU in its judgments on the concept of equal pay for equal work, and
asks the Commission to do more to tackle discrimination and the gender pay gap at
European level;

30. Calls on the Commission to ensure that the COVID-19 pandemic is not used by
Member States as a pretext for the incorrect application of EU law, and that any delays
in transposing directives into national legal orders are duly justified;

31. Instructs its President to forward this resolution to the Council and the Commission, the
Committee of the Regions, the Economic and Social Committee and the national
parliaments.

concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).