**Follow-up to the European Parliament non-legislative resolution on the implementation of the principle of primacy of EU law**

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2. **Reference number:** 2022/2143 (INI)) / A9-0341/2023 / P9\_TA(2023)0406
3. **Date of adoption of the resolution:** 21 November 2023
4. **Competent Parliamentary Committee:** Committee onLegal Affairs (JURI), Committee on Constitutional Affairs (AFCO)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The resolution reiterates the importance of the principle of primacy of EU law for the consistent application of EU law throughout the Union and guaranteeing equal treatment of EU citizens before the law. It points at the negative consequences in that respect of the decisions of national constitutional and supreme courts that challenge or fail to apply the primacy of EU law. The resolution underlines that a constructive dialogue between national constitutional and supreme courts may solve tensions between the European and national legal orders regarding the division of competences. It invites those courts to use the preliminary reference procedure when appropriate, which is a prerequisite for the consistency and autonomy of the EU’s legal order and a key instrument for solving conflicts between the national constitutional and supreme courts and the Court of Justice of the European Union (CJEU). The resolution welcomes all informal mechanisms allowing for the strengthening of judicial dialogue between national constitutional and supreme courts and the CJEU. It believes that a more intense judicial dialogue may be facilitated by a more balanced distribution of labour between the Court of Justice and the General Court, as discussed in the legislative procedure aimed at amending Protocol No 3 on the Statute of the CJEU. Emphasizing that transparency of decision-making also applies to the judiciary, the resolution believes that public access to court documents, files and records contributes to the transparency and accountability of the judiciary at national and EU level.

The resolution stresses that it is the responsibility of the Member States’ legislative and executive bodies to take action to amend or withdraw legal facts found to have been in breach of EU law. It calls on the Commission to analyse the state of play of the implementation of CJEU case-law and to initiate the appropriate proceedings against Member States that fail to implement EU law, of which it should keep the European Parliament involved. It encourages the individual Member States and the Commission to support efforts to bring the CJEU and national constitutional and supreme courts together. Academic institutions are encouraged to incorporate modules on the primacy of EU law in their curriculums and use should be made of EU programmes offering training to judicial actors and policy-makers in view of a better understanding of the primacy of EU law. It calls on the Commission and Member States to swiftly conclude the process of EU accession to the European Convention on Human Rights, which could reduce the conflicts with national constitutional or supreme courts which consider the level of protection of fundamental rights ensured under EU law to be less protective than the protection granted by their national constitution. The resolution calls on the Commission to make full use of its powers to address the existing and potential breaches of the values enshrined in Article 2 of the Treaty on European Union (TEU) and reiterates a call on the Council to make concrete and credible efforts to advance all on-going Article 7 proceedings. It proposes the establishment of a structural dialogue between the CJEU and the national constitutional and supreme courts of candidate countries. In the event of a revision of the Treaties, the principle of primacy should be included as an explicit Treaty provision.

1. **Response to requests and overview of action taken, or intended to be taken, by the Commission:**

The Commission shares the European Parliament’s assessment as to the crucial importance of the principle of primacy of EU law. This principle is crucial for the uniform application of EU law in the Union. In that regard, the preliminary reference procedure provided for in Article 267 of the Treaty on the Functioning of the European Union (TFEU) is a cornerstone of the EU legal order. It enables or, as regards last instance courts, obliges national courts to enter into a dialogue with the CJEU whenever they have doubts as to the interpretation or validity of Union law in a case before them. This can include cases raising questions linked to the recognition of the national identity in Article 4(2) TEU. The Commission will always make sure that the exclusive competence of the CJEU to provide the definitive interpretation of EU law is respected. Decisions of national courts, including national constitutional and supreme courts, that challenge the primacy of EU law or the authority of judgments of the Court of Justice would indeed put at risk one of the founding principles of the EU legal order.

The Commission agrees with the Parliament that the transfer of the competence to the General Court to respond to certain categories of preliminary references, as indicated in the recently adopted modification of Protocol No 3 on the Statute of the CJEU, will enable the Court of Justice to focus on its core tasks, including on further deepening the judicial dialogue with national constitutional and supreme courts. This may contribute to a better acceptance of the obligations that result from the principle of primacy of EU law. The Commission welcomes the new rules in the Statute of the CJEU regarding public access to the pleadings of the parties before the Court in preliminary ruling procedures which will increase the transparency of justice in Europe.

The state of play of the compliance with the CJEU’s rulings can be found on the Commission’s [public register of infringement procedures](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en), which provides up-to-date information on all active and closed infringement cases. The search options make it possible to filter cases for which the Commission decided to refer a Member State to the CJEU and which of those cases are still ongoing. Moreover, the Commission explains key infringement decisions in a press release on the day of their adoption. These press releases can also be found on the public register.

The Commission’s [annual report on monitoring the application of EU law](https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2022-annual-report-monitoring-application-eu-law_en) also provides statistics on the number of infringement cases still open after a judgment of the Court of Justice under Articles 258 and 260 TFEU. The annual report website lists all judgments in the reference year per policy area and per Member State. It also includes hyperlinks to the most important preliminary rulings per policy area.

To ensure that the way the Commission enforces EU law is also future-proof, over the last year it conducted a stocktaking exercise on its working methods for monitoring the application of EU law. This led in July 2023 to [targeted recommendations](https://commission.europa.eu/publications/stocktaking-report-commission-working-methods-monitoring-application-eu-law_en), which the Commission is currently implementing, where appropriate together with Member States. One of the recommended improvements is further increasing the transparency on the Commission’s enforcement action, notably by publishing information in a more user-friendly and meaningful way. One of the planned actions is to add the search criterion ‘Financial sanctions imposed by the Court’ to the public register. The Commission also plans to facilitate searches per topic, for example ‘rule of law’. This will make it easier for the public and stakeholders to track progress on the relevant infringement cases. Apart from these measures to strengthen transparency and the proactive publication of information, the Commission looks forward to continuing the regular and fruitful exchange with the European Parliament on the rule of law and primacy of EU law.

The Commission’s 2022 Communication ‘[Enforcing EU law for a Europe that delivers](https://commission.europa.eu/system/files/2022-10/com_2022_518_1_en.pdf)’ reflects the Commission’s unwavering commitment to protect the primacy of EU law. In recent years, the Commission has launched infringement cases for breaches affecting the principles of autonomy, primacy, effectiveness and uniform application of Union law, as well as the respect of the authority of the CJEU. Preliminary references to the Court of Justice are essential for the uniform application of EU law, based on the principle of primacy of EU law and for upholding citizens’ rights. The Commission therefore agrees with the Parliament on the importance of a regular informal dialogue between the CJEU and national constitutional or supreme courts outside the context of the court proceedings, such as the preliminary reference procedure. This why the Commission systematically makes use of its right to submit observations in all preliminary questions proceedings before the Court of Justice.

The Commission’s 2020 Communication [Ensuring justice in the EU — a European judicial training strategy for 2021-2024](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0713) aims to build adequate capacity of justice professionals to enable them to “put into practice the principles of primacy and direct effect”, and correctly ”refer preliminary questions to the CJEU.” It is implemented with the funds of Justice Programme supporting operating grant to European Judicial Training Network (EJTN) and numerous action grants deepening understanding and ability to apply foundational principles among future and current justice professionals. According to [2023 European judicial training report](https://commission.europa.eu/system/files/2023-12/European-Judicial-Training-2023.pdf) over 237 000 justice professionals received training on EU law in 2022, confirming the general considerable upward trend.

The most recent example of the training tool procured by the Commission is the set of training videos for justice professionals on the CJEU, the primacy of EU law, and the judicial dialogue between national and European courts, that will be launched at the conference of 7 March 2024.

The justice professionals from the candidate countries are involved in these activities, having the observer status to EJTN and due to the association agreements to the Justice Programme, already signed with Kosovo and advanced with Albania, Ukraine and Bosnia and Herzegovina. Moldova, North Macedonia, and Serbia expressed their interest to join.

As regards the protection of fundamental rights assured by national constitutional or supreme courts, the Commission recalls that, pursuant to Article 51(1) of the Charter of Fundamental Rights of the European Union, the Member States are bound to respect the rights and observe the principles set in the Charter when they are implementing EU law. It follows from the case law of the Court of Justice that where a national court is called upon to review whether fundamental rights are complied with by a national provision or measure implementing EU law, but in a situation where action of the Member States is not entirely determined by EU law, national authorities and courts remain free to apply national standards of protection of fundamental rights only if the level of protection provided for by the Charter, as interpreted by the Court of Justice, and the primacy, unity and effectiveness of EU law are thereby not compromised. As regards the accession of the EU to the European Convention on Human Rights, the Commission recalls that the EU is fully committed to the accession of the EU to the European Convention on Human Rights and that it is continuously working towards the goal of EU accession together with the Member States.

As regards the procedure laid down in Article 7 TEU, the Commission will continue to make use of the on-going proceedings to engage in a dialogue with the concerned Member States’ authorities in order to resolve the existing concerns. From its side, the Commission continues to make full use of its powers to ensure compliance with EU law and the principle of primacy of EU law, as well with the EU’s fundamental values, in particular the rule of law.