

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

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The European Parliament adopted a resolution on the twenty-seventh annual report on monitoring the application of European Union law (2009). Members stress that, despite a fall in the number of infringement cases opened by the Commission, the latter was still dealing with around 2 900 complaints and infringement files at the end of 2009, and transposition of directives is behind schedule in more than half of the cases, a situation which is far from satisfactory and for which the Member States' authorities bear most of the responsibility.

The role of citizens as complainant: the resolution 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.

Improve transparency: Parliament considers it 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. It asks the Commission to (i) bring more transparency into ongoing infringement procedures and to inform EU citizens as soon as possible, and in an appropriate manner, of the action taken on their requests; (ii) propose a benchmark for Member States' compliance with Court of Justice rulings.

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

Procedural law: Parliament calls 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, Parliament 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.

EU Pilot Project: Parliament notes that in the new EU Pilot Project, citizen's risk being further excluded from any subsequent procedure, whilst the Commission is aiming to increase cooperation with Member States. 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 note that the Commission has created a confidential on-line database for communication between Commission services and Member State authorities, but 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.

Registration of complaints:

Registration of complaints: 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, Parliament 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.

Members also regret that too many infringement procedures take a long time to be closed or brought before the Court of Justice. They call on Member States and the Commission to intensify their efforts to resolve infringement procedures and ask the Commission to prioritise infringements in different sectors in a more systematic and transparent manner.

Transposition: Parliament stresses that timely transposition of EU directives is essential for the smooth functioning of the single market for the benefit of consumers and enterprises in the EU. It welcomes the progress made towards this goal, but remains concerned about the high number of infringement cases opened for late transposition of directives.

Members welcome 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. They call on the Commission to 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.

The resolution notes the high number of infringements in the fields of recognition of professional qualifications, services and public procurement. Parliament is of the opinion that further clarification of the legal framework in these fields would be useful in order to help national authorities with the implementation process. It recalls the importance of SOLVIT in helping EU consumers and businesses enjoy their rights in the single market and calls on the Commission and Member States to reinforce it further.