

Twenty-seventh annual report on monitoring the application of EU law (2009)

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The Committee on Legal Affairs adopted the own-initiative report by Eva LICHTENBERGER (Greens /EFA, AT) on the twenty-seventh annual report on monitoring the application of EU law (2009) in response to the Commission's report on the subject.

Members consider that the report shows that, despite a fall in the number of infringement cases opened by the Commission, it was still dealing with around 2 900 complaints and infringement files at the end of 2009, and that Member States were still behind schedule with their transposition of directives in more than half of the cases. This is situation which is far from satisfactory and for which the Member States' authorities bear most of the responsibility.

The committee stresses the **fundamental role of the Commission as that of 'guardian of the Treaties'**, and the Commission's power and duty to bring infringement proceedings against a Member State that has failed to fulfil an obligation under the Treaties. In this context, it notes that the infringement procedure consists of two phases: the administrative (investigation) stage and the judicial stage before the Court of Justice. Members consider 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, and they urge the Commission to guarantee that citizens are always included when dealing with compliance with EU law.

Members consider that **greater access to information on infringement files** could be provided without jeopardising the purpose of the investigation and that an overriding public interest might well justify access to these files, particularly in cases where human health and irreversible damage to the environment may be at stake. They call therefore 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. Noting that the Commission has expressed 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, the committee 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.

The committee goes on to note that on the one hand citizens are portrayed as having an essential role in ensuring compliance with EU law on the ground, whilst on the other – in the **new EU Pilot Project**– they risk being further excluded from any subsequent procedure. Whilst welcoming the Pilot Project, Members consider that this outcome should be avoided by treating the Pilot as 'mediation'-type alternative in which citizens are fully involved and integrated as the initiating complainant, an outcome which would better reflect the Treaty aims. They also take the view that the 'EU Pilot' initiative might make a contribution to solving problems faced by individuals and businesses in the single market and call on the Commission to extend the initiative's coverage from 24 to 27 Member States. In order to make the EU Pilot operational, Members note that the Commission has created a confidential on-line database for communication between Commission services and Member State authorities. However, they point to 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.

With regard to the **Commission plans to 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, the committee 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. It underlines that this is a duty imposed upon the Commission by the Treaties which cannot be unilaterally renounced, and urges the Commission to prove 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.

With regard to **transposition**, Members welcome the new element contained in the 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, and they call on the Commission to provide information on the use of this new discretionary power, with a view to guaranteeing greater transparency. It is 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, and Members

remain concerned about the high number of infringement cases opened for late transposition of directives

Lastly, the committee notes its concern about the high number of infringements in the fields of recognition of professional qualifications, services and public procurement, and feels that further clarification of the legal framework in these fields would be useful in order to help national authorities with the implementation process.