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

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The Committee on Legal Affairs adopted the own-initiative report by Eva LICHTENBERGER (Greens /EFA, AT) on the 29th annual report on monitoring the application of EU law (2011).

According to Article 298 of the Treaty on the Functioning of the European Union (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.

The Legal Service of the European Parliament and the **EU Pilot**, an online platform used by the Member States and the Commission to clarify the factual and legal background to problems arising in relation to the application of EU law, **do not have any legal status.** According to the Framework Agreement on Relations between the European Parliament and the European Commission, the latter has to make available to Parliament summary information concerning all infringement procedures from the letter of formal notice, including on a case-by-case basis, and **may only refuse access to personal data in the EU Pilot**.

According to its 29th annual report, the Commission has decreased the number of new infringement procedures in recent years, having opened 2900 such procedures in 2009, 2100 in 2010 and 1775 in 2011. Furthermore, the annual report also showed an increase in late-transposition cases over the last few years (1185 in 2011, 855 in 2010, 531 in 2009), and that the four most infringement-prone policy areas are the environment (17 %), the internal market (15 %), transport (15 %) and taxation (12 %).

The report also noted the decreasing proportion of infringement cases (60.4 %) closed in 2011 before reaching the Court of Justice, in comparison with 88 % of cases in 2010.

Members noted that in total 399 infringement cases were closed because the Member State demonstrated its compliance with EU law, making serious efforts to settle the infringement without court proceedings. In late 2011, the Commission referred the first late-transposition infringement to the Court of Justice with a request for financial sanctions under Article 260(3) TFEU.

Members stated, nevertheless, that these statistics are **not an accurate reflection of the actual deficit in compliance with EU law**, but 'only represent the most serious breaches or the complaints of the most vocal individuals or entities'. **The Commission currently has neither the policy nor the resources to systematically identify and enforce all cases of non-implementation'.**

Members stated that, as regards the functioning of infringement procedures under Articles 258 and 260 TFEU, the Commission should ensure that **petitions** to Parliament and complaints to the Commission are treated with equal consideration. Petitions are evidence that there are still frequent and widespread instances of incomplete transposition or of misapplication of EU law. The Commission is called upon to make compliance with EU law a real political priority to be pursued in close collaboration with Parliament, to make sure that it is itself fully informed with a view to constantly improving its legislative work.

EU Pilot platform: Members deplored the EU Pilot's lack of legal status and considered that legitimacy can only be ensured by enabling transparency, participation of complainants and [of the European Parliament] … in the EU Pilot, and that legality can be ensured through the adoption as soon as possible

of a **legally binding act** containing the rules governing the whole pre-infringement and infringement procedure. They considered that such a legally binding act should clarify the legal rights and obligations of individual complainants and of the Commission, respectively, and strive to allow the participation of complainants in the EU Pilot, as far as possible, at least ensuring that they are informed of the different stages of the procedure.

They suggested that the implementation of the **EU Pilot platform needs to be enhanced in terms of transparency vis-à-vis complainants**. They requested access to the database in which all complaints are collected, in order to enable Parliament to carry out its function of scrutinising the Commission's role as guardian of the Treaties.

It called once again on the Commission, therefore, to propose binding rules in the **form of a regulation** under the new legal basis provided by Article 298 TFEU, so as to ensure full respect for citizens' right to good administration.

Lastly, Members welcomed the fact that all the Member States are taking part in the EU Pilot and hoped that this will lead to a further reduction in the number of infringement procedures.

The question of the EU Pilot and, more generally, of infringements of EU law and Parliament's access to relevant information relating to the pre-infringement and infringement procedure, is considered to be an essential point to be put on the agenda in connection with a future interinstitutional agreement. However, more should be done to inform citizens about the EU Pilot.