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on the 27th Annual Report on Monitoring the application of European Union
law (2009)
(2011/2027(INI))

Committee on Legal Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the 27th Annual Report on Monitoring the application of European Union law (2009) (2011/2027(INI))

The European Parliament,

- having regard to the Interinstitutional Agreement on better law-making¹,
 - having regard to the 27th Annual Report on Monitoring the application of European Union law (2009) (COM(2010)0538),
 - having regard to the Commission staff working documents (SEC(2010)1143) and (SEC(2010)1144),
 - having regard to the report from the Commission entitled ‘EU Pilot Evaluation Report’ (COM(2010)0070),
 - having regard to the Commission Communication on the implementation of Article 260(3) TFEU (SEC(2010)1371),
 - having regard to the Commission Communication of 5 September 2007 entitled ‘A Europe of results – applying Community law’ (COM(2007)0502),
 - having regard to the Commission Communication of 20 March 2002 on relations with the complainant in respect of infringements of Community law (COM(2002)0141),
 - having regard to its resolution of 25 November 2010 on the 26th Annual Report on Monitoring the Application of Community law (2008)²,
 - having regard to the Commission’s reply to its resolution of 25 November 2010 on the 26th Annual Report on Monitoring the Application of Community law (2008),
 - having regard to Rule 119(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Petitions (A7-0000/2011),
- A. whereas the Lisbon Treaty entered into force on 1 December 2009 and introduced a number of new legal bases intended to facilitate the implementation, application and enforcement of EU law,
- B. whereas according to Article 298 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,

¹ OJ C 321, 31.12.2003, p. 1.

² Texts adopted P7_TA(2010)0437.

1. Considers that article 17 TEU defines the fundamental role of the Commission as that of ‘guardian of the Treaties’; in this context, the Commission’s power and duty to bring infringement proceedings against a Member State that has failed to fulfil an obligation under the Treaties¹ is a cornerstone of the EU’s legal order and as such is consistent with the concept of a Union based on the rule of law;
2. Notes that the infringement procedure consists of two phases: the administrative (investigation) stage and the judicial stage before the Court of Justice; considers that the role of citizens as complainants is vital in the administrative phase when it comes to ensuring compliance with Union law on the ground, which is again acknowledged by the Commission in its above-mentioned Communication of 20 March 2002; considers it therefore of paramount importance to guarantee transparency, fairness and reliability of the procedures that empower citizens to detect infringements of Union law and to bring these to the Commission’s attention;
3. Regrets that by using the EU Pilot Project, the Commission is excluding complainants even further from the procedure, particularly in the first phase, by entering into an exclusive dialogue with the Member State concerned and not considering citizens’ feedback in any subsequent decision-making; considers that this is not in line with the declarations in the Treaties that ‘decisions are taken as openly as possible and as closely as possible to the citizen’ (Article 1 TEU), that ‘the Union institutions ... shall conduct their work as openly as possible’ (Article 15 TFEU) and that ‘[I]n all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions’ (Article 9 TEU);
4. Notes that the discretionary power conferred by the Treaties upon the Commission in dealing with the infringement process must respect the rule of law, the requirement of transparency and openness and the principle of proportionality and must never endanger the very first aim of that power, which is to guarantee timely and correct application of Union law; reiterates that ‘absolute discretion coupled with an absolute lack of transparency is fundamentally contrary to the rule of law’²;
5. Notes that in order to make the EU Pilot operational, the Commission has created a confidential on-line database for communication between Commission services and Member State authorities; reiterates the lack of transparency vis-à-vis complainants in the EU Pilot and Parliament’s request to be given access to the database where all complaints are collected in order to enable it to perform its role of scrutiny of the Commission’s role as guardian of the Treaties;
6. Notes that in the Commission’s reply to its resolution of 25 November 2010, reference is made only to Court cases³, which would confirm the need for the Commission to ensure

¹ Articles 258 and 260 TFEU define the Commission’s powers to launch infringement procedures against a Member State. More particularly, 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.

² European Parliament resolution of 25 November 2010 on the 26th Annual Report on Monitoring the application of European Union law (2008) (P7_TA(2010)0437).

³ Judgments of the General Court in Case T-105/95 *WWF UK v Commission* [1997] ECR II-313 and in Case T-191/99 *Petrie and Others v Commission* [2001] II-3677 and judgment of the Court of Justice in 21 September 2010 in Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Kingdom of Sweden v Association de la presse*

the confidentiality of documents which relate to infringement proceedings and pre-infringement proceeding investigations; reminds the Commission that the Court of Justice has never denied in those cases that an overriding public interest might well justify access to documents; also notes that the Ombudsman has showed a positive approach to the release of documents related to infringement procedures¹;

7. Calls therefore once again on the Commission to propose a procedural law in the form of a regulation under the new legal basis of Article 298 TFEU, setting out the various aspects of the infringement procedure, including notifications, binding time-limits, the right to be heard, the obligation to state reasons and the right for every person to have access to her/his file, in order to reinforce citizens' rights and guarantee transparency;
8. Notes in this context the Commission's reply to Parliament's request for a procedural law in which it expresses doubts about the possibility of adopting any future regulation based on Article 298 TFEU because of the discretionary power conferred by the Treaties upon the Commission 'to organise the way in which it manages infringement proceedings and related work to ensure the correct application of EU law'; is convinced that such a procedural law would not in any way limit the discretionary power of the Commission but would only guarantee that when exercising its power the Commission would respect the principles for 'an open, efficient and independent European administration' as referred to in Article 298 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union;
9. Reminds the Commission that the above-mentioned Communication of 20 March 2002 concerning the relations with the complainant in respect of infringements of EU law contains procedural steps that the Commission finds acceptable in respect of regulating its discretion and that there should therefore be no obstacle to basing a regulation on this instrument; notes the Commission's intention to review that communication; urges the Commission not to make use of soft law when dealing with the infringement procedure but to propose a regulation in order for Parliament to be fully involved as co-legislator in such an essential element of the EU's legal order;
10. Notes in particular that the Commission plans a review of its general policy on the registration of complaints and relations with complainants in the light of experience of the new methods now being tested; is worried about the Commission's renouncement of the use of the infringement procedure as an essential tool to ensure that Member States apply Union law in a timely and correct way; underlines that this is a duty imposed upon the Commission by the Treaties which cannot be unilaterally renounced; urges the Commission to prove, by means of consistent data, the declared success of those 'new methods' with detailed pre- and post-EU Pilot data and to include in the future regulation principles and conditions for the registration of complaints and any other complainant's rights;

internationale and European Commission, Association de la presse internationale ASBL v European Commission and European Commission v Association de la presse internationale, not yet reported in the ECR.

¹ See <http://www.ombudsman.europa.eu/cases/decision.faces/en/10096/html.bookmark>.

11. Welcomes the new element contained in article 260 TFEU which allows the Commission to ask the Court of Justice to impose financial sanctions on a Member State for late transposition of a directive when bringing a case before the Court under Article 258 TFEU;
12. Considers it of the utmost importance that the Commission should use this and all other possible means to guarantee that Member States transpose Union legislation in a timely and correct way, especially with reference to environmental cases;
13. Notes that the national courts play a vital role in applying EU law and fully supports the EU's efforts to enhance and coordinate judicial training for national judges, legal professionals, officials and civil servants in the national administrations;
14. Notes that the possibility for citizens, enterprises or civil society interests to bring their own proceedings before Member States' administrative review bodies, courts or tribunals concerning the application of EU law is separate, independent and not in contradiction with the conduct of infringement proceedings by the Commission;
15. Urges the Council, in accordance with its own statement in point 34 of the Interinstitutional Agreement on better law-making, to encourage Member States to draw up and publish tables illustrating the correlation between directives and national transposition measures; stresses that such tables are essential in order for the Commission to be able to monitor implementation measures in all Member States effectively;
16. 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 European Union law in 2009. It focuses on the fundamental role of the Commission as "Guardian of the Treaty" and the Commission's power and duty to bring infringements proceedings against a Member State that has failed to fulfil an obligation under the Treaty. It reiterates that the infringement procedure consists of two phases: the administrative (investigation) stage and the judicial stage before the Court of Justice. In the administrative phase the role of citizens (complainants) in ensuring compliance with Union law on the ground is of paramount importance. Bringing Europe closer to its citizens and embracing techniques of good governance are intrinsically linked. One of the areas of direct interaction between "Europe" and the EU citizens is precisely the administrative phase of article 258 TFEU, where citizens turn to the Commission and Parliament for help in order to access their European rights. As such, it is vital that complainants are treated according to principles of good administration¹. The report calls therefore on the Commission to propose a "procedural law" in the form of a regulation under the new legal basis of article 298 TFEU in order to reinforce citizens' rights and guarantee transparency. The procedural law will not in any way limit the discretionary power of the Commission but would only guarantee that when exercising its power the Commission respects the principles for "an open, efficient and independent European administration" as referred to in article 298 and in article 41 of the Charter of Fundamental Rights.

¹ See Melanie Smith, 'Enforcement, monitoring, verification, outsourcing: the decline and decline of the infringement process' (2008) 33 *European Law Review* 777.