



Brussels, 6.7.2017
COM(2017) 370 final

REPORT FROM THE COMMISSION

Monitoring the application of European Union law 2016 Annual Report

{SWD(2017) 259 final}
{SWD(2017) 260 final}

Monitoring the application of European Union law 2016 Annual Report

I.	Introduction	3
II.	Enforcement in priority policy areas	4
1.	A new boost for jobs, growth and investment.....	5
2.	A connected 'digital single market'	6
3.	A resilient energy union with a forward-looking climate change policy	7
4.	A deeper and fairer internal market with a strengthened industrial base	7
5.	A deeper and fairer economic and monetary union.....	11
6.	An area of justice and fundamental rights based on mutual trust	11
7.	Towards a new policy on migration	13
8.	Working with Member States to ensure proper implementation of EU law	13
8.1.	Implementation plans: state of play.....	13
8.2.	Explanatory documents: state of play	14
III.	Infringement procedures.....	17
IV.	Before an infringement procedure is started	18
1.	Detecting problems.....	18
1.1.	Own-initiative cases.....	18
1.2.	Complaints and petitions	18
2.	EU Pilot.....	20
V.	Stages in infringement procedures.....	23
1.	Pre-litigation phase	23
2.	Judgments of the Court of Justice under Articles 258 and 260(2) TFEU	26
VI.	Transposition of directives	28
1.	Late transposition	28
2.	Referrals to the Court of Justice under Article 258/260(3) TFEU.....	30
VII.	Conclusions	32

I. Introduction

The effective application of EU law is essential to delivering the benefits of European Union policies to the public and to businesses. Often, when issues come to the fore — car emissions testing, illegal landfills or transport safety and security — it is not the lack of EU legislation that is the problem but rather that EU law is not applied effectively.

The Member States are responsible for transposing directives into their national law on time and accurately, as well as for correctly applying and implementing the entire body of EU legislation (the *acquis*).¹ The Commission, as guardian of the Treaties, monitors the Member States' measures and ensures that their legislation complies with EU law.² Should a Member State fail to comply with Union law, the Commission may open an infringement procedure and, if necessary, bring the case before the Court of Justice. Financial penalties may be proposed when a Member State fails to implement a Court judgment or to communicate to the Commission its measures transposing a legislative Directive.³

Better application of EU law is a priority of the Juncker Commission and a key part of the Better Regulation Agenda. The Commission restated its commitment to improving the application of EU law in a Communication of December 2016 which sets out a more strategic approach to its infringement policy.⁴ It announced that it would give priority to pursuing the most serious breaches of EU law affecting the interests of citizens and businesses.

This annual report highlights the main developments in enforcement policy in 2016. The structure of the report reflects the focus on enforcement in the political priority areas of the Commission. For example, the Commission pursued enforcement actions in the area of the internal market, where it specifically targeted Member States' failure to establish or apply penalties systems to deter car manufacturers from violating car emissions legislation. Another example is the transposition of EU rules on public procurement and concessions; here, full transposition and implementation of EU law is essential to make it easier and cheaper for small and medium-sized enterprises to bid for public contracts, in full respect of the EU's principles of transparency and competition. In addition to the priority areas, the documents accompanying the report⁵ examine how well EU law was applied, and the challenges faced, in each Member State and policy area.

¹ Article 291(1) of the Treaty on the Functioning of the European Union (TFEU).

² Article [17 TEU](#) '[the Commission] shall ensure the application of the Treaties and of the measures adopted by the institutions pursuant to them. It shall oversee the application of Union law [...]'].

³ Articles 260(2) and (3) of the Treaty on the Functioning of the European Union (TFEU).

⁴ Communication 'EU law: Better results through better application', [C\(2016\) 8600](#), OJ C 18, 19 January 2017.

⁵ SWD (2017)259 and SWD(2017) 260.

II. Enforcement in priority policy areas

Ensuring that the EU's legal instruments are applied and implemented better is a pre-requisite for delivering on the EU's policies in general and on the political priorities of the Juncker Commission in particular. The Commission uses a wide array of tools, including infringement procedures, to achieve the objectives of EU policies. The 2016 Annual Report provides an overview of the Commission's action in this respect.

New enforcement policy — Communication on EU law: Better results through better application

In December 2016, the Commission adopted a new Communication on enforcement policy: *EU law: Better results through better application*.⁶ The Communication sets out how the Commission as guardian of the Treaties will increase its efforts to ensure compliance with EU law. Being 'bigger and more ambitious on big things, and smaller and more modest on small things' should be translated into a more strategic and effective approach to enforcement in terms of infringement handling. In implementing this approach, the Commission should focus on problems where the Commission's enforcement action can make a real difference, and on policy priorities. Consequently, the Commission will distinguish between cases on the basis of the added value an infringement procedure can achieve. It will close cases when it considers this appropriate from a policy point of view.

The Commission will focus on cases where Member States:

- fail to communicate transposition measures or where those measures incorrectly transpose directives;
- fail to comply with a judgment of the Court of Justice (as referred to in Article 260(2) TFEU); or
- cause serious damage to EU financial interests or violate EU exclusive powers.

The Commission will rigorously pursue cases which reveal systemic weakness in a Member State's legal system. These would include cases of national rules or general practices which impede the procedure for preliminary rulings by the Court of Justice. The Commission will also rigorously pursue cases where national law prevents the national courts from acknowledging the primacy of EU law. It will also pursue as a matter of priority cases in which national law provides no effective redress procedures for a breach of EU law or where national law otherwise prevents national judicial systems from ensuring that EU law is applied effectively. The Commission will proceed expeditiously in investigating such breaches. It will launch infringement procedures without relying on the EU Pilot mechanism, unless recourse to EU Pilot is seen as useful in a given case.

In implementing its new approach, the Commission will continue to value the essential role played by individual complainants in identifying wider problems with the enforcement of EU law affecting the interests of citizens and businesses. However, it is essential that citizens understand the nature of the infringement process and set their expectations accordingly. Many submit complaints in the expectation that they may obtain financial or other redress for a breach of EU law. This is not the purpose of the infringement procedure. Therefore, certain individual cases of incorrect application which do not raise issues of wider principle can often be satisfactorily dealt with by other, more appropriate mechanisms at EU and national level. In such cases, if there is effective legal protection available, the Commission will, as a general rule, direct complainants to the national level.

While the Commission will continue to support Member States in their efforts to transpose, apply and implement EU law, it is essential that Member States live up to their responsibility to respect and enforce the rules they themselves have jointly put in place. In this respect, the Commission will reinforce its approach to sanctions for non-communication of national transposition measures: in cases brought to the Court of Justice under Articles 258 in conjunction with 260(3) TFEU, the Commission will now systematically ask the Court to impose a lump sum as well as a periodic penalty payment.

⁶ [C\(2016\) 8600](#), OJ C 18, 19 January 2017.

1. A new boost for jobs, growth and investment

The Juncker Commission's first priority is to strengthen Europe's competitiveness and stimulate investment that creates jobs. However, efforts to create the right regulatory environment to support businesses and job creation are undermined if the EU *acquis* is not implemented correctly and on time. Enforcing the application and implementation of EU law thus also contributes substantially to creating jobs, growth and investment.

The Commission's enforcement activities in 2016 focused on the following areas:

Enforcing the acquis on free movement of workers and health and safety at work

The Commission continued its efforts to ensure a level playing field in the EU's labour market by checking the complete and correct transposition by the Member States of Directives in the areas of free movement of workers and health and safety at work.

The deadline for transposing two important Directives expired in 2016: one concerns the enforcement of free movement of workers' rights,⁷ the other the enforcement of posted workers' rights.⁸ As several Member States failed to notify their transposition measures within the deadline, the Commission launched a number of infringement procedures in September 2016.

In the area of health and safety at work, the deadline for the transposition of the Directive on health and safety requirements in case of exposure to electromagnetic fields⁹ expired on 1 July 2016. The Directive constitutes an important contribution to protecting workers' health. The Commission is checking Member States' national transposition measures and launched a number of infringement procedures in 2016.

The Commission continued the transposition check for the directive on classification, labelling and packaging of substances and mixtures¹⁰ and sent inquiries to eight Member States to verify the correct implementation of the Directive protecting workers from sharp injuries in the hospital and healthcare sector.¹¹

Enforcing the environmental acquis

The Commission targeted its enforcement of EU environmental rules towards contributing to a healthier environment and a stronger, more 'circular' economy which uses resources in a more sustainable way. It also sought to ensure a level playing field for all Member States and economic operators that need to meet environmental requirements. Strict enforcement also stimulates the market to find innovative ways to increase resource efficiency and reduce import dependency, which in turn give EU companies a competitive edge and create jobs.

Significant shortcomings in the implementation and enforcement of EU environmental legislation persist in some Member States, particularly in waste management, waste water treatment infrastructure and compliance with air quality limit values.

The Commission continued to address these deficiencies through legal means, in particular infringement procedures, but also by working closely with the national authorities and other stakeholders to support compliance. In this context, in 2016 the Commission launched the Environmental Implementation Review.¹² This process aims to improve common knowledge about the

⁷ Directive [2014/54/EU](#).

⁸ Directive [2014/67/EU](#).

⁹ Directive [2013/35/EU](#).

¹⁰ Directive [2014/27/EU](#).

¹¹ Directive [2010/32/EU](#).

¹² [COM\(2016\) 316 final](#).

gaps in implementing EU environmental legislation and policy in each Member State, and to address the root causes of these gaps. It also seeks to provide solutions that are complementary to legal enforcement and to stimulate exchanges of good practice. The review is based on country-specific reports drafted every 2 years which will focus on essential topics in the area of environmental legislation and policy in each Member State. The reports will prepare the ground for dialogues with and within each Member State.

Enforcing the agricultural acquis

The Commission's enforcement strategy focused on ensuring the implementation of agricultural measures with the highest potential to support jobs and growth. These also contribute to a deeper and fairer internal market.

The common agricultural policy (CAP) and the enforcement of related EU rules helps to foster both the competitiveness and the market orientation of the primary sector, while protecting farmers from sudden and severe market disturbances. The overriding goal is to sustain farming in Europe.

In 2016, the Commission gave particular attention to the implementation by all Member States of the provisions on direct payments, a major element of the 2014 CAP reform. After examining the compatibility of national legislation with the EU provisions, Commission initiated EU Pilot dialogues with several Member States.

The Commission also focused on actively monitoring the correct, clear and timely transposition by all Member States of the EU Directives on agriculture. The aim was to create legal certainty and allow citizens and businesses to benefit from the opportunities of the single market. The Commission provided assistance to the Member States to help them implement the Caseins and Caseinates Directive¹³ on time (by 22 December 2016).

Enforcing the acquis on maritime affairs and fisheries

The Commission's enforcement strategy in 2016 concentrated on areas of fisheries conservation and control which are essential to build a 'circular' economy where fish resources are used in a sustainable manner, ensuring jobs and growth in the fisheries sector in the long term. Particular attention was given to systemic deficiencies in the national fisheries monitoring systems that cause illegal fishing activities to go undetected, to the detriment of the sector's sustainability. Moreover, non-respect of the EU's exclusive external competence was addressed in several cases in order to support the EU's objective of becoming a stronger global actor on fisheries. Furthermore, after the expiration on 18 September 2016 of the transposition period for some provisions of the Maritime Spatial Planning Directive,¹⁴ the Commission launched infringement procedures against five Member States for failing to communicate any national transposition measures. Three other cases were initiated for partial transposition.

2. A connected 'digital single market'

The Commission's enforcement strategy in the area of communication networks, content and technology in 2016 targeted priorities in several sectors. These include, for instance, structural elements of legislation in electronic communications, such as the independence of national regulatory authorities, respect for consultation procedures in the market review process, spectrum management and freedom of establishment. Enforcement efforts also addressed provisions which are crucial for the preservation of the internal market in audiovisual services, such as the country of origin and freedom of reception principles.

The Commission opened infringement procedures against most Member States for failing to fully transpose the Broadband Cost Reduction Directive¹⁵ and the Collective Management Rights

¹³ Directive (EU) [2015/2203](#).

¹⁴ Directive [2014/89/EU](#).

¹⁵ Directive [2014/61/EU](#).

Directive.¹⁶ It took further steps in the infringement procedures already open over non-transposition of the Directive on the re-use of public sector information (the 'PSI Directive').¹⁷ The Commission also held dialogues with Member States to address compliance issues. These concerned, for example, practical arrangements for correctly implementing the e-IDAS Regulation and correctly transposing the Collective Management Rights Directive.

3. A resilient energy union with a forward-looking climate change policy

The Commission's *Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy*¹⁸ provides that 'full implementation and strict enforcement of existing energy and related legislation is the first priority to establish the Energy Union.'

The Commission closely monitored the application of the *acquis* on climate and energy policy. It undertook systematic checks on Member States' transposition of, and conformity with, several directives. It also further pursued the infringement procedures it had already opened regarding:

- the Third Energy Package Directives;¹⁹
- the Energy Performance of Buildings Directive;²⁰
- the Directive for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption;²¹
- the Radioactive Waste Directive;²²
- the Energy Efficiency Directive;²³
- the Offshore Safety Directive;²⁴
- the Renewable Energy Directive;²⁵
- the Oil Stocks Directive;²⁶
- the Security of Gas Supply Regulation;²⁷
- the EU Emissions Trading System Directives;²⁸
- the Fuel Quality Directive;²⁹ and
- the Geological Storage of Carbon Dioxide Directive.³⁰

Following the compliance checks, the Commission initiated EU Pilot dialogues in 2016 with several Member States. It also launched 31 infringement procedures following systematic conformity checks and lack of reporting on energy efficiency and in the nuclear field.

4. A deeper and fairer internal market with a strengthened industrial base

The single market provides enormous opportunities for European businesses as well as greater choice and lower prices for consumers. It enables people to travel, live, work and study wherever they wish. But these benefits do not materialise when single market rules are not applied or implemented, or if they are undermined by other barriers.

Enforcing the competition acquis

¹⁶ Directive [2014/26/EU](#).

¹⁷ Directive [2013/37/EU](#).

¹⁸ COM(2015) 80.

¹⁹ Directives [2009/72/EC](#) and [2009/73/EC](#).

²⁰ Directive [2010/31/EU](#).

²¹ Directive [2013/51/Euratom](#).

²² Directive [2011/70/Euratom](#).

²³ Directive [2012/27/EU](#).

²⁴ Directive [2013/30/EU](#).

²⁵ Directive [2009/28/EC](#).

²⁶ Directive [2009/119/EC](#).

²⁷ Regulation (EU) [No 994/2010](#).

²⁸ Directives [2008/101/EC](#) and [2009/29/EC](#).

²⁹ Directive [2009/30/EC](#).

³⁰ Directive [2009/31/EC](#).

The Commission's enforcement efforts in the area of competition focused on ensuring compliance with EU rules on antitrust and State aids. In 2016, the Commission continued an infringement procedure aimed at tackling the potential strengthening of the incumbent's dominant position on the electricity market in one Member State. This resulted from measures taken by that Member State granting to the incumbent most of the hydropower concessions for a very long duration without carrying out a tender procedure.

The enforcement of State aid decisions is essential to the credibility of the Commission's control of State aids. In 2016, the Commission decided to launch an action before the Court of Justice against Greece under Article 260(2) TFEU for failing to implement the Commission's recovery decision of 2008 in the Hellenic Shipyards case and to comply with the Court's judgment of 2013³¹.

The Commission has been assisting Member States with implementing the Directive on Antitrust Damages Actions³² and will continue to devote significant efforts to ensuring its timely and proper implementation.

*Enforcing the *acquis* on the single market, industry, entrepreneurship and SMEs*

The Commission's single market strategy³³ envisages the development of a culture of compliance and smart enforcement. This involves following a holistic approach to enforcing the internal market rules. This approach covers all stages of policymaking — from policy design to the transposition, implementation and smart enforcement of single market rules — in line with the Better Regulation approach. It includes better integrating evaluation and enforcement into policy design and providing better assistance and guidance to Member States and economic operators on how to implement internal market rules. The overall aim is to improve compliance with single market rules specifically and EU law in general.

In line with this approach the Commission offers guidance to the Member States. It did so in 2016 by providing legal clarity on, for example, the applicable EU rules in the innovative areas of the collaborative economy and e-commerce.³⁴ The Commission also offers guidance to EU citizens and businesses to ensure they can benefit from their rights under single market rules. It does so by directing them to appropriate redress mechanisms, such as SOLVIT. At the same time, the evidence gathered through cases in SOLVIT can help the Commission identify potential breaches of EU law, thus making SOLVIT a smart enforcement tool.

In 2016 the Commission applied its smart enforcement approach in two specific areas, among others. In the services sector, the Commission requested that nine Member States remove excessive and unjustified obstacles to the provision of services across the internal market. It considered that the requirements imposed on certain service providers in these Member States run counter to the Services Directive.³⁵ In the automobile sector, the Commission is very closely following national authorities' enforcement of the current EU rules. In 2016 it opened infringement procedures against seven Member States for failing to fulfil their obligations under EU vehicle type approval legislation.³⁶ These actions specifically targeted their failure to establish or apply penalties systems to deter car manufacturers from violating car emissions legislation.

In addition, the Commission opened infringement procedures against most Member States for lack of full transposition of the Directives on public procurement,³⁷ legal metrology,³⁸ advanced engineering

³¹ Case [C-246/12P](#); *Ellinika Nafpigeia v Commission*.

³² Directive [2014/104/EU](#).

³³ [COM\(2015\) 550 final](#).

³⁴ [COM\(2016\) 356 final](#).

³⁵ Directive [2006/123/EC](#).

³⁶ Directive [2007/46/EC](#) and Regulation (EC) No [715/2007](#).

³⁷ Directive [2014/23/EU](#), Directive [2014/24/EU](#), Directive [2014/25/EU](#).

³⁸ Directives [2014/31/EU](#), [2014/32/EU](#) and [2015/13/EU](#).

and manufacturing systems,³⁹ explosives for civil use and defence-related products,⁴⁰ and the Internal Market Information System.⁴¹

Enforcing the capital markets union and financial services acquis

The capital markets union aims to make it easier for innovative companies, start-ups and small and medium-sized enterprises to access finance. It seeks to make EU capital markets more attractive for retail and institutional investors and to further expand cross-border investment. The capital markets union also intends to help restore stability and confidence in the financial sector following the crisis.

The Commission's 2015 *Action Plan on Building a Capital Market Union*⁴² was complemented in September 2016 by the Communication on *Capital Markets Union — Accelerating Reform*.⁴³ The Commission's enforcement action underpins this initiative by removing national cross-border investment barriers (e.g. golden shares cases, investment restrictions) and by ensuring full implementation of the capital markets union Directives relating to capital markets. For example, the Commission launched infringement cases against 21 Member States over their transposition of the Transparency Directive,⁴⁴ which aims to ensure that securities issuers disclose certain key information about their operations.

In the aftermath of the financial crisis, several Directives were adopted to further open up the EU financial services market and strengthen the resilience and stability of the financial sector. Key measures include the Accounting and Audit Directives,⁴⁵ the Undertakings for Collective Investment in Transferable Securities Directive⁴⁶ and the Mortgage Credit Directive.⁴⁷ In 2016 the Commission focused its enforcement action on ensuring these Directives are fully implemented by verifying their complete and correct transposition. It launched for example infringement procedures against 20, 16 and 18 Member States for late transposition of the Mortgage Credit Directive, the Undertakings for Collective Investment in Transferable Securities Directive and the Audit Directive, respectively.

Enforcing the acquis on taxation and customs

Following judgments of the Court relating to the interpretation of the VAT Directive and the Excise Duty Directives, the Commission put emphasis on ensuring that these judgments were applied across all Member States. In addition, the Commission investigated several car taxation cases as it found that the neutrality of car registration tax had been infringed.

In the area of direct taxation, the Commission continued to check the EU-wide equal tax treatment of cross-border inheritances, cross-border workers (who live in one Member State but work in another) and so-called mobile persons (who actually move from one EU Member State to another). Under the *Action Plan on Building a Capital Markets Union*, the Commission launched a new study on discriminatory tax obstacles to cross-border investment results by pension funds and life insurance companies.

Following a Court judgment,⁴⁸ the Commission also launched horizontal compliance checks to examine the proportionality of fines set by Member States for bringing undeclared cash into the EU.

Enforcing the acquis on consumer protection

³⁹ Directives [2013/53/EU](#), [2014/29/EU](#), [2014/30/EU](#), [2014/33/EU](#), [2014/34/EU](#), [2014/35/EU](#), [2014/53/EU](#) and [2014/68/EU](#).

⁴⁰ Directives [2014/28/EU](#) and [2016/970/EU](#).

⁴¹ Directive [2013/55/EU](#).

⁴² [COM\(2015\) 468](#) final.

⁴³ [COM\(2016\) 601](#) final.

⁴⁴ Directive [2013/50/EU](#).

⁴⁵ Directives [2013/34/EU](#) and [2014/56/EU](#).

⁴⁶ Directive [2014/91/EU](#).

⁴⁷ Directive [2014/17/EU](#).

⁴⁸ Chmielewski, [C-255/14](#).

In early 2016 the Commission set up a European online dispute resolution platform.⁴⁹ This facilitates the out-of-court resolution of disputes arising from sales or service contracts that EU consumers have concluded online. A precondition for the platform to work is that the Directive on alternative dispute resolution for consumer disputes in the Member States is implemented and applied properly. This is thus a priority for the Commission's enforcement work.⁵⁰

In 2016, the Commission continued its assessment of the completeness and correctness of the national measures transposing the Consumer Rights Directive.⁵¹

Thirteen infringement proceedings over the transposition of the Unfair Commercial Practices Directive were still pending at the end of 2016.⁵² Many Member States initiated legislative changes to bring their legislation into compliance with the Directive. Furthermore, in May 2016 the Commission published a revised guidance document on the application of the Directive. This guidance aims at improving compliance with the Directive, in particular concerning new business models and market operators in the digital economy.

The Commission also launched infringement procedures for non-communication of measures transposing the Directive on payment accounts.⁵³ The Directive requires all EU Member States to ensure that consumers have access to a basic payment account and makes it easier for them to compare the fees charged by banks for such accounts. It also establishes a rapid and simple procedure for consumers who change their payment accounts to a different bank or payment service provider.

The enforcement work carried out by the Commission on implementation of the Package Travel Directive⁵⁴ led to legislative changes in five Member States. In 2016, the Commission also assisted Member States in their efforts to transpose the Directive by organising three transposition workshops for national experts.⁵⁵

One infringement case on the correct transposition of the Timeshare Directive⁵⁶ is still pending, while the Commission closed other cases in 2016 following legislative changes in the Member States concerned.

Enforcing the acquis on health and food safety

The Commission's 2016 enforcement strategy in the health sector focused on checking the compliance of national legislations with the Directives on human tissues and cells⁵⁷ and on cross-border healthcare,⁵⁸ and pursuing infringement procedures where necessary.

In the animal welfare sector, compliance with the requirements of the Directives for laying hens and group housing of sows has been achieved and most of the infringement procedures have been closed.⁵⁹

Enforcing the acquis on mobility and transport

In this area the Commission initiated and pursued infringement cases on issues which have a direct impact on the completion of the internal market, in particular:

⁴⁹ Regulation (EU) No [524/2013](#).

⁵⁰ Directive [2013/11/EU](#).

⁵¹ Directive [2011/83/EU](#).

⁵² Directive [2005/29/EC](#).

⁵³ Directive [2014/92/EU](#).

⁵⁴ Directive [90/314/EEC](#).

⁵⁵ Directive [2015/2302/EU](#), for which the transposition deadline elapses on 1 January 2018.

⁵⁶ Directive [2008/122/EC](#).

⁵⁷ Directive [2004/23/EC](#).

⁵⁸ Directive [2011/24/EU](#).

⁵⁹ Directives [1999/74/EC](#) and [2008/120/EC](#).

- discriminatory user charges for passenger cars;
- restrictions on access to the profession of road transport operators;
- obstacles to the freedom of establishment caused by the monopolistic conditions for recruiting dockers; and
- limitations on the provision of transport services and free movement of goods deriving from national minimum wage laws.

In 2016 Member States stepped up their efforts to comply with the provisions of the Directive on the interoperability of electronic road toll systems.⁶⁰ The Commission was therefore able to close infringement procedures against several Member States. However, most Member States were not able to transpose the Directive on the deployment of alternative fuel infrastructure⁶¹ by the deadline.

The Commission also focused its efforts on safety issues, in particular in the maritime sector. It has intensified monitoring of the application of EU law in this area and in 2016 initiated or pursued several infringement procedures over the application of EU law on accident investigations,⁶² port State control⁶³ and flag state issues.⁶⁴ The Commission continued to pursue conformity checks on the implementation of the Directive on driving licences⁶⁵ and three railway Directives.⁶⁶

5. A deeper and fairer economic and monetary union

The EU banking union rules seek to ensure that banks are stronger and better supervised and, if necessary, that problems can be resolved more easily without using taxpayers' money. In the aftermath of the financial crisis, the EU enacted a large number of measures to further open up the EU single market in financial services for consumers and businesses, improve supervision of financial institutions and strengthen the resilience and stability of the financial sector. This new framework is founded on measures such as the Capital Requirements Directive IV,⁶⁷ the Deposit Guarantee Schemes Directive⁶⁸ and the Bank Recovery and Resolution Directive.⁶⁹ The Commission's enforcement action in 2016 focused on checking the complete and correct transposition of these Directives. For example, the Commission addressed reasoned opinions to several Member States over the incompleteness of their transposition of the Capital Requirements Directive IV and the Bank Recovery and Resolution Directive.

6. An area of justice and fundamental rights based on mutual trust

The Commission gives high priority to addressing infringements that reveal systemic weaknesses which undermine the functioning of the EU's institutional framework. This goes in particular for those which affect the capacity of national judicial systems to contribute to the effective enforcement of EU law. One of the areas where the action of the Commission plays an essential role is when the 'national rule of law safeguards' no longer seems capable of addressing a systemic threat to the rule of law. This reflects the fact that upholding the rule of law is a pre-requisite for upholding all rights and obligations deriving from the Treaties.

In this context, the Commission has taken steps under the Rule of Law Framework⁷⁰ to address significant changes in the Polish legal system which undermine the proper functioning and the effectiveness of the Constitutional Tribunal. After adopting an opinion on the situation in Poland on 1 June 2016, the Commission adopted a first Recommendation on 27 July and a second one on

⁶⁰ Directive [2004/52/EC](#).

⁶¹ Directive [2014/94/EU](#).

⁶² Directive [2009/18/EC](#).

⁶³ Directive [2009/16/EC](#).

⁶⁴ Directive [2009/15/EC](#).

⁶⁵ Directive [2006/126/EC](#).

⁶⁶ Directives [2012/34/EU](#), [2008/57/EC](#) and [2004/49/EC](#).

⁶⁷ Directive [2013/36/EU](#).

⁶⁸ Directive [2014/49/EU](#).

⁶⁹ Directive [2014/59/EU](#).

⁷⁰ [COM\(2014\) 158 final/2](#).

21 December. The Commission was concerned about a systemic threat to the rule of law in Poland. This is due to the Constitutional Tribunal being prevented from fully ensuring an effective constitutional review after the reforms introduced in 2015 and 2016. This situation adversely affects the integrity, stability and proper functioning of the Tribunal, which is one of the essential safeguards of the rule of law in Poland.

In the area of **freedom of movement of persons**, the Commission carried out comprehensive assessments of the compliance of the new national legislation enacted in the Czech Republic, Ireland and Slovakia with the EU rules on free movement and residence rights of EU citizens.

In the area of **criminal and procedural law**, the Procedural Rights Roadmap was completed by the adoption of three new Directives. These concern the strengthening of certain aspects of the presumption of innocence and the right to be present at one's trial,⁷¹ the procedural safeguards for children,⁷² and legal aid.⁷³ At the same time, the transposition of the Victims' Rights Directive⁷⁴ remains incomplete in nine Member States. In 2016 the Commission also assessed for correctness the Member States' transposition of Directives on the right to translation and interpretation⁷⁵ and the right to information in criminal proceedings.⁷⁶

Almost all Member States have finished transposing the Directive on the European protection order.⁷⁷ The practical application of this instrument depends of the awareness of the users (victims and legal practitioners). To date, only a few protection measures have been recognised across borders. The Commission committed to publish a report on its application when more data on the number of orders issued or recognised is available.

In September 2016 the Commission launched infringement procedures against 18 Member States for not communicating their national measures transposing the Directive on criminal sanctions for market abuse.⁷⁸

In the field of **data protection**, the new General Data Protection Regulation⁷⁹ adopted in 2016 will repeal and replace the existing legislation as from 25 May 2018.⁸⁰ The Commission will assess its enforcement work in the light of the new *acquis*. Moreover, the Commission started preparatory work to help Member States and stakeholders implement and apply the new Police and Criminal Justice Authorities Directive⁸¹, which will replace the current Framework Decision.⁸²

In 2016 enforcement work was conducted in the context of the **European Agenda on Security**⁸³ and the development of a fledgling security union. Since September 2016, the Commission has created a special portfolio and entrusted a Commissioner with the responsibility for implementing the security union.

The enforcement work contributed to the Commission's response to the tragic terrorist attacks of 2016. Infringement procedures were initiated over the incorrect implementation of the Regulation on the marketing and use of explosives precursors.⁸⁴ The Commission also launched the first infringement procedures over instruments belonging to the former 'third pillar'. These procedures were for non-

⁷¹ Directive [2016/343](#).

⁷² Directive [2016/800](#).

⁷³ Directive [2016/1919](#).

⁷⁴ Directive [2012/29/EU](#).

⁷⁵ Directive 2010/64/EU.

⁷⁶ Directive [2012/13/EU](#).

⁷⁷ Directive [2011/99/EU](#).

⁷⁸ Directive [2014/57/EU](#).

⁷⁹ Regulation No (EU) [2016/679](#).

⁸⁰ Directive [95/46/EC](#).

⁸¹ Directive (EU) 2016/680.

⁸² Council Framework Decision [2008/977/JHA](#).

⁸³ [COM\(2015\) 185](#) final.

⁸⁴ Regulation (EU) No [98/2013](#).

communication of national measures to implement the ‘Swedish initiative’⁸⁵ on simplifying the exchange of information and intelligence between EU law enforcement authorities, and for failure to comply with the Prüm Decisions⁸⁶ on information-sharing to combat terrorism and serious crime.

The Commission completed the transposition checks for the Directives against trafficking in human beings⁸⁷ and sexual exploitation of children.⁸⁸ It closed almost all infringement procedures for non-communication of national measures implementing these Directives. However, the Commission pursued infringement procedures for non-communication of national measures implementing the Directive on attacks against information systems.⁸⁹ It also launched infringement procedures for failure to notify national measures implementing the Directive on the freezing and confiscation of instrumentalities and proceeds of crime.⁹⁰

The Commission regularly reports to the European Parliament, the European Council and the Council on progress towards creating an effective and genuine security union. This includes the use of its enforcement work in contributing to consolidating the security union.

7. Towards a new policy on migration

The Commission’s response to the developing migration and security situations includes its work to enforce the **European Agenda on Migration**⁹¹ as well as the regular implementation packages it has presented.

In this regard, in 2016 the Commission followed up on the infringement procedures it launched in 2015 over the non-communication or incorrect implementation of instruments under the Common European Asylum System. It addressed reasoned opinions to Member States which had still not notified national measures transposing the Asylum Procedures⁹² and Reception Conditions Directives.⁹³ It did likewise for Member States which had not notified measures to fully transpose the Directive extending the scope of application of the long-term residence scheme to beneficiaries of international protection.⁹⁴ The Commission decided to close three of the infringement procedures opened in 2015 on the incorrect implementation of the Eurodac Regulation.⁹⁵

Correct implementation of the Return Directive⁹⁶ remains key in achieving the Agenda’s objectives of combating and preventing irregular migration. The Commission addressed a reasoned opinion to one Member State for incorrect implementation of this Directive. The Commission is regularly reporting on the implementation of the European Agenda on Migration.

The Commission also launched infringement procedures for failure to notify national measures implementing the Directive on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.⁹⁷

8. Working with Member States to ensure proper implementation of EU law

8.1. Implementation plans: state of play

In the Better Regulation Package, the Commission committed to actively help Member States transpose and implement legislation by preparing implementation plans for certain directives and

⁸⁵ Council Framework Decision [2006/960/JHA](#).

⁸⁶ Decisions [2008/615/JHA](#) and [2008/616/JHA](#).

⁸⁷ Directive [2011/36/EU](#).

⁸⁸ Directive [2011/93/EU](#).

⁸⁹ Directive [2013/40/EU](#).

⁹⁰ Directive [2014/42/EU](#).

⁹¹ [COM\(2015\) 240 final](#).

⁹² Directive [2013/32/EU](#).

⁹³ Directive [2013/33/EU](#).

⁹⁴ Directive [2011/51/EU](#).

⁹⁵ Regulation (EU) No [603/2013](#).

⁹⁶ Directive [2008/115/EC](#).

⁹⁷ Directive [2014/36/EU](#).

regulations. While the responsibility for applying EU law lies with the Member States, the implementation plans aim to help them do so effectively and on time. The plans identify challenges which the Member States will face and which need to be taken into account when they prepare to transpose and implement the law. The plans also provide for a wide range of tools to help Member States implement EU laws, such as guidance documents, expert groups and dedicated websites.

In 2016 the Commission prepared an implementation plan to ensure the effective transposition and implementation of three proposals it issued for Directives on passenger ship safety.⁹⁸ The plan lists the actions needed to implement simplification measures and identifies the main technical, legal and time-related implementation challenges.

Regarding support action at EU level, the Commission envisages making extensive use of the existing Passenger Ship Safety Expert Group to develop the implementation measures and facilitate the transposition process. It will also use the expert groups on port State control inspections and the implementation of the National Single Window. A number of specific workshops and correspondence groups will be organised with the assistance of the European Maritime Safety Agency (EMSA) to further develop issues of a more technical nature and provide technical assistance during the transposition period. At Member States' request, EMSA could make visits to identify any transposition difficulties and provide technical assistance where needed.

At national level, Member States will be responsible for coordination between the relevant competent authorities, economic actors such as shipyards, ship-owners and operators, and passenger associations.

The Commission will monitor the use Member States make of the implementation plan.

8.2. Explanatory documents: state of play

The EU institutions and the Member States agreed in 2011 that Member States, when notifying national transposition measures to the Commission, may also have to provide documents explaining how they have transposed directives into their law.⁹⁹ The Commission can ask Member States to submit these 'explanatory documents' in justified cases.¹⁰⁰

Explanatory documents play an essential role in promoting good understanding of national transposition measures. They help to make compliance monitoring easier: without the documents, the Commission would need considerable resources and numerous contacts with national authorities to track the methods of transposition in all Member States. As transposing measures must be merged with a complex existing legal framework, the resulting transposition exercise produces hundreds of measures to be examined.

In 2016, the Commission requested explanatory documents in 20 out of 40 proposals for directives submitted to the European Parliament and the Council. The 37 Directives that the Parliament and the Council adopted during the year included eight for which the Commission had requested explanatory documents. In all eight, the agreed recital on the need for such documents was maintained in the final text.

⁹⁸ Proposal for a Directive on a system of inspections for the safe operation of ro-ro ferry and high-speed passenger craft in regular service [COM\(2016\) 371](#); Proposal for a Directive amending Directive [2009/45/EC](#) on safety rules and standards for passenger ships [COM\(2016\)369](#) and Proposal for a Directive amending Council Directive [98/41/EC](#) on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community [COM\(2016\) 370](#).

⁹⁹ The policy is contained in a (1) Joint Political Declaration of 28 September 2011 between the Commission and the Member States ([OJ 2011/C 369/02](#)) and (2) a Joint Political Declaration of 27 October 2011 between the European Parliament, the Council and the Commission ([OJ 2011/C 369/03](#)).

¹⁰⁰ The standard recital in such directives reads as follows: Member States 'undertake to accompany the notification of transposition measures with one or more explanatory documents, which can take the form of correlation tables or other documents serving the same purpose'. The Commission will have 'to justify on a case by case basis, when submitting the relevant proposals, the need for, and the proportionality of, providing such documents'.

During the year Member States had to transpose 70 Directives.¹⁰¹ They had undertaken to submit explanatory documents for 20 of these. The process of assessing the national measures for these Directives is under way.

Five of the 20 Directives for which the Member States had undertaken to provide explanatory documents in 2016 concern **financial markets**. Member States notified to the Commission the following numbers of explanatory documents:

- 26 for the Mortgage Credit Directive¹⁰² (including 7 correlation tables);
- 13 for the Directive on deposit guarantee schemes¹⁰³ (including 9 correlation tables);
- 12 for the Audit Directive¹⁰⁴ (including 8 correlation tables);
- 19 for the Directive on undertakings for collective investment in transferable securities¹⁰⁵ (including 14 correlation tables); and
- 16 for the Directive on payment accounts¹⁰⁶ (including 5 correlation tables).

In general, Member States send explanatory documents relating to financial markets together with the last document they dispatch when they declare complete transposition, though sometimes they send the explanatory documents later. In most cases the explanatory documents provided are correlation tables, which in general include information on the transposition of the provisions of the Directive and the related national provisions. The quality of the documents submitted varies. In many cases, the correlation table is very schematic and includes only cross-references between the EU legal act (e.g. the Directive on undertakings for collective investment in transferable securities) and the national text. In other cases, the explanatory document also includes the text of the transposition measures and remarks or explanatory notes to further facilitate the transposition check. In three cases, the explanatory documents included both the text of the measures transposing the Audit Directive and the translation into English, as well as some explanation on the interaction between the different transposition measures.

Five of the 20 Directives for which the Member States had undertaken to provide explanatory documents concern the **internal market**. Member States notified to the Commission the following numbers of explanatory documents:

- 37 for the Directive on the recognition of professional qualifications¹⁰⁷ (including 11 correlation tables);
- 14 for the Directive on the award of concession contracts¹⁰⁸ (including 7 correlation tables);
- 32 for the two Public Procurement Directives¹⁰⁹ (including 14 correlation tables); and
- 12 for the Directive on the list of defence-related products¹¹⁰ (including 2 correlation tables).

Three of the 20 Directives are in the field of **employment**. The Commission received 25 explanatory documents for the Directive on health and safety requirements in case of exposure to electromagnetic fields¹¹¹ (including 15 correlation tables), 25 for the Directive on free movement of workers' rights¹¹² (including 9 correlation tables), and 7 for the Directive on working time in inland waterway transport¹¹³

¹⁰¹ For some of these 70 directives, some Member States have a transitional period and some other Member States are not concerned.

¹⁰² Directive [2014/17/EU](#).

¹⁰³ Directive [2014/49/EU](#).

¹⁰⁴ Directive [2014/56/EU](#).

¹⁰⁵ Directive [2014/91/EU](#).

¹⁰⁶ Directive [2014/92/EU](#).

¹⁰⁷ Directive [2013/55/EU](#).

¹⁰⁸ Directive [2014/23/EU](#).

¹⁰⁹ Directives [2014/24/EU](#) and [2014/25/EU](#).

¹¹⁰ Directive [2016/970/EU](#).

¹¹¹ Directive [2013/35/EU](#).

¹¹² Directive [2014/54/EU](#).

¹¹³ Directive [2014/112/EU](#).

(including 2 correlation tables). The quality of the documents received varies substantially. In some rare cases the quality is unsatisfactory, for example in referring only to the law transposing a provision of the Directive and failing to indicate which precise provision of national law transposes a specific provision of the Directive. The process of assessing the national measures for these Directives is under way, so the Commission cannot yet draw definitive conclusions on the quality of the explanatory documents received.

Two of the 20 Directives are in the field of **migration and home affairs**. The Commission received 10 explanatory documents for the Directive on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers¹¹⁴ (including 2 correlation tables). It received 11 for the Directive on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer¹¹⁵ (including 2 correlation tables).

One of the 20 Directives concerns **communication networks**. The Commission received 7 explanatory documents for the Directive on collective management of copyright¹¹⁶ (including 4 correlation tables). This cross-cutting Directive is complex and is often implemented by more than one act and/or by introducing changes to existing legal documents. Consequently, transposition is also complex and the explanatory documents greatly facilitate the Commission's assessment of the national transposition measures.

One of the 20 Directives is in the field of **competition**. The Commission received 7 explanatory documents (including 1 correlation table) for the Damages Directive.¹¹⁷

One of the 20 Directives concerns the **environment** sector. The Commission received 9 explanatory documents for the Directive on the assessment of ambient air quality¹¹⁸ (including 2 correlation tables).

One of the 20 Directives is in the field of **justice and consumers**. The Commission received 10 explanatory documents for the Directive on the right of access to a lawyer in criminal proceedings¹¹⁹ (including 1 correlation table).

One of the 20 Directives concerns **health and food safety**. The Commission received 16 explanatory documents for the Tobacco Directive¹²⁰ (including 10 correlation tables). These take a variety of forms, such as correlation tables, summary reports and explanatory notes.

Overall, in 2016 Member States did not deliver in all cases on their commitment to provide explanatory documents together with the national measures transposing the Directives into their legal order. An initial assessment of the explanatory documents that were submitted indicates that their quality is uneven.

The Commission will continue to report to the Parliament and the Council on explanatory documents in its annual reports on the application of EU law.

¹¹⁴ Directive [2014/36/EU](#).

¹¹⁵ Directive [2014/66/EU](#).

¹¹⁶ Directive [2014/26/EU](#).

¹¹⁷ Directive [2014/104/EU](#).

¹¹⁸ Directive [2015/1480/EU](#).

¹¹⁹ Directive [2013/48/EU](#).

¹²⁰ Directive [2014/40/EU](#).

III. Infringement procedures

There are four main types of infringements of EU law:

- a) **failure to notify:** a Member State does not notify the Commission on time of its measures to transpose a directive;
- b) **non-conformity/non-compliance:** the Commission considers that a Member State's legislation is not in line with the requirements of EU directives;
- c) **infringement of the Treaties, regulations and decisions:** the Commission considers that a Member State's legislation is not in line with the requirements of the Treaties, EU regulations and decisions;
- d) **incorrect/bad application:** EU law is not applied correctly, or not applied at all, by national authorities.

Infringements may be detected by the Commission's own investigations or brought to its attention by complaints or petitions from members of the public, businesses, NGOs or other organisations or by other means. The Commission actively informs complainants of the decisions taken throughout all stages of the procedure.¹²¹

The infringement procedure under Article 258 TFEU is divided into a **pre-litigation phase** and a **litigation phase**.

In the **pre-litigation phase**, the Commission first sends a **letter of formal notice** to the Member State requesting an explanation within a given time limit. If the Member State's reply is unsatisfactory or it does not reply at all, the Commission sends a **reasoned opinion** asking the Member State to comply within a given time limit.

Should the Member State not comply with the reasoned opinion, the Commission may open the **litigation procedure** by bringing the case to the Court of Justice under Article 258 TFEU.

When it brings a case before the Court against a Member State for failing to fulfil its obligations to notify measures transposing a directive adopted under a legislative procedure, the Commission may propose financial penalties under Article 260(3) TFEU.

The Court may agree with the Commission and rule that the Member State has breached its obligations under EU law. If the Court does so but the Member State still does not take the steps needed to comply, the Commission may continue the infringement procedure under Article 260(2) TFEU. This involves referring the Member State to the Court again after sending it a letter of formal notice under Article 260(2) TFEU. In such cases the Commission can propose, and the Court can impose, financial sanctions in the form of a lump sum and/or penalties per day or another specified period.

The Commission regularly publishes information on its decisions on infringement procedures on the Europa portal.¹²²

At the request of national courts, the Court of Justice may also issue preliminary rulings under Article 267 TFEU addressing issues of conformity of national laws with EU legislation. Whilst preliminary rulings are distinct from infringement judgments, they give the Commission an additional opportunity to ensure that violations of EU law deriving from national legislation or its application are remedied. The Commission systematically follows up on preliminary rulings in which the Court identifies non-conformities in national legislation.

¹²¹ Annex to Communication "EU law: Better results through better application" [C\(2016\) 8600](#), OJ C 18, 19 January 2017.

¹²² Commission [decisions on infringements](#).

IV. Before an infringement procedure is started

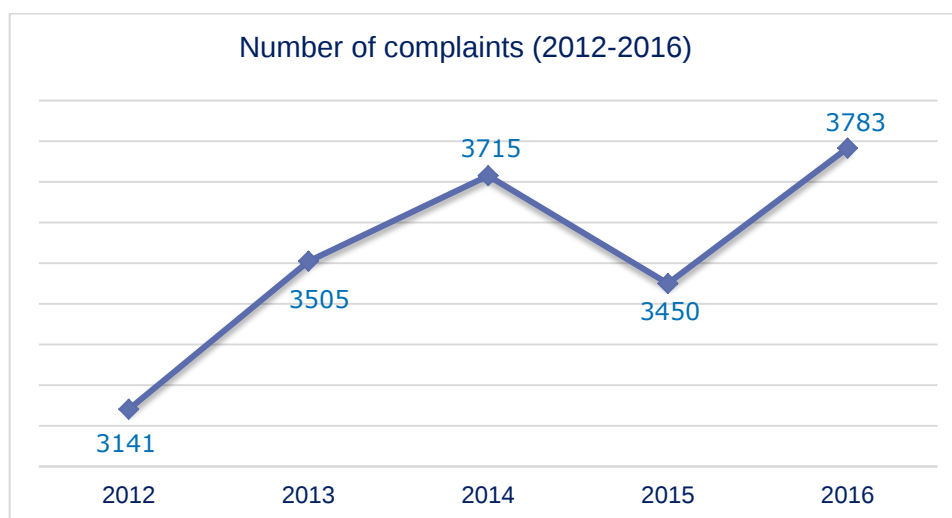
1. Detecting problems

1.1. Own-initiative cases

When examining the implementation of EU law, the Commission opens cases on its own initiative. In 2016 it launched 520 such investigations using the EU Pilot mechanism (EU Pilot is explained in point 2 below), against 578 in 2015.

1.2. Complaints and petitions

The number of new complaints in 2016 is the highest since 2011. In 2015 the number had fallen for the first time since 2011 (by around 9 % against 2014).



The chart below shows further key data on complaints from members of the public:¹²³

Public complaints open at year-end

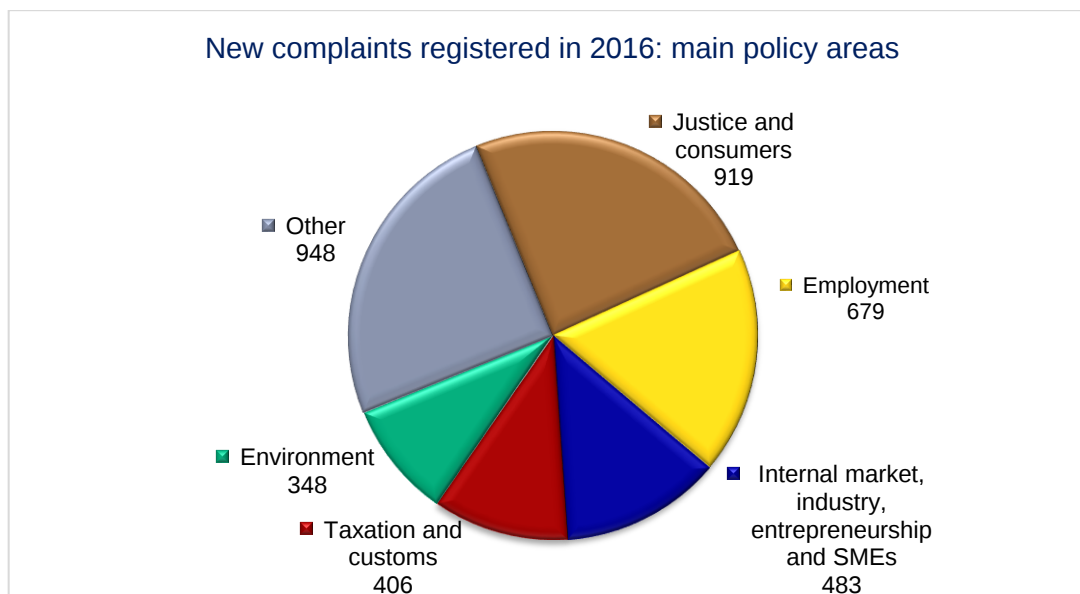
3 098	>	Complaints open at end-2015
3 783	>	New complaints registered in 2016
3 458	>	Complaints handled in 2016
= 3 423	>	Complaints open at end-2016

The Commission registered 3 783 new complaints in 2016. The three Member States against which it filed the most complaints were Italy, Spain and France.

- **Italy:** 753 complaints, most of them related to: employment, social affairs and inclusion (322 complaints); internal market, industry, entrepreneurship and SMEs (129 complaints); and environment (76 complaints);
- **Spain:** 424 complaints, especially in connection with: justice and consumers (149 complaints); employment, social affairs and inclusion (57 complaints); and taxation and customs union (44 complaints); and
- **France:** 325 complaints, mainly related to: mobility and transport (79 complaints); employment, social affairs and inclusion (60 complaints); and justice and consumers (58 complaints).

¹²³ The number of complaints open at end-2016 (d) is calculated by adding together the number of complaint files open at end-2015 (a) and of new complaints opened in 2016 (b), then subtracting the number of complaints handled during 2016 (c) (a+b-c=d).

The following chart shows the five policy areas with the highest number of new complaints. Together they account for 75 % of all complaints made against all Member States in 2016.



The Commission handled 3 458 complaints in 2016. Once it has assessed complaints, the Commission may launch an investigation using the EU Pilot mechanism to clarify whether EU rules have been breached. Not all complaints in 2016 led to such investigations, for the following reasons: no EU laws were breached (2 253), the Commission had no power to act (86) or the correspondence did not qualify as a complaint (667). The Commission did not pursue 20 cases as the complainants withdrew their complaint. These 3 026 complaints have therefore been closed.

Complaints leading to investigations using the EU Pilot mechanism were most frequently related to taxation and customs (68 files opened under EU Pilot), internal market, industry, entrepreneurship and SMEs (48 files opened) and justice and consumers (26 files opened).

These complaints also mainly concerned Spain, France and Italy.

- **Spain:** 34 new EU Pilot files, most of them related to complaints about taxation and customs (7); employment (6); internal market, industry, entrepreneurship and SMEs (5); and mobility and transport (4);
- **France:** 33 new EU Pilot files, especially in connection with complaints about taxation and customs (6); employment (4); internal market, industry, entrepreneurship and SMEs (4); and justice and consumers (4);
- **Italy:** 23 new EU Pilot files, most of them related to complaints about taxation and customs (7); internal market, industry, entrepreneurship and SMEs (6); and employment (5).

Through petitions and questions, the European Parliament alerted the Commission to shortcomings in the way some Member States were implementing and applying certain EU laws in 2016. These include the following:

- **Environment:** The Commission issued a reasoned opinion against one Member State over its non-compliant transposition of the Directive on public access to

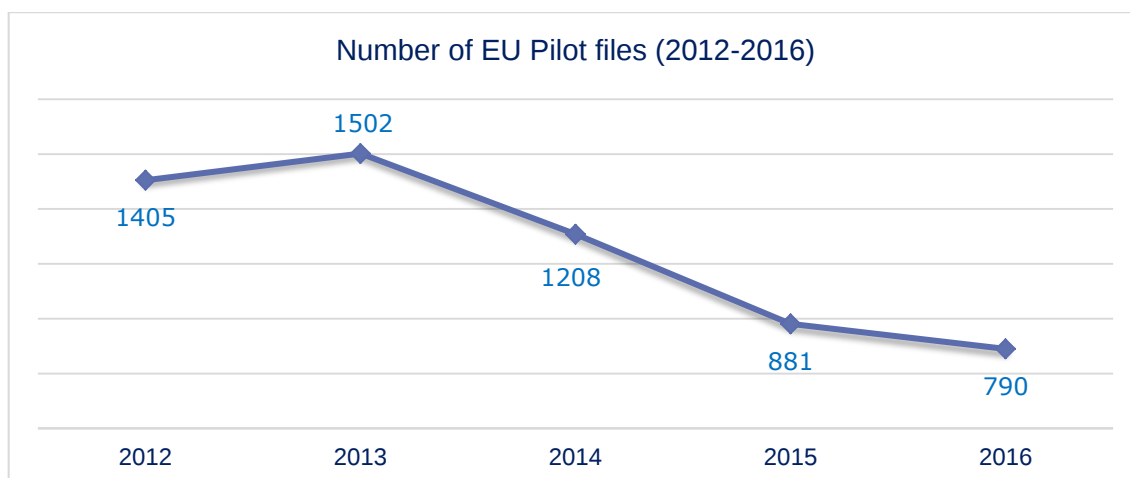
environmental information.¹²⁴ In another case about waste management, the Commission began a bilateral dialogue with the Member States concerned.

- **Justice and consumers:** The Commission launched a bilateral dialogue with a Member State on recognition of married names.
- **Taxation:** In the area of direct taxation, the Commission followed up on a petition on immovable property taxes. It launched bilateral discussions with the Member State concerned on potential discrimination against EU pensioners. In the customs sector, the Commission launched bilateral discussions with some Member States over the duty relief for products for handicapped persons.
- **Internal market:** The Commission launched bilateral discussions with a Member State in a case about compliance with the rules on public procurement.

2. EU Pilot

The EU Pilot dialogue between the Commission and Member States was set up to quickly resolve potential breaches of EU law at an early stage in appropriate cases. It should be avoided that the recourse to EU Pilot adds a lengthy step to the infringement process, which in itself is a means to enter into a problem-solving dialogue with a Member State. In line with the Communication *EU law: Better results through better application*,¹²⁵ the Commission will henceforth launch infringement procedures without relying on the EU Pilot mechanism unless recourse to EU Pilot is seen as useful in a given case.

In 2016, the number of new EU Pilot files reached the lowest level since 2011 (see the chart below).



¹²⁴ Directive [2003/4/EC](#).

¹²⁵ [C\(2016\) 8600](#), OJ C 18, 19 January 2017.

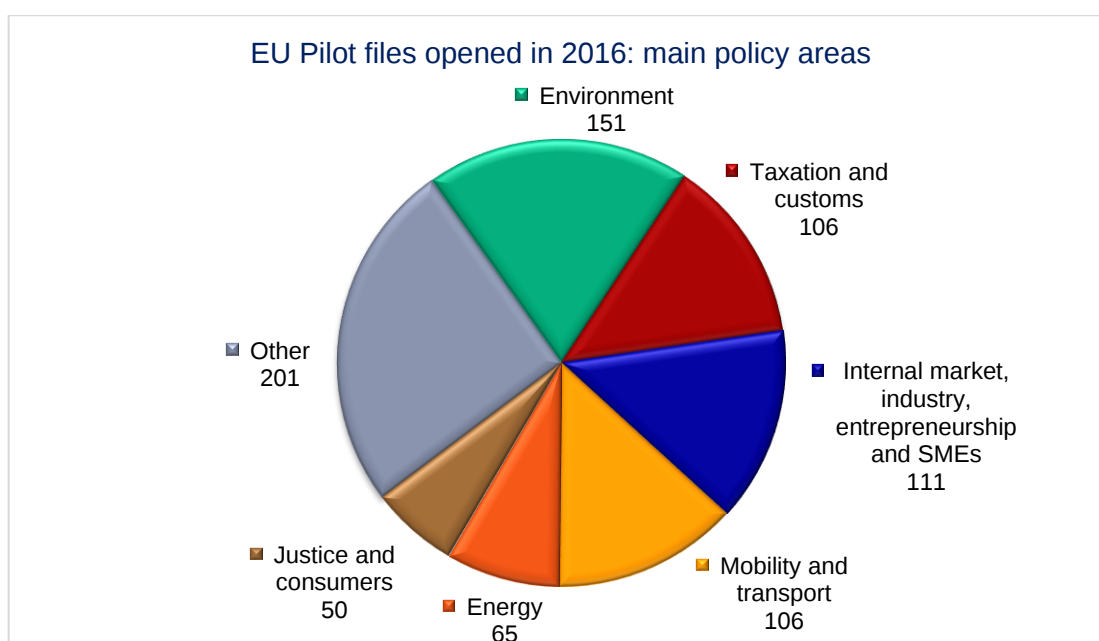
The following chart shows the main EU Pilot figures for 2016:¹²⁶

EU Pilot files open at year-end

1 260	>	EU Pilot files open at end-2015
790	>	New EU Pilot files registered in 2016
875	>	EU Pilot files handled in 2016
= 1 175	>	EU Pilot files open at end-2016

790 new EU Pilot files were opened in 2016. Of these, 270 were triggered by complaints and inquiries and 520 were opened by the Commission on its own initiative.

The following pie chart shows the policy areas in which most new EU Pilot files were opened in 2016:

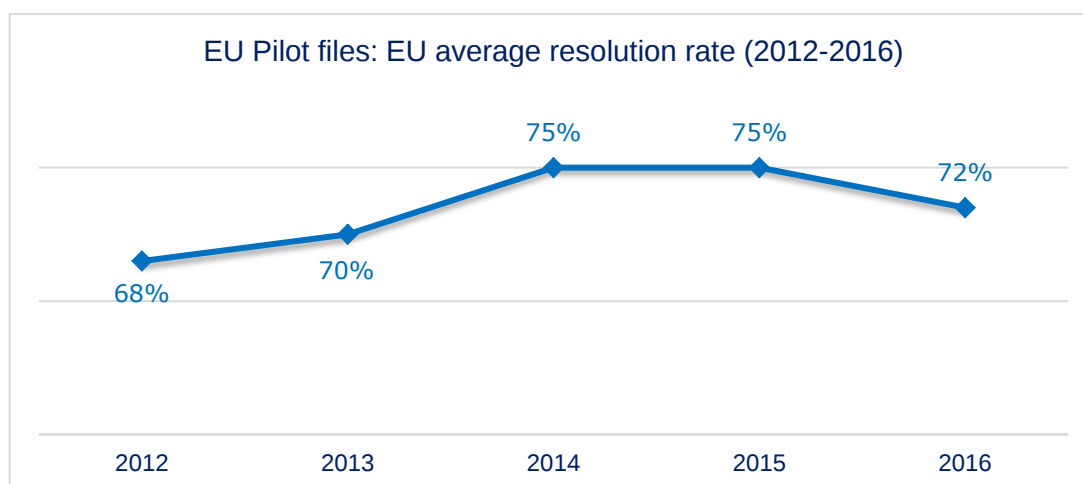


The Commission handled 875 EU Pilot files in 2016. It closed 630 of these after receiving satisfactory answers from the Member States concerned. This gives a resolution rate of **72 %**, which is below the 2015 and 2014 levels.

Altogether, **245 EU Pilot files** were closed because the Commission rejected the responses provided by Member States. Of these, 233 were followed up by launching formal infringement procedures (there were 201 such files in 2015). While 65 of these procedures were based on complaints and inquiries, the Commission launched the remaining 168 at its own initiative.

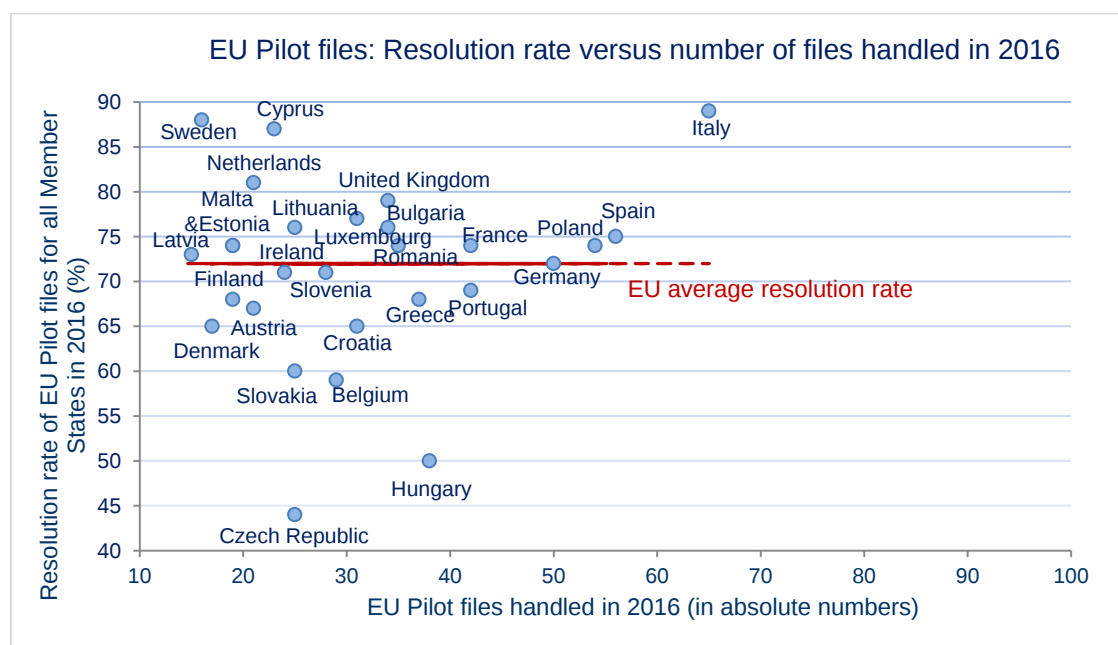
Most EU Pilot files which led to formal infringement procedures concerned the following policy areas: environment (53 cases), internal market, industry, entrepreneurship and SMEs (38), energy (29), and taxation and customs (25). Hungary and Germany had the highest number of files in EU Pilot which were pursued through infringement procedures (at 18 and 14 files each respectively), followed by Spain and Poland (13 files each).

¹²⁶ The number of EU Pilot files open at end-2016 (d) is calculated by adding together the numbers of files open at end-2015 (a) and of new files opened in 2016 (b), then subtracting the number of files handled during 2016 (c) (a+b-c=d).

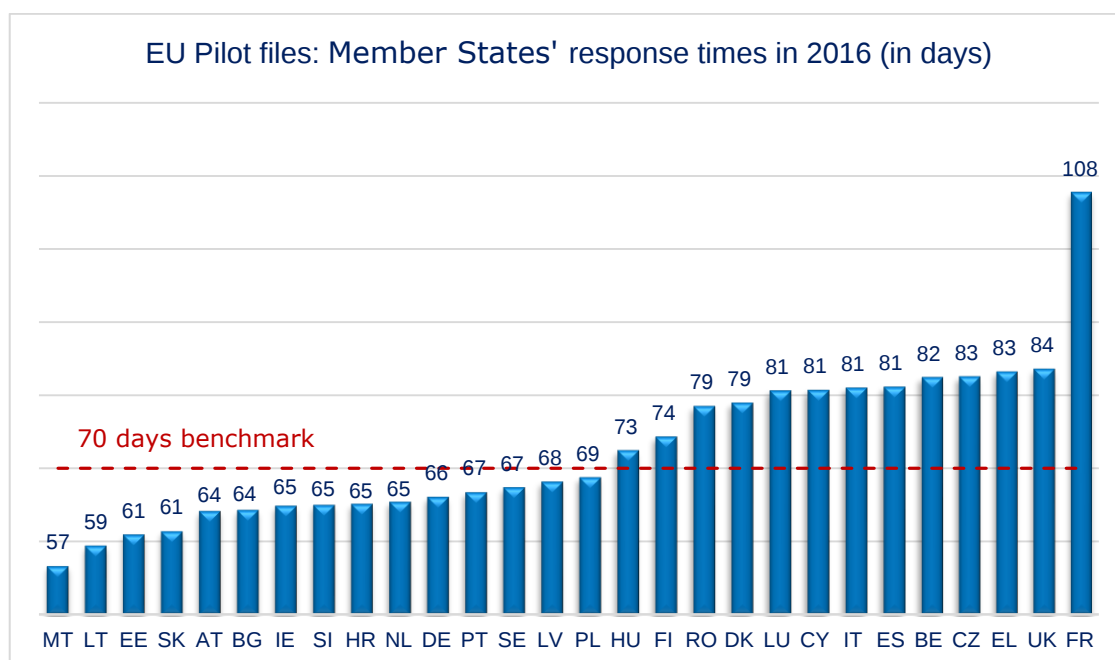


At the end of 2016, 1 175 EU Pilot files were open. The main Member States concerned were Italy (98), Spain (75) and France (73). The environment remained the main policy area affected (295 open files), followed by justice (161) and internal market, industry, entrepreneurship and SMEs (143).

The following chart shows the EU Pilot resolution rate. This is the percentage of files the Commission handled in 2016 that it was able to close without opening an infringement case.



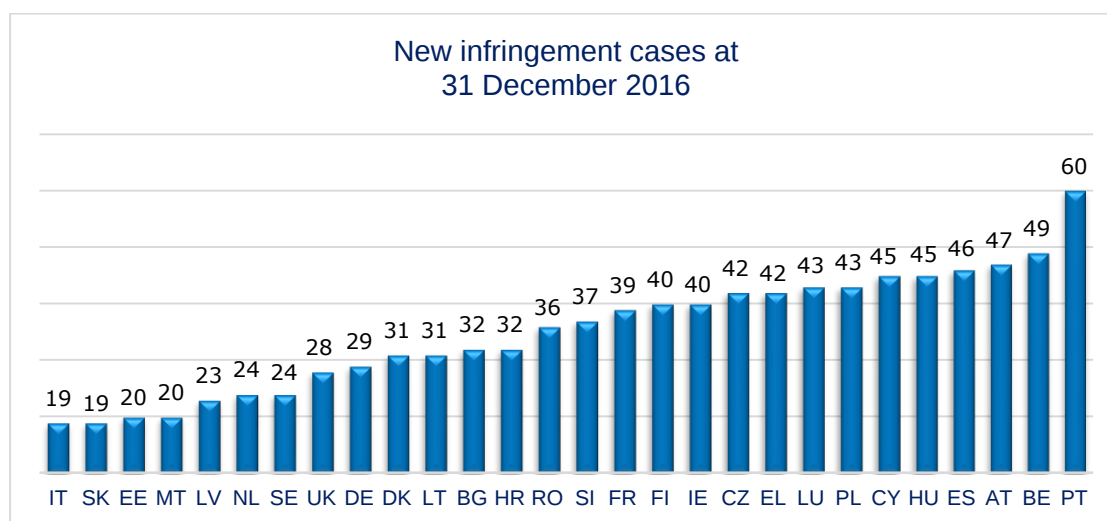
Member States have a standard ten week timeframe (70 days) to respond to the Commission's requests for information on EU Pilot files. The next chart shows how long it took each Member State on average to respond to the Commission's requests in 2016. If the response is not clear or not satisfactory, the Commission may ask for further clarification or may open formal infringement proceedings.



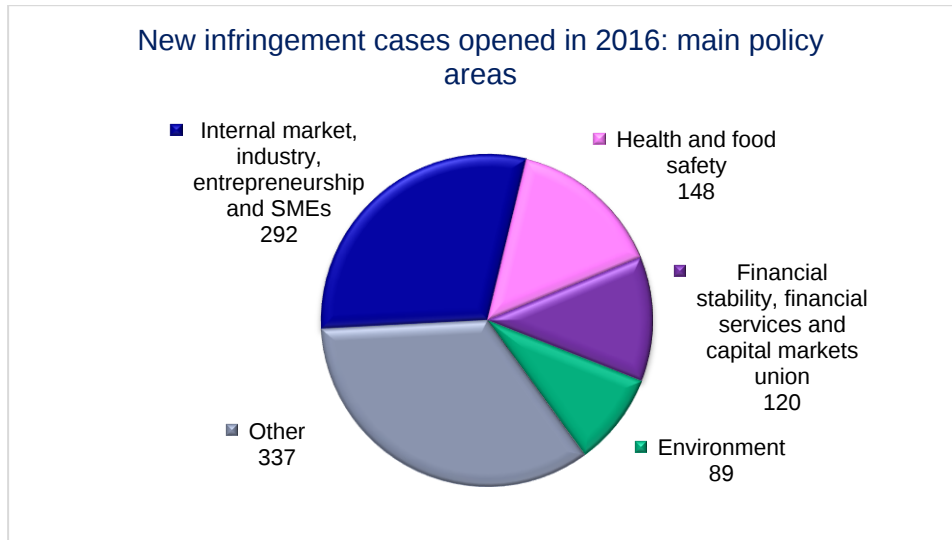
V. Stages in infringement procedures

1. Pre-litigation phase

In 2016, the Commission launched **986** new procedures by sending a letter of formal notice. The following chart gives the breakdown by Member State.

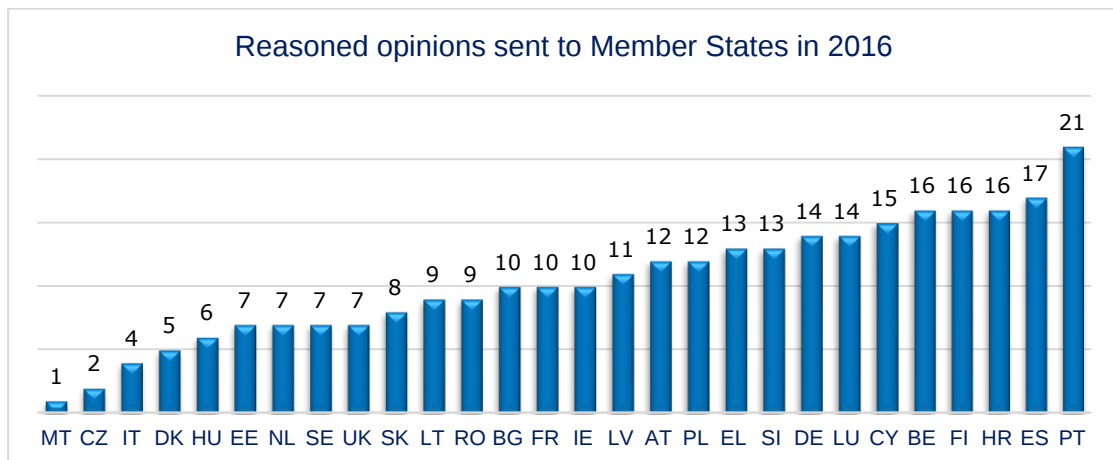


The following chart shows the main policy areas in which new procedures were opened.

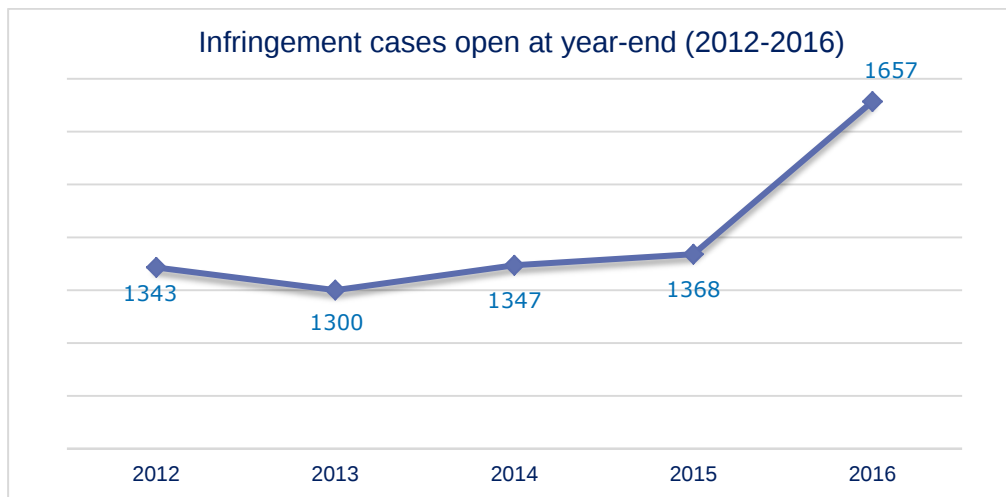


The Commission also sent 292 reasoned opinions to Member States in 2016. The main policy areas concerned were internal market (92), mobility and transport (42), financial services (37) and environment (33).

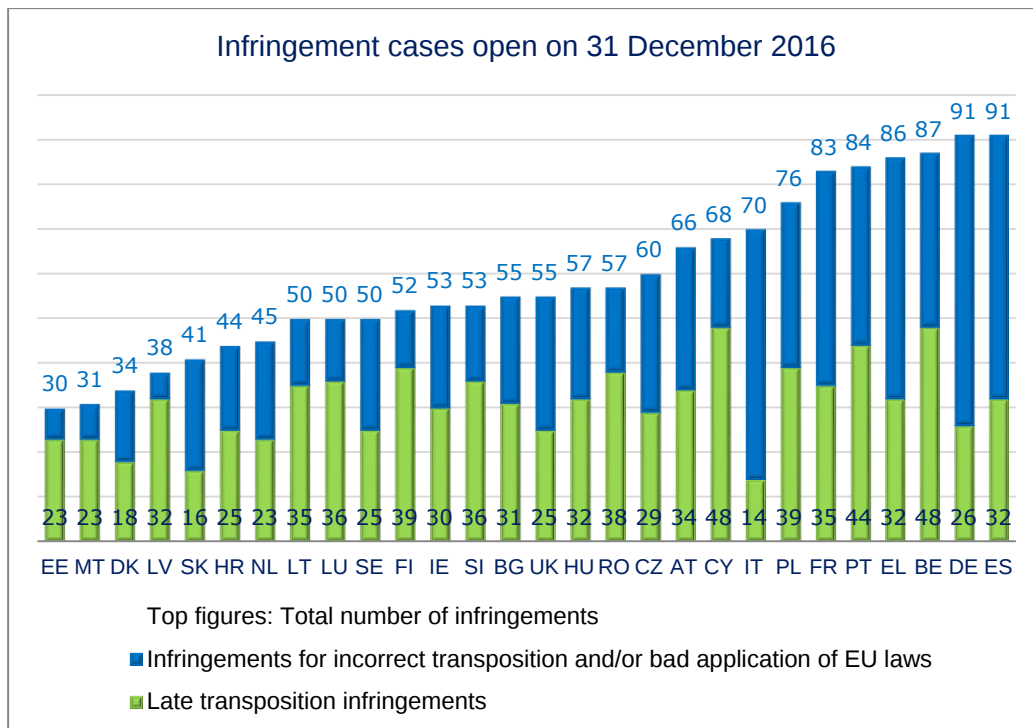
The following chart gives the breakdown by Member State.



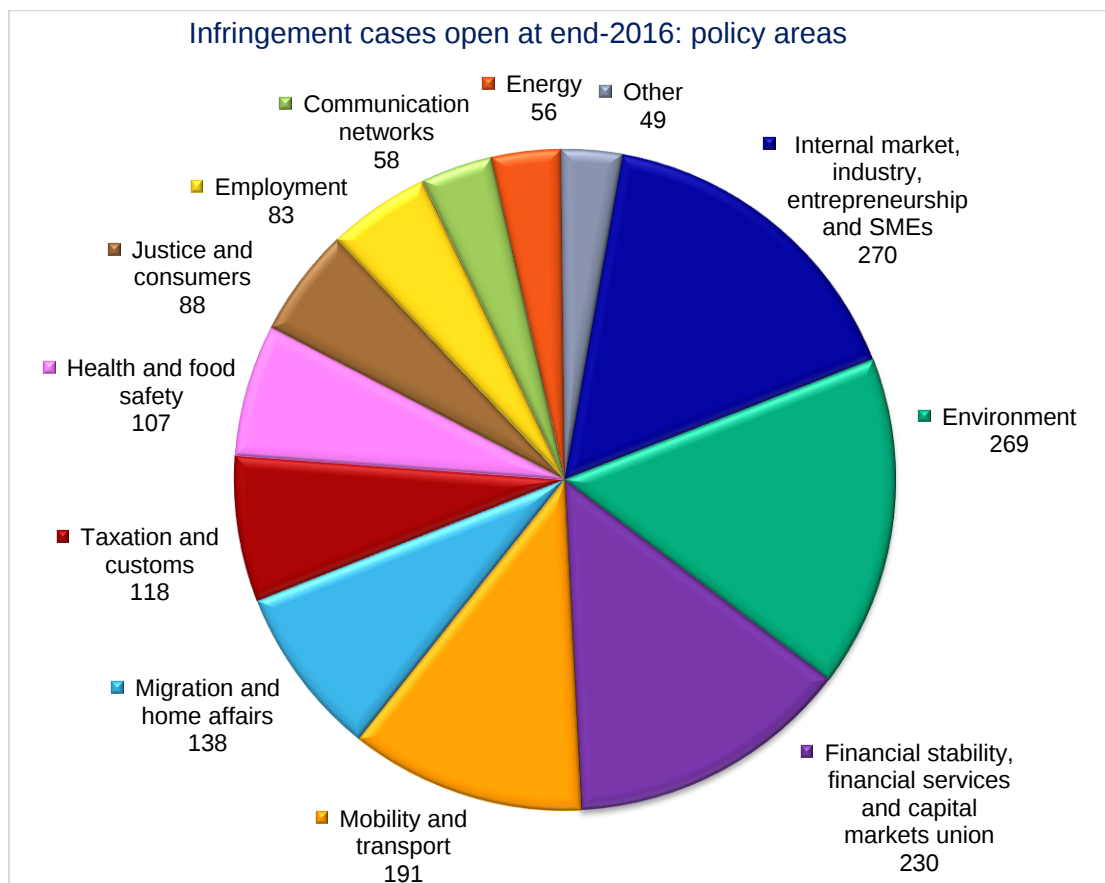
At the end of 2016, **1 657** infringement cases remained open. This is a considerable increase from the previous year and higher than all previous years, as the following chart shows.



The following chart shows the number of open infringement cases by Member State at the end of 2016:



The following chart shows the breakdown of the infringement cases open at the end of 2016, by policy area:



Even after it has launched an infringement procedure, the Commission continues its dialogue with the Member State in order to seek compliance. Statistics confirm that Member States make serious efforts to settle their infringements before the Court hands down its ruling.¹²⁷

In 2016, the Commission closed:

- 520 infringements after sending letters of formal notice;
 - 126 cases after sending reasoned opinions; and
 - 18 cases after deciding to refer the case to the Court but before submitting the application.
- In addition, the Commission withdrew 9 cases from the Court before the latter handed down its ruling.

2. Judgments of the Court of Justice under Articles 258 and 260(2) TFEU

In 2016 the Court gave 28 judgments under Article 258 TFEU, of which 23 were in the Commission's favour. The Court delivered the most judgments against:

- Portugal (4, all in the Commission's favour);
- Greece (3, all in the Commission's favour);
- Spain (3, all in the Commission's favour);
- United Kingdom (2, one of them in the United Kingdom's favour);

¹²⁷ The figures that follow were calculated for all infringement cases irrespective of origin (i.e. complaint, own initiative by the Commission or late transposition of directives by Member States).

- The Netherlands (2, one of them in the Netherlands' favour);
- Poland (2, both in the Commission's favour);
- Austria (1, in Austria's favour);
- Belgium (1, in the Commission's favour);
- Bulgaria (1, in the Commission's favour);
- Cyprus (1, in the Commission's favour);
- Czech Republic (1, in the Commission's favour);
- Germany (1, in the Commission's favour);
- France (1, in the Commission's favour);
- Hungary (1, in the Commission's favour);
- Italy (1, in the Commission's favour);
- Luxembourg (1, in the Commission's favour);
- Malta (1, in Malta's favour); and
- Romania (1, in the Commission's favour).

Portugal (4), Greece (3) and Spain (3) were the subject of the most Court judgments under Article 258 TFEU in 2016.

Member States frequently take the measures needed to comply with a Court judgment promptly. However, at the end of the year 95 infringement procedures were still open after a Court ruling because the Commission considered that the Member States concerned had not yet complied with judgments under Article 258 TFEU. The main Member States concerned were Greece (14), Spain (8), Germany and Italy (both 7). The cases mainly related to the environment (37), transport and mobility (13), taxation and customs (9), and the internal market (8).

Of these 95 cases, 3 had already been referred to the Court for the second time. When the Court imposes financial penalties under Article 260(2) TFEU, the defaulting Member State must pay the lump sum immediately and continue to pay the periodic penalty until it complies fully with the first and second Court judgments. In 2016, the Court delivered 2 judgments under Article 260(2) TFEU. It imposed penalty payments on Greece¹²⁸ and Portugal.¹²⁹ At the end of 2016, 10 infringement procedures were still open after a Court ruling under Article 260(2) TFEU.

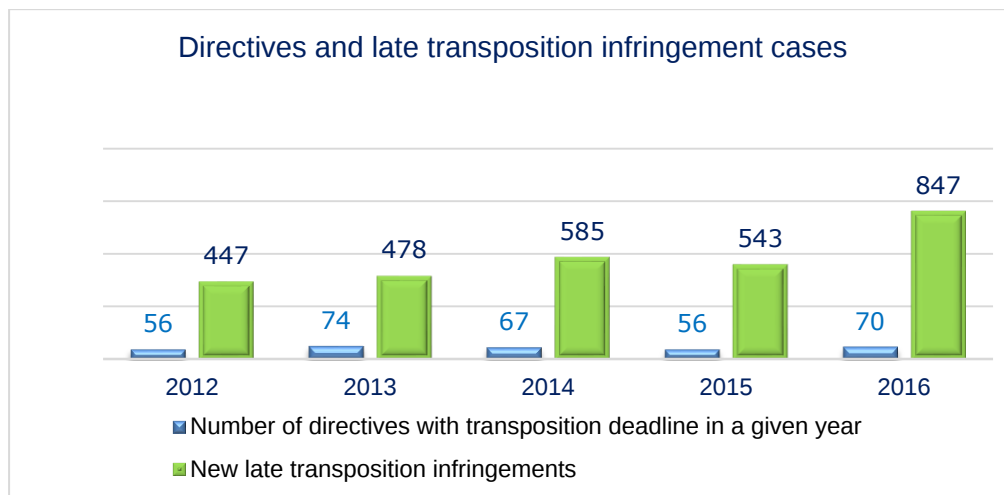
¹²⁸ Commission v Greece, [C-584/14](#) (lump sum payment of EUR 10 million; penalty: EUR 30 000 for each day of delay adopting the measures necessary to comply with the judgment under Article 258 TFEU).

¹²⁹ Commission v Portugal, [C-557/14](#) (lump sum payment of EUR 3 million; penalty: EUR 8 000 for each day of delay in implementing the measures necessary to comply with the judgment under Article 258 TFEU).

VI. Transposition of directives

1. Late transposition

Combating late transposition is a long-established priority for the Commission. The Commission therefore proposes financial sanctions whenever it refers a Member State to the Court of Justice under Articles 258 and 260(3) TFEU for not having communicated on time its measures to transpose a directive adopted under a legislative procedure (see details in subsection VI.2).



There were 70 directives to transpose in 2016, up from 56 in 2015. **New late transposition infringements increased sharply, to 847** from 543.

At the end of 2016, **868 late transposition infringement cases were still open**, a 67.5 % increase from the 518 cases open at the end of 2015.

Late transposition infringement cases open at year-end

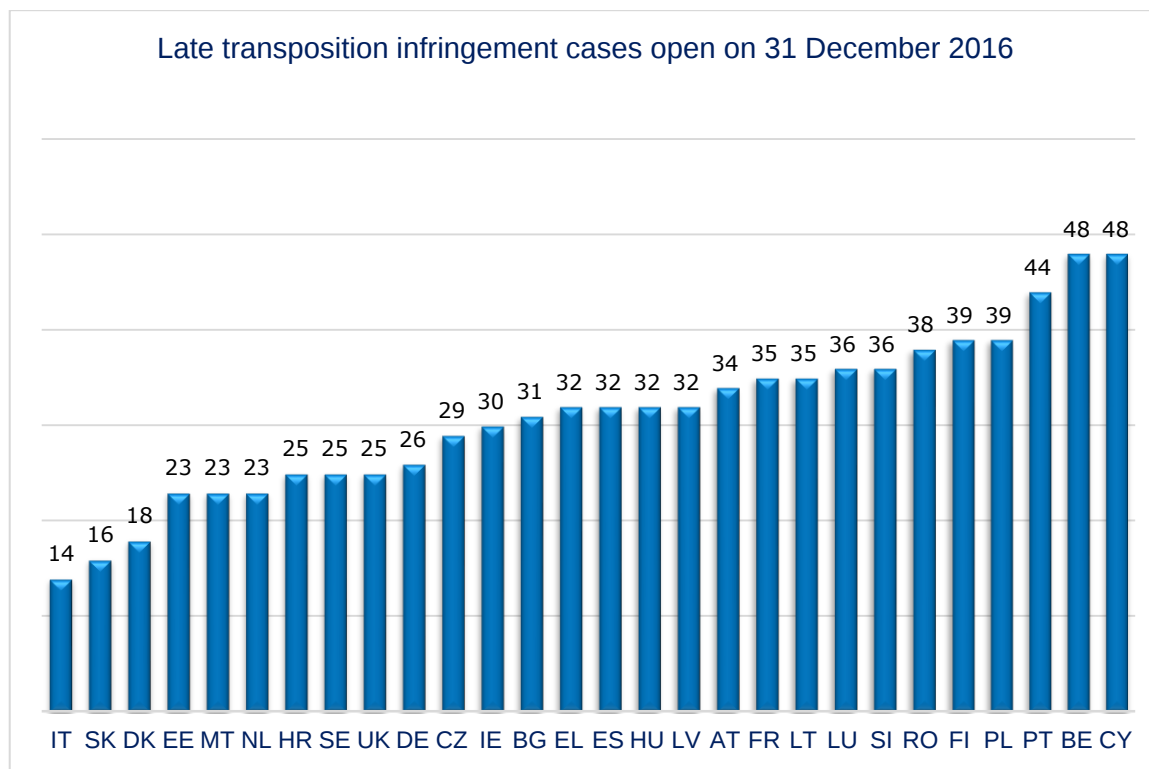
518 > Late transposition cases open at end-2015

847 > New late transposition cases registered in 2016

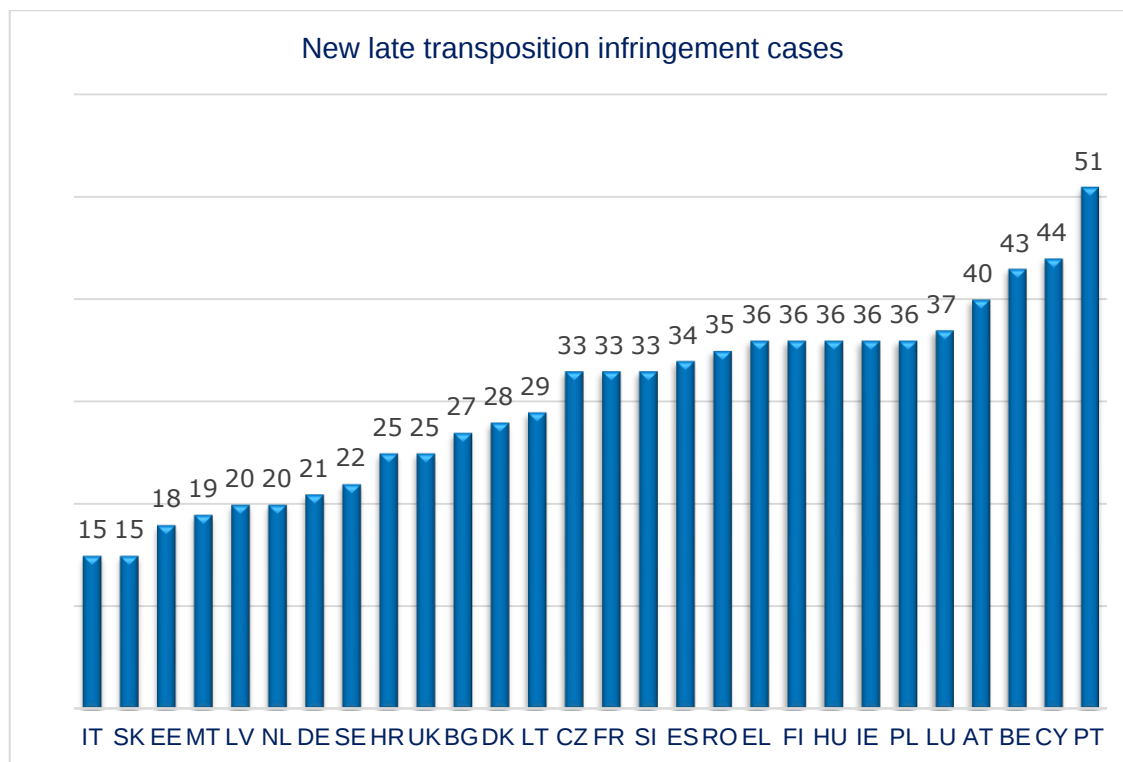
498 > Late transposition cases closed in 2016

= 868 > Late transposition cases open at end-2016

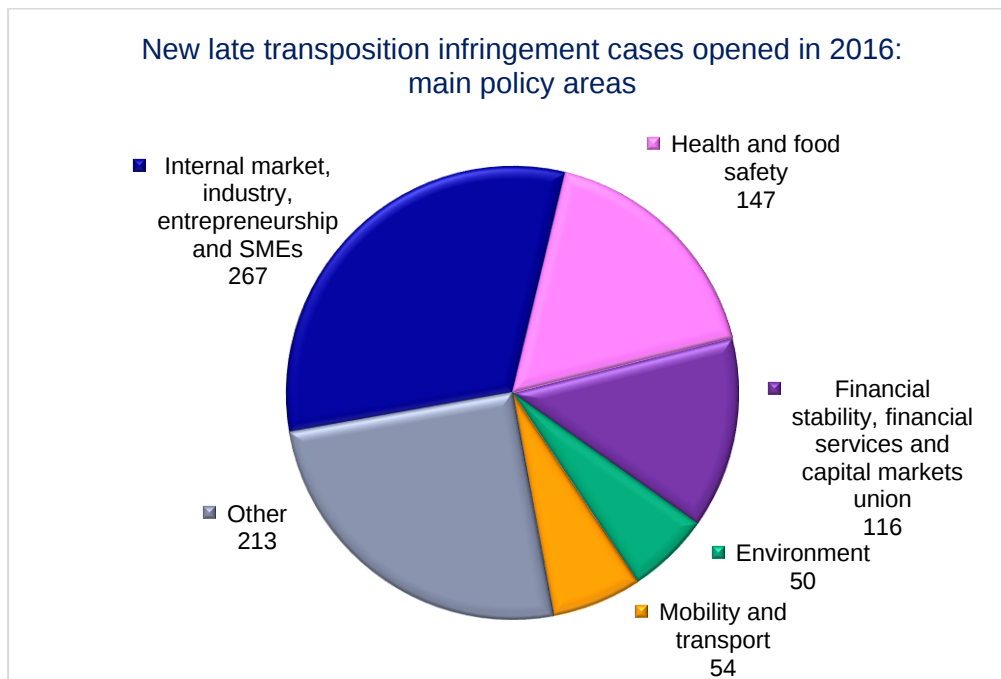
The following chart shows the number of late transposition infringement cases open at the end of 2016 by Member State, irrespective of the year in which the case was opened.



The next chart shows new late transposition infringement cases (**847** in total) opened in 2016, by Member State.



The policy areas in which the new cases were launched in 2016 are shown in the following chart:



New cases were launched against 27 Member States for late transposition of the Directive on measures to reduce the cost of deploying high-speed electronic communications networks.¹³⁰ In addition, 26 Member States were involved in cases of late transposition of the Directives on human tissues and cells.¹³¹ The Commission launched 23 procedures over late transposition of the Directive on collective management of copyright and related rights.¹³²

2. Referrals to the Court of Justice under Article 258/260(3) TFEU

Under Article 260(3) TFEU, the Commission may propose financial penalties even when referring a case for the first time to the Court of Justice under Article 258 TFEU for failure to fully transpose a legislative Directive. This innovation, introduced in the Treaty of Lisbon, aims to give Member States a greater incentive to transpose directives on time. The Commission decides on the level of financial penalties to propose in line with the policy laid down in its Communication on the implementation of Article 260(3) TFEU.¹³³ In its Communication on enforcement policy: *EU law: Better results through better application*,¹³⁴ the Commission announced that for infringement cases launched after its publication, it would systematically ask the Court to impose a lump sum as well as a periodic penalty payment.

In 2016, the Commission continued to bring late transposition infringement cases to the Court of Justice with a request for daily penalties under Article 260(3) TFEU. It referred 2 Member States to the Court in 2016: Luxembourg (2 cases)¹³⁵ and Romania (1 case).¹³⁶ In another 4

¹³⁰ Directive [2014/61/EU](#).

¹³¹ Directives [2015/565/EU](#) and [2015/566/EU](#).

¹³² Directive [2014/26/EU](#).

¹³³ [OJ C 12](#), 15.1.2011, p. 1-5.

¹³⁴ C(2016) 8600, [OJ C 18](#), 19 January 2017.

¹³⁵ Commission v Luxembourg, [C-489/16](#). The Commission referred Luxembourg to the Court for failing to fully implement the Single European Railway Area Directive. It proposed a daily penalty of EUR 8 710; Commission v Luxembourg, [C-511/16](#). The Commission referred Luxembourg to the Court for failing to fully implement the Directive [2014/27/EU](#) in order to align it to Regulation (EC) No [1272/2008](#) on the classification, labelling and packaging of substances and mixtures. It proposed a daily penalty of EUR 8 710.

¹³⁶ Commission v Romania, [C-62/156](#). The Commission referred Romania to the Court for failing to fully implement the Directive on sulphur content of marine fuels. It proposed a daily penalty of EUR 38 042.60.

cases the Commission took a decision for referral but the Member States adopted the transposition measures before the application was sent to Court and thus avoided the Court procedure. These cases concerned late transposition of the Single European Railway Area Directive (Greece),¹³⁷ the Banking Recovery and Resolution Directive¹³⁸ (Romania and Czech Republic) and the Over-Reliance on Credit Ratings Directive¹³⁹ (Luxembourg).

In 2016, Member States increased their efforts to complete transposition before the Court of Justice delivered its judgments. However, 5 cases with a proposal for daily penalties remained open: 1 case each against Belgium, the Netherlands, Poland, Romania and Sweden.

Romania subsequently adopted the necessary legislative measures and the Commission therefore withdrew this case from the Court.

¹³⁷ Directive [2012/34/EU](#).

¹³⁸ Directive 2014/59/EU.

¹³⁹ Directive 2013/14/EU.

VII. Conclusions

The high number of infringement procedures, which in 2016 rose to a five-year peak, remains a serious concern. Failure to ensure timely and correct transposition of EU legislation ultimately deprives citizens and businesses of their benefits under EU law. The Commission therefore attaches great importance to ensuring the effective application of the law.

The task of applying, implementing and enforcing EU legislation is shared by the EU and the Member States. The Commission will continue to provide the Member States with the support and assistance they need during the implementation phase. In line with the Communication *EU law: Better results through better application*, the Commission will focus its efforts on problems where enforcement action can make a real difference. At the same time, it will strengthen its response when pursuing breaches of EU law through infringement procedures. To ensure swifter compliance and to be able to deliver on its policy priorities, the Commission will henceforth launch infringement procedures without relying on the EU Pilot mechanism, unless recourse to EU Pilot is seen as useful in a given case. The Commission has also reinforced the sanctions regime under Article 260(3) TFEU for when Member States fail to communicate on time their measures transposing a directive adopted under a legislative procedure.

This more strategic approach to enforcement, combined with timely and effective Commission action, aims at ensuring better application of EU law for the benefit of all.

METHODOLOGY AND EXPLANATIONS

I. Annual report

1. Detecting problems

First chart: Number of complaints (2012-2016)

This shows the total number of complaints the Commission registered for the years 2012-2016.

Second chart: Public complaints open at year-end

This starts with the number of open complaints carried over from 2015 (first column). The second column shows the number of new complaints registered in 2016. The third column shows the number of complaints on which the Commission took a decision in 2016. The fourth column shows the number of complaints open at the end of 2016 (calculated by taking the first figure, adding the second and subtracting the third).

Third chart: New complaints registered in 2016: main policy areas¹⁴⁰

This shows the main policy areas in which the new complaints were registered in 2016.

2. EU Pilot

First chart: Number of EU Pilot files (2012-2016)

This shows the total number of EU Pilot files the Commission opened in the years 2012-2016.

Second chart: EU Pilot files open at year-end

This starts with the number of open EU Pilot files carried over from 2015 (first column). The second column shows the number of new EU Pilot files opened in 2016. The third column shows the number of files on which the Commission took a decision in 2016. The fourth column shows the number of EU Pilot files open at the end of 2016 (calculated by taking the first figure, adding the second and subtracting the third).

Third chart: EU Pilot files opened in 2016: main policy areas

This shows the policy areas in which the new EU Pilot files were opened in 2016.

Fourth chart: EU Pilot files: EU average resolution rate (2012-2016)

This shows the total number of EU Pilot files the Commission closed in the past 4 years without opening an infringement case.

Fifth chart: EU Pilot files: Resolution rate versus number of files handled in 2016

This shows the EU Pilot resolution rate, i.e. the percentage of files the Commission handled in 2016 that it was able to close without opening an infringement case.

¹⁴⁰ The data on policy areas referred to in the main report and in the sections on the Member States is based on information available in the European Commission's infringements central database. The policy areas are referred to as follows: agriculture and rural development; budget; climate action; communication networks, content and technology; competition; education and culture; economic and financial affairs; financial stability and capital markets union; neighbourhood and enlargement negotiations; employment; energy; environment; migration and home affairs; justice and consumers; maritime affairs and fisheries; internal market, industry, entrepreneurship and SMEs; mobility and transport; regional policy; health and food safety; taxation and customs; trade.

Sixth chart: EU Pilot files: Member States' response times in 2016 (in days)

This shows each Member State's average response time in EU Pilot in 2016.

3. Infringement procedures

First chart: New infringement cases at 31 December 2016

This shows the number of new infringement cases opened in 2016, by Member State.

Second chart: New infringement cases opened in 2016: main policy areas

This shows the main policy areas in which the new infringement cases were opened in 2016.

Third chart: Reasoned opinions sent to Member States in 2016

This shows the number of reasoned opinions sent to Member States in 2016.

Fourth chart: Infringement cases open at year-end (2012-2016)

This shows the number of infringements that remained open on 31 December of each year from 2012 to 2016.

Fifth: chart: Infringement cases open on 31 December 2016

These figures show all procedures that the Commission has started against each Member State by sending a letter of formal notice under Article 258 TFEU. It covers letters sent in 2016 or before, irrespective of the stages the cases have reached. Only cases which have not yet been closed by a formal decision are shown. For each Member State, the chart distinguishes between infringements for incorrect transposition and/or bad application of EU law, on the one hand, and late transposition infringements, on the other.

Accordingly, the numbers include all cases that, on 31 December 2016:

- were in the pre-litigation phase (letter of formal notice, reasoned opinion or decision on referral to the Court under Article 258 TFEU);

- were pending before the Court under Article 258 TFEU or Article 260(3) TFEU;

- the Court had ruled on but where the Commission could not yet confirm that the Member State had implemented the judgment correctly;

- were in the second pre-litigation procedure (letter of formal notice or referral decision under Article 260(2) TFEU);

- were pending before the Court due to a second referral; or

- the Court had ruled on for the second time but where the Commission could not yet confirm that the Member State had implemented the second judgment correctly.

This figure does *not* include, for example, open EU Pilot files. It also does not include EU Pilot files for which the Commission rejected the Member State's response but had not yet sent a letter of formal notice under Article 258 TFEU.

Sixth chart: Infringement cases open at end-2016: policy areas

This shows the breakdown, by policy area, of the infringement cases open on 31 December 2016.

4. Transposition of directives

First chart: Directives and late transposition infringement cases

This shows how many directives had to be transposed in the years 2012-2016 and how many new infringement cases for late transposition were opened in that period.

Second chart: Late transposition infringement cases open at year-end

This starts with the number of late transposition infringements carried over from 2015 (first column). The second column shows the number of new late transposition infringements registered in 2016. The third column shows the number of complaints on which the Commission took a decision in 2016. The fourth column shows the number of late transposition infringements open at the end of 2016 (calculated by taking the first figure, adding the second and subtracting the third).

Third chart: Late transposition infringement cases open on 31 December 2016

This shows the number of late transposition infringements open on 31 December 2016 by Member State, irrespective of the year in which the infringement was opened.

Fourth chart: New late transposition infringement cases

This figure shows the number of letters of formal notice addressed to each Member State under Article 258 TFEU for missing or partial notifications of national transposition measures in 2016. This figure is already included in the total number of new infringement cases initiated against the Member State in 2016, so it should *not* be added to the figure shown in the first chart of the general statistics section.

Please note that not all of these new infringement cases for late transposition were necessarily still open on 31 December 2016. For example, if the Commission opened a late transposition infringement procedure in March 2016 by sending a letter of formal notice, this would be added to the new infringement cases even if the Commission closed the case in October 2016 as a result of the Member State notifying complete transposition.

Fifth chart: New late transposition infringement cases opened in 2016: main policy areas

This shows the main policy areas in which the procedures for late transposition were launched in 2016.