29th annual report on monitoring the application of EU Law (2011)

2013/2119(INI) - 30/11/2012 - Non-legislative basic document

PURPOSE: to present the 29th annual report on monitoring the application of EU law (2011).

CONTENT: this Report reviews performance on key aspects of the application of EU law and provides an overview of strategic issues.

The main findings of the report are as follows:

Incorrect transposition and bad application of EU laws: the correct application of EU law continues to present challenges for the Member States. Problems are frequent in the early stages of implementation, with late transposition becoming increasingly problematic.

Late transposition infringements have steadily increased for the past three years, indicating a worrisome trend. Compared to the end of 2010, 763 late transposition cases were open at the end of 2011, representing a 60% increase. The three policy areas where the most late transposition infringements were launched in 2011 were transport (240 procedures), internal market & services (198) and health & consumers (164).

Monitoring late transposition is a Commission priority and it proposes fines under the special penalty regime established by Article 260(3) TFEU against Member States if they do not transpose directives in time. The Commission referred the first late transposition infringement to the Court with a request for financial sanctions under Article 260(3) TFEU in late 2011. Five Member States were involved in nine such decisions in 2011: Austria (1 case), Germany (3), Greece (1), Italy (1) and Poland (3).

Problem solving mechanisms: once detected, problems are followed up by bilateral discussions between the Commission and the Member State concerned in order to remedy them, to the extent possible, using the **EU Pilot platform**. During 2011, a further 7 Member States joined EU Pilot, bringing the total number of participants up to 25. **The problem-solving discussions under EU Pilot allowed for timely resolution** of nearly two thirds of potential infringements in 2011.

Infringement procedures: the number of formal infringement procedures launched **continued to decrease** as did the number of cases referred to the ECJ. At the end of 2011, 1775 infringement cases were open against 2100 cases in 2010 and nearly 2900 cases in 2009.

Statistics confirm that **Member States make serious efforts to settle their infringements without Court procedures**. In total, 399 infringement cases were closed because the Member State has demonstrated its compliance with EU law.

Member States usually take the necessary measures to **comply with the judgment of the Court** in a timely manner. However, at the end of 2011, the Commission still had to continue 77 infringement procedures under Article 260(2) TFEU given that Member States failed to comply with Court judgments. Most of these cases concerned Greece, Italy and Spain. Almost half of the infringements related to environment with a few cases also in the fields of internal market & services and transport.

Infringements in the policy cycle: the data on performance of Member States in the application of law feeds into the policy cycle. Understanding the challenges of transposition and application of law are

essential at the early stages of policy development (for example, at the stage of the impact assessment). Looking at the implementation challenge at the impact assessment phase facilitates further work on implementation downstream. The Commission can support the competent national authorities in ensuring the correct transposition and application of EU rules by identifying the main risks for timely and correct implementation of new (or amended) pieces of legislation and recommending actions to mitigate those risks in implementation plans.

The Commission prepared a number of implementation plans for strategic initiatives in 2011. These included insider dealing and market manipulation (market abuse); alternative dispute resolution for consumer disputes; amendments to Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts; and the Common Consolidated Corporate Tax Base.

Other forms of support to the Member States include bilateral contact between the national administrations and the Commission, convening of expert groups and the release of guidelines, handbooks, interpretative notes and working papers.

The Commission as guardian of the Treaties will **continue to actively monitor the application of EU law** . Implementation is key for successful and efficient policy-making at EU level and an integral component of the Commission's Smart Regulation agenda.