

Thursday 10 September 2015

P8_TA(2015)0322

30th and 31st annual reports on monitoring the application of EU law (2012-2013)

European Parliament resolution of 10 September 2015 on the 30th and 31st annual reports on monitoring the application of EU Law (2012-2013) (2014/2253(INI))

(2017/C 316/28)

The European Parliament,

- having regard to the 30th annual report on monitoring the application of EU law (2012) (COM(2013)0726),
 - having regard to the 31st annual report on monitoring the application of EU law (2013) (COM(2014)0612),
 - having regard to the report by the Commission entitled ‘EU Pilot Evaluation Report’ (COM(2010)0070),
 - having regard to the report by the Commission entitled ‘Second Evaluation Report on EU Pilot’ (COM(2011)0930),
 - 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 the Framework Agreement on relations between the European Parliament and the European Commission ⁽¹⁾,
 - having regard to its resolution of 4 February 2014 on the 29th annual report on monitoring the application of European Union law (2011) ⁽²⁾,
 - having regard to the study: ‘The impact of the crisis on fundamental rights across Member States of the EU — Comparative analysis’ ⁽³⁾,
 - having regard to the Better Regulation package adopted by the Commission on 19 May 2015,
 - having regard to Rules 52 and 132(2) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Environment, Public Health and Food Safety, the Committee on Civil Liberties, Justice and Home Affairs, the Committee on Constitutional Affairs and the Committee on Petitions (A8-0242/2015),
- A. whereas Article 17 of the Treaty on European Union (TEU) defines the fundamental role of the Commission as ‘guardian of the Treaties’;
- B. whereas, according to Article 6(1) TEU, the Charter of Fundamental Rights of the European Union (CFREU) has the same legal value as the Treaties, and is addressed to the institutions, bodies, offices and agencies of the Union and the Member States when they are implementing Union law (Article 51(1) CFREU);
- C. whereas, according to Article 258 (1) and (2) TFEU, the Commission shall deliver a reasoned opinion to a Member State when it considers that the latter has failed to fulfil an obligation under the Treaties, and may bring the matter before the Court of Justice if the Member State in question does not comply with the opinion within a deadline set by the Commission;

⁽¹⁾ OJ L 304, 20.11.2010, p. 47.

⁽²⁾ Texts adopted, P7_TA(2014)0051.

⁽³⁾ Policy Department C: Citizens’ Rights and Constitutional Affairs for the Committee on Civil Liberties, Justice and Home Affairs (2015).

Thursday 10 September 2015

- D. whereas the Framework Agreement on relations between the European Parliament and the European Commission provides for sharing of information concerning all infringement procedures based on letters of formal notice, but does not cover the informal EU Pilot procedure which precedes the opening of formal infringement proceedings;
- E. whereas Article 41 CFREU defines the right to good administration as the right of every person to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, and Article 298 TFEU stipulates that, 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;
- F. whereas Article 51 CFREU limits Member States' obligation of compliance with the Charter to situations where they are implementing EU law, but does not provide for such a limitation of the obligations stemming from the Charter for EU institutions, bodies, offices or agencies;
- G. whereas, in the context of the recent financial crisis, Member States have had to take measures jeopardising primary EU law, most notably provisions on protection of social and economic rights;
1. Notes that, in line with the Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents, the Commission has reported to the two co-legislators on the implementation of the declaration;
2. Welcomes the Commission's 30th and 31st annual reports on the application of EU law, and notes that according to these reports the four fields in which Member States were mostly subject to transposition infringement proceedings in 2012 were transport, protection of health and consumers, protection of the environment, and issues related to the internal market and services, whereas in 2013 the most problematic areas were the environment, protection of health and consumers, the internal market and services, and transport; recalls, however, that this ex post evaluation does not replace the Commission's duty to monitor in an effective and timely fashion the application and implementation of EU law, and notes that Parliament could assist in reviewing the implementation of legislation through its scrutiny of the Commission;
3. Points out that in a European Union founded on the rule of law and on the certainty and predictability of laws, EU citizens must, as of right, be the first to be made aware, in a clear, accessible, transparent and timely manner (via the internet and by other means), whether and which national laws have been adopted in transposition of EU laws, and which national authorities are responsible for ensuring they are correctly implemented;
4. Notes that citizens and businesses expect a simple, predictable and reliable regulatory framework;
5. Urges the Commission, when drafting and assessing legislation, to take greater account of the burden it may impose on SMEs;
6. Calls on the Commission and the Member States to coordinate their efforts at an earlier stage of the legislative process with a view to ensuring that the end result can be implemented more effectively;
7. Notes that late transposition, incorrect transposition and bad application of EU law can result in differentiation between Member States and distort the level playing field across the EU;
8. Calls on the Commission to treat all Member States equally, regardless of their size or when they joined the EU;
9. Notes that the implementation and transposition of EU law remain uneven across Member States; notes that citizens who wish to live, work or do business in another Member State face the daily reality of ongoing difficulties arising from the uneven implementation of EU law in the legal systems of the Member States;

Thursday 10 September 2015

10. Recalls that the Commission is, according to Article 17 TEU, responsible for ensuring the application of Union law, including the Charter of Fundamental Rights of the European Union (Article 6(1) TEU), whose provisions are addressed to the institutions, bodies, offices and agencies of the Union and to the Member States when they are implementing Union law (Article 51(1) CFREU); recalls that the Commission has the power to bring infringement proceedings under Articles 258 to 260 TFEU in order to ensure respect for EU law; calls on the Commission, however, to facilitate Parliament's exercise of its role as co-legislator by providing it with adequate information and remaining accountable to it;

11. Notes that a total of 731 infringement cases were closed because the Member State in question had demonstrated its compliance with EU law; points out that the Court of Justice delivered 52 judgments under Article 258 TFEU in 2013, of which 31 (59,6 %) were handed down against Member States; recalls, to put these statistics into perspective, that to date 3 274 (87,3 %) infringement judgments delivered by the Court have been in the Commission's favour; asks the Commission to pay special attention to the actual enforcement of all these judgments;

12. Welcomes the Commission's increasing use of implementation plans for new pieces of EU legislation addressed to the Member States, since this increases the probability of timely and correct implementation, pre-empts transposition and application problems, and, in turn, has an impact on the number of relevant petitions submitted;

13. Reiterates the need for the Commission to focus on effective problem-solving, effective management and preventive measures, but suggests that it should also think of new ways, other than formal infringement procedures, of improving the transposition and enforcement of EU law;

14. Maintains that EU legislation must be transposed properly and promptly into the legal order of each Member State; urges Member State authorities to avoid the practice of 'gold-plating', as this often gives rise to marked divergences in the implementation process at Member State level, which, in turn, weakens respect for Union law as citizens become aware of significant variations across the EU; points to the need further to intensify cooperation between Members of the European Parliament and the European affairs committees of national and regional parliaments; warmly welcomes the innovation in the Lisbon Treaty under which the Court of Justice, on a request from the Commission, may impose penalties on Member States for late transposition without needing to wait for a second ruling; urges the EU institutions (Council, Commission, ECB) to respect primary EU law (the Treaties and the Charter of Fundamental Rights) when establishing rules of secondary law or adopting policies on economic and social matters which affect human rights and the common good;

15. Notes the Commission's use of the term 'gold-plating', which refers to obligations that go beyond EU requirements, that is, an excess of norms, guidelines and procedures accumulated at national, regional and local levels interfering with the expected policy goals; calls on the Commission to clearly define the term; stresses that such a definition must make it clear that Member States have the right to set stricter standards where necessary, while taking into account the fact that better harmonisation in the implementation of EU environmental law is important for the functioning of the internal market;

16. Notes that the decrease in late transposition infringements in 2012 compared to the previous year was mainly due to the fact that there were fewer directives to transpose in 2012 compared with previous years; recognises, however, that the statistics for 2013 show a real decrease in late transposition infringements, with the number of such infringements reaching a 5-year low at the end of that year, which could be seen as a positive outcome of the introduction in Article 260(3) TFEU of the 'fast-track' procedure for penalties in cases of non-transposition;

17. Notes that the decrease in late transposition infringements in 2013, 2012 and over the last five years can be explained by the use of EU Pilot and other mechanisms (including SOLVIT 2), and by the introduction in Article 260(3) TFEU of the 'fast-track' procedure for penalties in cases of non-transposition; stresses that the timely transposition of directives should remain a top priority within the Commission and that transposition deadlines have to be enforced;

Thursday 10 September 2015

18. Points out that the increase in the number of new EU Pilot files, in particular relating to the environment, taxation, justice and customs, during the period under examination, as well as the decrease in the number of open infringement cases, point to a positive tendency in Member States as regards the implementation of EU law, demonstrating that EU Pilot has proved to be effective in achieving early resolution of potential infringements; considers, nevertheless, that more efforts should be made in the field of enforcement of EU law in order to strengthen its transparency and its oversight by complainants and interested parties, and regrets that, despite its repeated requests, Parliament still has inadequate access to information about the EU Pilot procedure and pending cases; notes the need to reinforce the legal status and strengthen the legitimacy of EU Pilot, and considers that this can be achieved through more transparency and greater participation by complainants and by the European Parliament;

19. Calls, therefore, once again on the Commission to propose binding rules in the form of a regulation under the new legal basis of Article 298 TFEU, so as to ensure full respect for the citizens' right to good administration as set out in Article 41 of the Charter of Fundamental Rights;

20. Recognises that the primary responsibility for the correct implementation and application of EU law lies with the Member States, and stresses the European institutions' duty to respect primary EU law when they produce secondary EU law or decide, implement and impose on Member States social, economic or other policies, and also emphasises their duty to assist Member States by all means available in their efforts to respect democratic and social values and to transpose EU legislation in times of austerity and economic constraints recalls that the EU institutions are bound by the principle of subsidiarity and the prerogatives of the Member States;

21. Expresses its concern that the austerity measures imposed on over-indebted EU Member States, and which were subsequently incorporated in acts of secondary EU law before being transposed into domestic legislation, during the period covered by the two annual reports under examination, and in particular the drastic cuts in public spending, have had the effect of significantly reducing the capacity of Member States' administration and judiciary to assume their responsibility to correctly implement EU law;

22. Considers that Member States under economic adjustment programmes should still be able to fulfil their obligation to respect social and economic rights;

23. Recalls that the EU institutions, even when they act as members of groups of international lenders ('troikas'), are bound by the Treaties and the Charter of Fundamental Rights of the European Union;

24. Stresses that it is of the utmost importance that the EU institutions respect the Treaties; notes that the Commission must help Member States to correctly implement EU law, in order to reinforce support for the EU and confidence in its legitimacy; encourages the Commission to publish concerns raised by Member States during the implementation process; stresses that the support of national parliaments in transposing legislation is essential in improving the application of EU law, and therefore calls for dialogue with national parliaments to be stepped up, including when subsidiarity concerns have been expressed; notes the crucial role of regular ex post assessments and the importance of seeking the views of national parliaments to address concerns or complexities of legislation that may not have previously been apparent;

25. Notes that the right to petition Parliament is one of the pillars of European citizenship, as laid down in Article 44 of the Charter of Fundamental Rights of the European Union and Article 227 TFEU; points out that this right provides tools that are necessary, but not sufficient, for increasing public participation in the EU's decision-making process, and plays an important role in identifying and assessing potential loopholes and violations in the implementation of EU legislation by Member States and informing the EU institutions thereof; underlines, in the light of the above, the crucial role of the Committee on Petitions as the effective juncture between EU citizens, Parliament, the Commission and national parliaments;

26. Welcomes the Commission's acknowledgment of the vital role played by the complainant in helping it detect infringements of EU law;

Thursday 10 September 2015

27. Recalls that the European institutions, and in particular the Commission and the Council, must fully apply and comply with EU law and case-law in the field of transparency and access to documents; calls in this regard for the effective application of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents⁽¹⁾ and of the related judgments of the Court of Justice of the European Union;

28. Emphasises that the EU has been set up as a Union based on the rule of law and respect for human rights (Article 2 TEU); reiterates that careful monitoring of Member States' and EU institutions' acts and omissions is of utmost importance, and underlines that the number of petitions to Parliament and of complaints to the Commission concerning problems supposedly resolved by the Commission shows that citizens are paying increasing attention to the need for better application of EU law; calls on the Commission to respond more rapidly and clearly to notifications from citizens related to infringements of Union law;

29. Notes the large number of infringement cases that were closed in 2013 before reaching the Court of Justice, with only approximately 6,6 % of all cases being concluded by court ruling; considers it essential, therefore, to continue to carefully monitor Member States' actions, taking into consideration the fact that some of the petitions still refer to problems that persist even after the matter has been closed;

30. Welcomes the fact that the Commission is attaching ever greater importance to petitions as a source of information regarding both citizens' complaints against public authorities, including the EU itself, and potential infringements of EU law in its actual implementation, as evidenced by the fact that the two annual reports paid particular attention to petitions; notes that this has been accompanied by a corresponding increase in the number of petitions forwarded by the Committee on Petitions to the Commission with requests for information; regrets, however, the Commission's delay in responding when asked to give an opinion in the case of numerous petitions;

31. Notes also the need for a constructive dialogue with the Member States in the framework of the Committee on Petitions, and asks the Member States concerned by the relevant petitions to send representatives to address the Committee during its meetings;

32. Points out that petitions submitted by EU citizens or residents of a Member State refer to violations of EU law, particularly in the fields of fundamental rights, home affairs, justice, the internal market, health, consumers, transport, taxation, agriculture and rural development and the environment; considers that petitions give evidence of the fact that there are still frequent and widespread instances of incomplete transposition and lack of adequate enforcement, effectively leading to a misapplication of EU law; stresses that such a situation calls for increased efforts from Member States and for ongoing monitoring by the Commission; highlights in particular the large number of petitions submitted which report the existence of discrimination and barriers against people with disabilities;

33. Points out that there continue to be difficulties in dialogue with some Member States and regions, which are reluctant to provide the documents or explanations requested;

34. Welcomes the Commission services' commitment to strengthen the exchange of information with the Committee on Petitions, and wishes to reiterate its requests for:

- (a) improved communication between the two parties, in particular with regard to the initiation and progress of infringement procedures brought by the Commission, including the EU Pilot procedure, so as to make sure that Parliament is fully informed with a view to constantly improving its legislative work;
- (b) efforts to be made to give all possible relevant information on petitions relating to investigation and infringement procedures to the Committee on Petitions within a reasonable time-frame, thus allowing the committee to respond to citizens' requests more effectively;
- (c) agreement by the Commission to take into account the reports of the Committee on Petitions, and particularly the findings and recommendations contained therein, when drawing up its communications and when preparing amendments to legislation;

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Thursday 10 September 2015

35. Deplores the fact that Parliament, which directly represents European citizens and is now a fully-fledged co-legislator that is more and more closely involved in complaints procedures, in particular via parliamentary questions and through the activities of the Committee on Petitions, does not yet automatically receive transparent and timely information on the implementation of EU laws, despite the fact that such information is essential, not only as a means of enhancing accessibility and legal certainty for European citizens, but also for the purposes of adopting amendments aimed at improving those laws; considers that improved communication between the European Parliament and national parliaments could be a helpful step in this regard; urges more effective and efficient cooperation between the EU institutions, and expects the Commission to apply in good faith the clause of the revised Framework Agreement on relations with Parliament in which it undertakes to 'make available to Parliament summary information concerning all infringement procedures from the letter of formal notice, included, if so requested, on the issues to which the infringement procedure relates';

36. Calls for the creation within the relevant Directorates-General of Parliament (DG IPOL, DG EXPO and DG Research) of an autonomous system for ex post assessment of the impact of the main EU laws adopted by Parliament under codecision and in accordance with the ordinary legislative procedure, including via cooperation with the national parliaments;

37. Notes that the Court of Justice has pointed out that 'damage caused by national institutions can only give rise to liability on the part of those institutions, and the national courts retain sole jurisdiction to order compensation for such damage' ⁽¹⁾; underlines, therefore, the importance of strengthening the means of redress available at national level, which would enable complainants to assert their rights more directly and more personally;

38. Notes that most of the complaints from citizens in the justice area are concerned with freedom of movement and the protection of personal data; reiterates that the right of free movement is one of the four fundamental freedoms of the EU enshrined in the Treaty on the Functioning of the European Union, and is guaranteed to all European citizens; recalls that as one of the fundamental freedoms of the European Union, the right of EU citizens to move freely and reside and work in other Member States needs to be guaranteed and protected;

39. Underlines that the full transposition and effective implementation of the Common European Asylum System is an absolute priority; calls on the Member States to make every effort to transpose the new Asylum Package in a correct and timely manner and in full;

40. Notes that in the area of home affairs there were 22 infringement cases open in 2012 and 44 in 2013; deplores the fact that in 2013 most of the late infringement cases were launched due to the late transposition of Directive 2011/36/EU on preventing and combating trafficking in human beings; notes that asylum remains an area where a large number of complaints have been lodged;

41. Notes that in the area of justice there were 61 infringement cases open in 2012 and 67 in 2013; points out that most of these cases concerned citizenship and free movement of persons; deplores the fact that most of the late infringement cases were launched due to the late transposition of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings; expresses concern over the significant increase in the number of complaints in the justice area in 2013;

42. Welcomes the significant progress that has been made over the past years in strengthening the rights of defence of suspected or accused persons in the EU; underlines the crucial importance of the timely, complete and correct transposition of all measures stipulated in the Council's Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings; points out that these measures are crucial to the proper functioning of EU judicial cooperation in criminal matters;

⁽¹⁾ See judgment in Case 175/84.

Thursday 10 September 2015

43. Stresses that trafficking in human beings is a serious crime and represents a violation of human rights and human dignity that the Union cannot tolerate; deplores the fact that the number of people being trafficked to and from the EU is rising; points out that, although the legal framework is adequate, its concrete implementation by the Member States is still deficient; stresses that the current situation in the Mediterranean has increased the likelihood of trafficking, and calls on the Member States to take an extremely firm line with perpetrators of such crimes and to protect the victims as effectively as possible;

44. Recalls that the transitional period foreseen by Protocol 36 to the Lisbon Treaty came to an end on 1 December 2014; underlines that the end of this transitional period must be followed by a rigorous process of evaluation of the former third pillar measures and their implementation in Member States' national legislation; points out that as of April 2015 Parliament has not been informed of the current situation of each pre-Lisbon legal instrument in the fields of judicial and police cooperation in each Member State; calls on the Commission to comply with the principle of loyal cooperation and to make this information available to Parliament as soon as possible;

45. Recalls that the European Council conclusions of June 2014 identified the consistent transposition, effective implementation and consolidation of the legal instruments and policy measures in place as the overall priority in the Area of Freedom, Security and Justice (AFSJ) for the next five years; asks the Commission to put more emphasis on overseeing and ensuring the concrete implementation of EU law by the Member States; considers that this must be a political priority in view of the wide gap which is often observed between policies adopted at Union level and their implementation at national level; encourages national parliaments to become more involved in the European debate and the monitoring of the application of EU law, in particular in the field of home affairs;

46. Stresses that in its resolution of 11 September 2013 on endangered European languages and linguistic diversity in the European Union ⁽¹⁾, Parliament recalled that the Commission should pay attention to the fact that, with their policies, some Member States and regions are endangering the survival of languages inside their borders, even if those languages are not in danger in the European context, and also called on the Commission to consider the administrative and legislative obstacles posed to projects relating to endangered languages on account of the small size of the language communities concerned; calls on the Commission, in this regard, to take into thorough consideration the rights of persons belonging to minorities when evaluating the application of EU law;

47. Stresses that not only in the AFSJ but also in the other policy areas there is a need to enhance the access of citizens to information and documents with regard to the application of EU law; calls on the Commission to identify the best possible ways to achieve this, to make use of the existing communication tools in order to enhance transparency, and to ensure proper access to information and documents on the application of EU law; calls on the Commission to propose a legally binding instrument on the administrative procedure concerning the handling of citizens' complaints;

48. Recalls that the smooth functioning of a true European area of justice based on respect for the different legal systems and traditions of the Member States is vital for the EU, and that the complete, correct and timely implementation of EU legislation is a prerequisite for achieving this objective;

49. Underlines that the improvement of implementation is one of the Seventh Environmental Action Programme's priorities;

50. Deplores the fact that EU environmental and health legislation continues to be affected by large numbers of cases of late transposition, incorrect transposition and bad application by the Member States; notes that the Commission's 31st annual report on the application of EU law shows that in 2013 the biggest category of infringement proceedings was environment-related; recalls that the costs of failing to implement environmental policy — including the costs of infringement proceedings — are high, being estimated at around EUR 50 billion per annum (COWI et al., 2011); stresses, moreover, that the implementation of environmental policy would yield many socio-economic benefits which are not always registered by cost-benefit analyses;

⁽¹⁾ Texts adopted, P7_TA(2013)0350.

Thursday 10 September 2015

51. Calls on the Commission to be more rigorous in relation to the application of EU environmental legislation and to conduct faster and effective investigations into infringements relating to environmental pollution;
 52. Calls on the Commission to take stronger action against the late transposition of environmental directives and to make greater use of penalty payments;
 53. Calls on the Commission to submit a new proposal on access to justice in environmental matters and a proposal on environmental inspections, if possible without increasing red tape and administrative costs;
 54. Underlines the need to maintain a high level of environmental protection and warns against associating high levels of infringements with the need to reduce the level of ambition of environmental legislation;
 55. Expresses its concern that the Commission's communication policy regarding the Regulatory Fitness and Performance Programme (REFIT) overstates the difficulty of implementing environmental and health legislation; stresses that environmental, food safety and health standards should not be undermined in the context of the REFIT programme; acknowledges the need for better regulation and takes the view that regulatory simplification should, inter alia, tackle problems encountered during implementation; takes the view that REFIT should deliver results for citizens and businesses in the least burdensome way;
 56. Welcomes the new practice whereby the Commission can ask the Member States, in justified cases, to include explanatory documents when they notify the Commission of their transposition measures; reiterates, however, its call for mandatory correlation tables on the transposition of directives, which should be publicly available in all EU languages, and regrets the fact that REFIT was the result of a unilateral decision by the Commission, with no real social and parliamentary dialogue;
 57. Points out that in relation to REFIT the Commission needs to facilitate dialogue on regulatory fitness with citizens, Member States, business and civil society at large, so as to ensure that the quality and social aspects of EU legislation are preserved and that one ideal does not progress at the expense of the other;
 58. Instructs its President to forward this resolution to the Council and the Commission.
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