



# Procedure file

| Basic information  |                     |
|--|---------------------|
| INI - Own-initiative procedure                                       | 2006/2271(INI)      |
| Monitoring the application of Community law. 23rd annual report 2005 | Procedure completed |
| Subject  |                     |
| 8.50.01 Implementation of EU law                                     |                     |

| Key players         |                               |   |            |
|---------------------|-------------------------------|---|------------|
| European Parliament | Committee responsible         | Rapporteur                                | Appointed  |
|                     | <b>JURI</b> Legal Affairs     |   | 02/10/2006 |
|                     | Committee for opinion         | Verts/ALE <a href="#">FRASSONI Monica</a> |            |
|                     | <b>PETI</b> Petitions         | Rapporteur for opinion                    | Appointed  |
|                     |                               |   | 27/03/2007 |
|                     |                               | ALDE <a href="#">WALLIS Diana</a>         |            |
| European Commission | Commission DG                 | Commissioner                              |            |
|                     | <a href="#">Legal Service</a> | BARROSO José Manuel                       |            |

| Key events |  |   |         |
|------------|--|---|---------|
| 23/07/2006 | Non-legislative basic document published   | <a href="#">COM(2006)0416</a>   | Summary |
| 16/11/2006 | Committee referral announced in Parliament |   |         |
| 20/11/2007 | Vote in committee                          |   | Summary |
| 23/11/2007 | Committee report tabled for plenary        | <a href="#">A6-0462/2007</a>  |         |
| 20/02/2008 | Debate in Parliament                       |  |         |
| 21/02/2008 | Results of vote in Parliament              |  |         |
| 21/02/2008 | Decision by Parliament                     | <a href="#">T6-0060/2008</a>  | Summary |
| 21/02/2008 | End of procedure in Parliament             |   |         |

| Technical information      |                                |
|----------------------------|--------------------------------|
| Procedure reference        | 2006/2271(INI)                 |
| Procedure type             | INI - Own-initiative procedure |
| Procedure subtype          | Annual report                  |
| Legal basis                | Rules of Procedure EP 54       |
| Stage reached in procedure | Procedure completed            |
| Committee dossier          | JURI/6/42384                   |

| Documentation gateway |
|-----------------------|
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|   |      |                               |            |    |         |
|---|------|-------------------------------|------------|----|---------|
| Non-legislative basic document                      |      | <a href="#">COM(2006)0416</a> | 24/07/2006 | EC | Summary |
| Document attached to the procedure                  |      | <a href="#">SEC(2006)0999</a> | 24/07/2006 | EC |         |
| Document attached to the procedure                  |      | SEC(2006)1005                 | 24/07/2006 | EC |         |
| Committee draft report                              |      | <a href="#">PE394.229</a>     | 27/09/2007 | EP |         |
| Committee opinion                                   | PETI | <a href="#">PE390.448</a>     | 09/10/2007 | EP |         |
| Amendments tabled in committee                      |      | <a href="#">PE396.680</a>     | 24/10/2007 | EP |         |
| Committee report tabled for plenary, single reading |      | <a href="#">A6-0462/2007</a>  | 23/11/2007 | EP |         |
| Text adopted by Parliament, single reading          |      | <a href="#">T6-0060/2008</a>  | 21/02/2008 | EP | Summary |
| Commission response to text adopted in plenary      |      | <a href="#">SP(2008)1767</a>  | 31/03/2008 | EC |         |
| Commission response to text adopted in plenary      |      | SP(2008)1857/4                | 16/04/2008 | EC |         |

## Monitoring the application of Community law. 23rd annual report 2005

**PURPOSE:** to present the 23<sup>rd</sup> annual report on monitoring the application of Community law (2005).

**CONTENT:** this, the Commission's 23<sup>rd</sup> annual report, gives an account of Commission activities vis-à-vis the monitoring and application of Community law. It covers the year 2005 and responds to a request by the European Council to examine specific areas of activity.

Article 211 of the Treaty awards the Commission the right to act as guardian of the Treaties whilst Article 226 of the Treaty provides that the Commission can take action against a Member State for adopting or maintaining legislation which is contrary to Community law. In monitoring EU law the Commission supports the principle of a Community based on the rule of law. The numerous complaints received from EU citizens highlights the continuing need to detect and act upon infringements to Community law. In summary, the 23<sup>rd</sup> annual report makes the following findings:

### Enlargement:

In 2005 the Commission prepared for the accession of Romania and Bulgaria. The integrated system for electronic notification of national measures for transposing Directives in the 25 Member States has been adopted by Bulgaria and Romania. In 2005, both the Netherlands and Sweden joined the electronic notification system, while preparations were at an advanced stage in France – the last Member State to join the system. In January 2005, an average of 97.69% of measures had been notified by the 25 Member States. This average rose to 98.12% in March; 98.69% in May. 98.78% in July, 98.88% in September and 98.92% in November.

### Infringement proceedings:

The total number of infringement proceedings initiated by the Commission fell from 2993 in 2004 to 2653 in December 2005. In overall terms, complaints accounted for around 43.5% of total infringements detected in 2005 and the number of infringement proceedings initiated by the Commission on the basis of its own investigations rose from 328 in 2004 to 433 in 2005 for the EU 25.

### Infringements relating to petitions presented to the European Parliament:

Petitions to Parliament represent a valuable source of information for detecting breaches of Community law. In many cases petitions to Parliament are presented at the same time as a complaint to the Commission. In the area of environmental protection, a large number of petitions are linked to active infringement proceedings and relate mostly to the completion of an environmental impact assessment. These sometimes concern motorways, electricity high tension lines or the construction of airports. In the core area of the Internal Market, a significant number of issues were also raised via petitions – such as the recognition of professional qualifications, the rights of shareholders, banking or insurance issues.

### Main developments by Commission activity:

- **Agriculture:** Commission attention has concentrated on removing barriers to the free movement of agricultural produce and ensuring that specific agricultural mechanisms are correctly applied. In addition, the trend towards removing traditional barriers to the free movement of agricultural produce has been reinforced.
- **Education and culture:** In 2005 the Commission dealt with cases relating to the cost and duration of procedures for the recognition of academic qualifications. Overly high costs, which some Member States charge prior to recognising a qualification, is deemed a barrier to the free movement of students. The Commission continues to receive numerous letters from members of the public regarding students' entitlement to maintenance grants, loans and other matter following the Bidar judgement.
- **Employment:** Commission monitoring focuses on the incorrect application of the EU Treaty. Most infringement cases relate to the incorrect transposition of measures or the failure to notify measures.
- **Enterprise and industry:** To recall the enterprise and industry department (single market for products) is responsible for 504 Directives and for the application of Article 28 of the EU Treaty. 333 infringement proceedings were initiated in 2005 – equivalent to

9.4% of the total proceedings brought by the Commission. This represents an increase in the number of proceedings.

- Environment: Environment is the Commission department with the highest number of open cases. In 2005 it accounted for about one quarter of the total number of open cases concerning non-compliance issues. The Commission gives priority to tackling structural problems in the Member States by grouping cases together that relate to the same subject matter. In 2005 DG Environment set up implementation task forces, which has resulted in the identification of a comprehensive set of pro-active measures to foster the implementation of air, waste, water and impact assessment legislation.
- Competition policy: DG Competition prioritised, in 2005, transposition of the Directive on competition for electronic communications and the transparency Directive.
- Information Society: Focus was given to the correct implementation of the 2002 Directive on electronic communications. All but one EU Member State (Greece) has completed transposition of this Directive
- Justice, freedom and security: Priority, in 2005, was given to immigration and asylum. An external study was launched on the application and transposition of Directive 2003/39/EC laying down minimum standards for the reception of asylum seekers.
- The internal market: The Commission's main objective in 2005 was to reinforce the political importance of implementing Community law. In addition, in 2005 DG Internal Market examined most of the 1300 national measures notified by the new Member States covering the existing acquis, as of May 2004. This substantial work gave rise to 259 new infringement proceedings of which only 85 are still open.
- Health and consumer protection: Health is an essential priority for the Commission. Most Directives in this policy field are due to be transposed in 2005, thus Commission attention has concentrated mostly on monitoring the adoption of transposition measures.
- Energy and transport: In 2005, 622 infringement cases were processed of which 247 were for failure to notify transposition measures and 375 for the incorrect transposition of Directives or the incorrect application of Community law.
- Fisheries: Particular attention has been given to compliance issues and monitoring the implementation of technical conservation measures (minimum size of species). Attention has also been given to: exceeding the quantitative catch restrictions; the notification of data on catch and fishing activity; and the use of pelagic driftnets.
- Taxation and customs: The screening of legislation from the new Member States in 2005 resulted in a considerable number of infringement cases relating to failure to notify national implementing legislation or incorrect application of Community law on indirect taxation (VAT and car taxation). Legislation transposing recent Directives was also screened.
- Regional policy: There was a significant decrease in infringement proceedings relating to enlargement in 2005 following the accession of the 10 new Member States the previous year. The Commission continued to pursue a case concerning the incorrect application of the association agreement with Turkey.

## Monitoring the application of Community law. 23rd annual report 2005

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The Committee on Legal Affairs adopted the own-initiative report by Monica FRASSONI (Greens, EFA, IT) in response to the Commission's 23rd Annual report on monitoring the application of Community law (2005).

The 2005 Annual report: MEPs note that the accession of 10 new Member States seems not to have had any impact on the number of registered infringements. They call on the Commission to give Parliament some explanation and reassurance that this is not due to a lack of registration of complaints or/and to a lack of internal resources dealing with infringements within the Commission. MEPs commit themselves to support the Commission via increased budget appropriations for an increase of resources, as requested by most of the relevant Directorates-General. They consider that the sharing of best practices between the Member States should be encouraged and they call on the Commission to consider means of involving Parliament in such processes. They encourage the practice of sending fact-finding missions to various Member States to investigate issues raised by petitioners.

The committee believes that the Commission should be more proactive in monitoring national events which may disclose a breach of Community law and that it should make more intensive use of its Representation Offices to prevent or remedy infringements. The Member States are called upon to go beyond a purely formal transposition of Community legislation and to avoid, as far as possible, the fragmentary transposition of directives with a view to making legislation simpler and more transparent.

The Commission's 2007 Communication: MEPs welcome the fact that, in its recently adopted Communication, the Commission attaches value to, and takes duly into account, the issue of the application of Community law. The report notes that the main obstacle to the effectiveness of the infringement procedure (Articles 226 and 228 of the EC Treaty) remain its length and the limited use of Article 228. It calls on the Commission to be more firm in applying Article 228 of the Treaty in order to ensure that judgments of the Court of Justice are properly complied with. The report insists that the time target proposed by the Commission in respect of the non-communication of transposition measures (no more than 12 months from the sending of the letter of formal notice to the resolution of the case or the Court being seised of the matter) and in respect of proceedings to ensure compliance with an earlier judgment of the Court (between 12 and 24 months) must in no case be exceeded.

The Commission is invited to: i) create an on-line one-stop-shop in order to assist citizens; ii) extensively apply the principle that all correspondence which is likely to denounce a real violation of Community law should be registered as a complaint, unless it falls within the exceptional circumstances; iii) keep complainants fully informed of the progress of their complaints at the expiry of each pre-defined deadline (letter of formal notice, reasoned opinion, referral to the Court), to provide reasons for their decisions.

The role of the European Parliament and national parliaments in the application of EU Law: MEPs consider that Parliament's standing committees should take a much more active role in monitoring the application of Community law in their fields of competence and, to that end, should receive support and regular information from the Commission. They believe that that Parliament's committees (including the Committee on Petitions) should be given sufficient administrative support to carry out their mission effectively.

The report calls for increased cooperation between national parliaments and the European Parliament and their respective parliamentarians, in order to promote and increase effective scrutiny of European matters at national level. It calls on Parliament as co-legislator to take all steps

necessary to ensure that provisions regarding those tables are not removed from the text of Commission proposals during the legislative process.

## Monitoring the application of Community law. 23rd annual report 2005

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The European Parliament adopted a resolution based on the own-initiative report drafted by Monica FRASSONI (Greens/ALE, IT), on the Commission's 23rd Annual report on monitoring the application of Community law (2005). It recalls that the effectiveness of EU policies is largely determined by their implementation at national, regional and local levels. Compliance with Community legislation by the Member States must be rigorously controlled and monitored in order to ensure that it has the desired positive effects on the daily lives of citizens.

2005 Annual report: Members note that the accession of 10 new Member States seems not to have had any impact on the number of registered infringements, and they call on the Commission to give Parliament a reassurance that this is not due to a lack of registration of complaints or to a lack of internal resources dealing with infringements within the Commission or to a political decision to be more indulgent towards those Member States.

With regard to resources, Parliament commits itself to supporting the Commission via increased budget appropriations for an increase of resources, as requested by most of the Directorates-General concerned. It also considers that the sharing of best practices between the Member States, for example in the form of package meetings and transposition workshops organised by the Commission to facilitate the application of Community law, should be encouraged. Parliament calls on the Commission to consider means of involving Parliament in such processes. It encourages the practice of sending fact-finding missions to various Member States to investigate issues raised by petitioners.

Members believe that the Commission should be more proactive in monitoring national events which may disclose a breach of Community law, and they call on the Commission to make more intensive use of its Representation Offices to prevent or remedy infringements. Member States are asked to go beyond a purely formal transposition of Community legislation and to avoid, as far as possible, the fragmentary transposition of directives, with a view to making legislation simpler and more transparent.

The Commission's 2007 Communication: Members welcome the Communication on "A Europe of results ? Applying Community law" (COM(2007)0502), and the fact that the Commission attaches value to, and takes duly into account, the issue of the application of Community law. The resolution notes that the main obstacles to the effectiveness of the infringement procedure (Articles 226 and 228 of the EC Treaty) remain its length and the limited recourse to Article 228. It insists that the time-limits proposed by the Commission in respect of the non-communication of transposition measures (no more than 12 months from the sending of the letter of formal notice to the resolution of the case or the Court of Justice being seised of the matter) and in respect of proceedings to ensure compliance with an earlier judgment of the Court (between 12 and 24 months) must in no case be exceeded. To that end, it calls on the Commission to carry out, within those time-limits, periodic monitoring of the progress of infringement procedures.

Parliament welcomes the Commission's intention to modify current working methods with the aim of prioritising and accelerating the handling and management of existing procedures as well as to commit and formally involve the Member States. It observes, however, that the Commission is often the only body left to which citizens can turn to complain about the non-application of Community law. It is therefore concerned that, by referring back to the Member State concerned (which is the party responsible for the incorrect application of Community law in the first place), the new working method could present a risk of weakening the Commission's institutional responsibility for ensuring the application of Community law as the "guardian of the Treaty". Moreover, Parliament considers that the suspension of some parts of the Commission's current internal Manual of Procedures is questionable, since not all Member States and not all sectors are included in the pilot project and the new method is not fully in place. This could result in confusion. The Commission is asked to: i) create an on-line one-stop-shop in order to assist citizens; ii) extensively apply the principle that all correspondence which is likely to denounce a real violation of Community law should be registered as a complaint, unless it falls within the exceptional circumstances; iii) keep complainants fully informed of the progress of their complaints at the expiry of each pre-defined deadline (letter of formal notice, reasoned opinion, referral to the Court), to provide reasons for their decisions.

The role of the European Parliament and national parliaments: Members consider that Parliament's standing committees should take a much more active role in monitoring the application of Community law in their fields of competence and, to that end, should receive support and regular information from the Commission. They believe that that Parliament's committees (including the Committee on Petitions) should be given sufficient administrative support to carry out their role effectively.

The resolution calls for increased cooperation between national parliaments and the European Parliament and their respective parliamentarians, in order to promote and increase effective scrutiny of European matters at national level.