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**COMMISSION STAFF WORKING DOCUMENT**

**Part II: Policy areas**

*Accompanying the document*

**Report from the Commission**

**Monitoring the application of European Union law  
2018 Annual Report**

{COM(2019) 319 final} - {SWD(2019) 285 final} - {SWD(2019) 287 final}

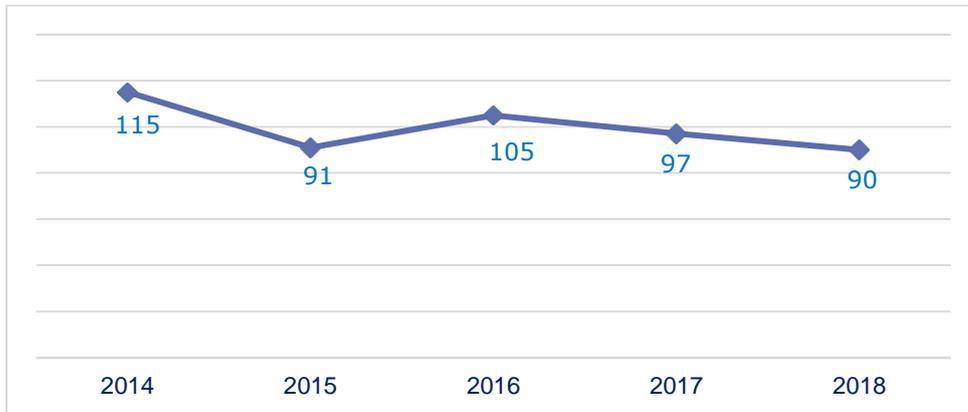
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This document provides an overview of the policy areas in which the most significant developments related to infringements of EU law took place in 2018.

Agriculture and rural development

I. COMPLAINTS

1. New complaints received from members of the public (2014-2018)



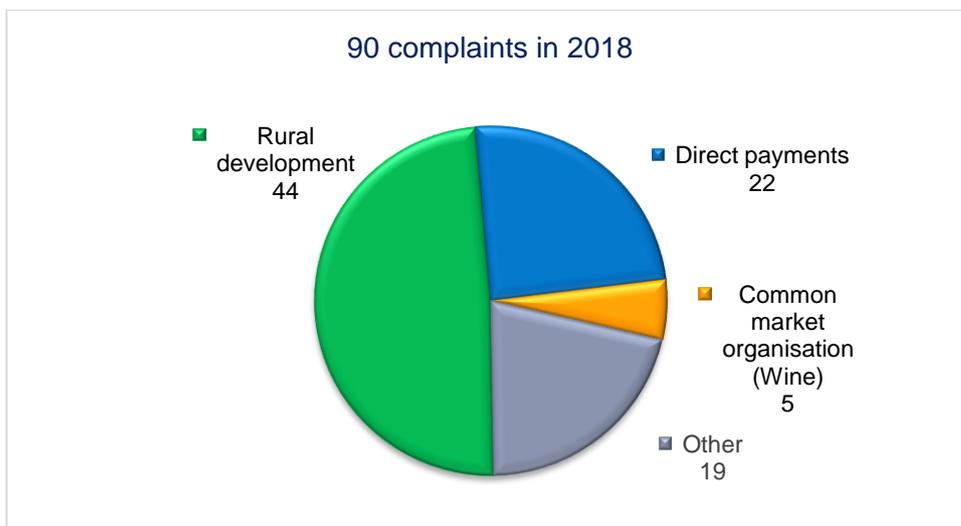
2. Public complaints open at year-end

40 > Complaints open at end-2017  
90 > New complaints registered in 2018  
85 > Complaints handled in 2018  

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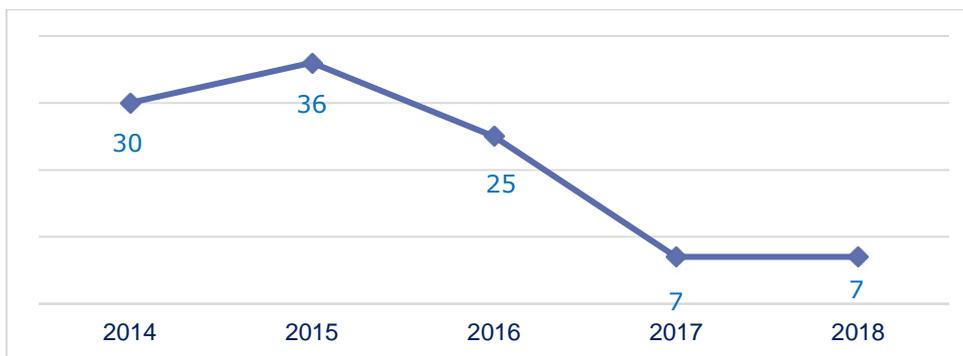
**= 45** > Complaints open at end-2018

3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

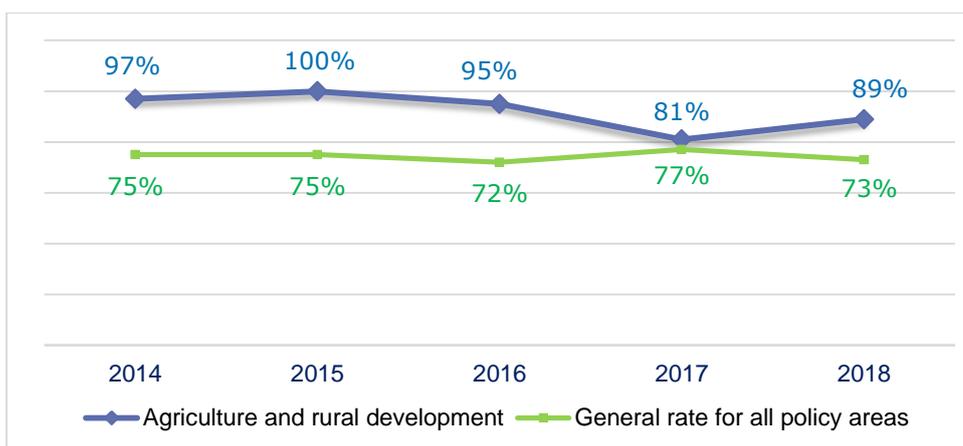
### 1. New EU Pilot files (2014-2018)



### 2. EU Pilot files open at year-end

At the end of 2018, 13 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2014-2018)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2018, the Commission opened own-initiative infringement cases for non-compliance with the rules on geographical indications.

## IV. INFRINGEMENT CASES

### Key infringement cases and referrals to the Court

- a) The Commission opened two new infringement cases in 2018. These concern:
- *Bulgaria*: maintaining a national framework on geographical indications, which is not compatible with the EU rules on quality schemes for agricultural products and foodstuffs<sup>1</sup>;
  - *Denmark*: unlawful use of the protected designation of origin 'Feta', in violation of the EU rules on quality schemes for agricultural products and foodstuffs<sup>2</sup>.

<sup>1</sup> Regulation (EU) No [1151/2012](#), [MEMO/18/349](#).

- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

## V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2018.

These concerned:

- *Cyprus, Italy and United Kingdom*: non-communication of national measures transposing the Directive on caseins and caseinates<sup>3</sup>.

## VI. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>4</sup>

The Court gave the following ruling:

- *Italy* failed to recover milk surplus levies from Italian milk producers which exceeded their production quotas for the marketing years from 1995/1996 to 2008/2009<sup>5</sup>.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *France*: Under the EU rules on the common organisation of the market in wine, the fact that an on-the-spot check can be carried out unannounced means at the very most that it can take place at any time, without the control official having given notice of his visit. However, officials carrying out on-the-spot checks cannot enter agricultural land without having obtained the vine grower's permission<sup>6</sup>.
- *Germany*: The case concerns the requirement to package a product covered by a protected geographical indication, such as 'Schwarzwälder Schinken' ham, only in its geographical area of production. The Court ruled that this requirement is compatible with EU law, despite its restrictive effects on trade, if it is shown to be necessary and proportionate to safeguard the quality of the product at issue, guarantee its origin or ensure the control of the specification of that protected geographical indication<sup>7</sup>.
- *Spain*: Spain's national legislation may limit the sales designation 'ibérico de cebo' to pork products complying with certain conditions imposed by that legislation. This is because it permits the importation and marketing of products from other Member States under the designations they bear pursuant to the rules of the Member State of origin, even if they are similar, comparable or identical to the designations provided for in the respective national legislation<sup>8</sup>.

## VII. OUTLOOK

Important implementation work in 2019 includes:

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<sup>2</sup> Regulation (EU) No [1151/2012](#), [MEMO/18/349](#).

<sup>3</sup> Directive [2015/2203/EU](#).

<sup>4</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>5</sup> Commission v Italy, [C-433/15](#).

<sup>6</sup> SCI Château du Grand Bois, [C-59/17](#).

<sup>7</sup> S, [C-367/17](#).

<sup>8</sup> Asociación Nacional de Productores de Ganado Porcino, [C-169/17](#).

Agriculture and rural development

- focusing on infringements that either challenge the application of the mechanisms of the common market organisation<sup>9</sup> or affect the correct application of the direct payments regime<sup>10</sup>;
- monitoring compliance with recent rulings of the Court of Justice;
- continuing to make use of the clearance of accounts procedure in the agricultural sector to convince Member States to adapt their management and control systems if an infringement is detected through conformity audit mechanisms.

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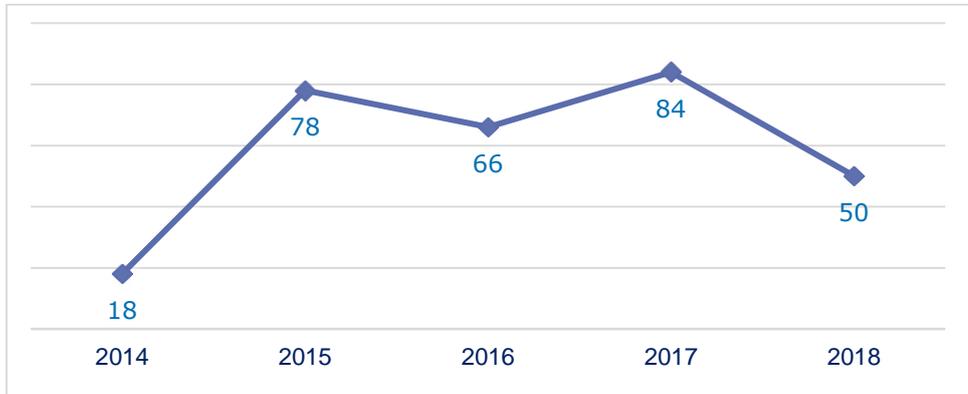
<sup>9</sup> Regulation (EU) No [1308/2013](#).

<sup>10</sup> Regulation (EU) No [1307/2013](#).

Communications networks, content and technology

I. COMPLAINTS

1. New complaints received from members of the public (2014-2018)



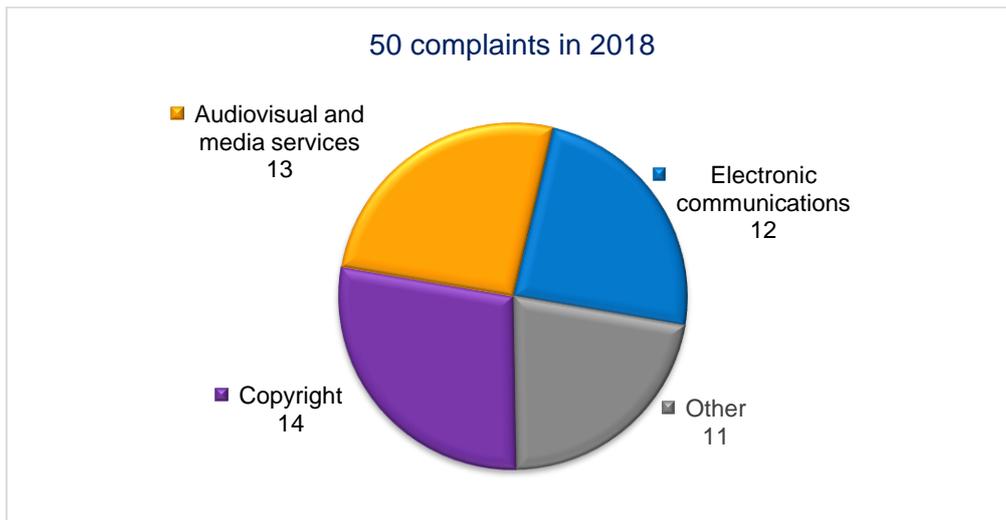
2. Public complaints open at year-end

105 > Complaints open at end-2017  
50 > New complaints registered in 2018  
39 > Complaints handled in 2018  

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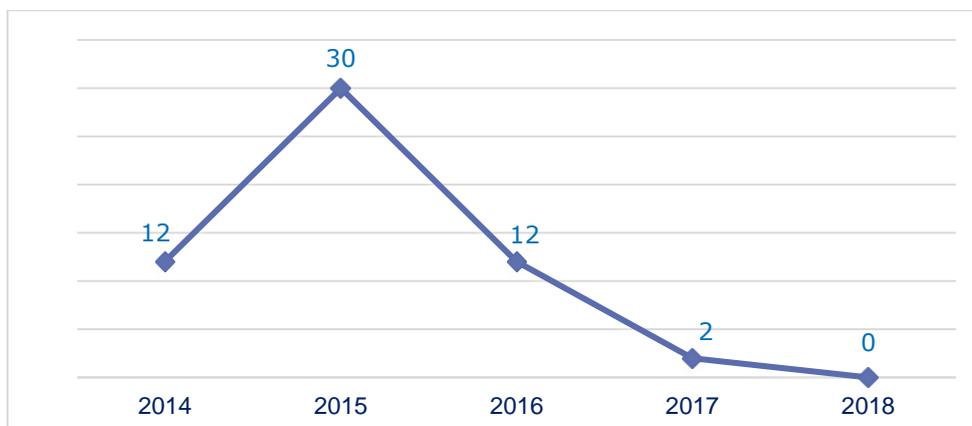
**= 116** > Complaints open at end-2018

3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

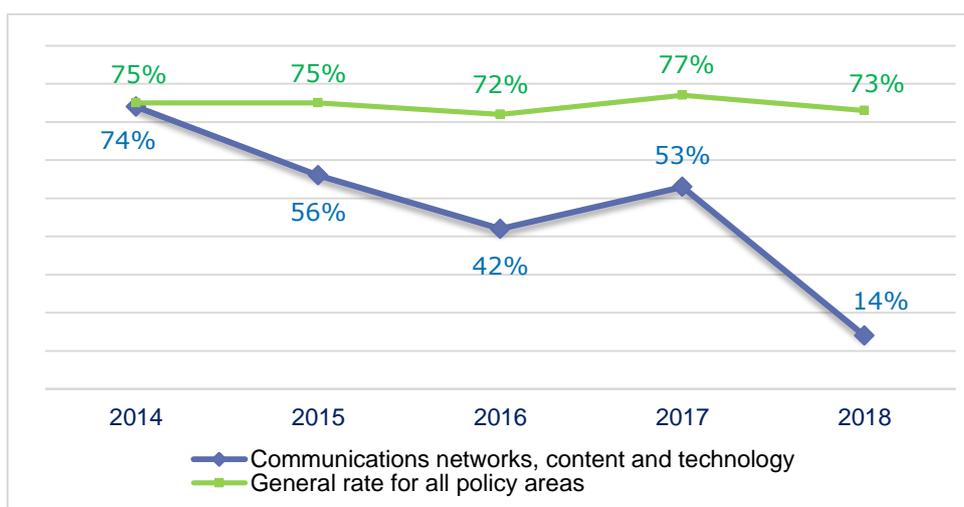
### 1. New EU Pilot files (2014-2018)



### 2. EU Pilot files open at year-end

At the end of 2018, 22 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2014-2018)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

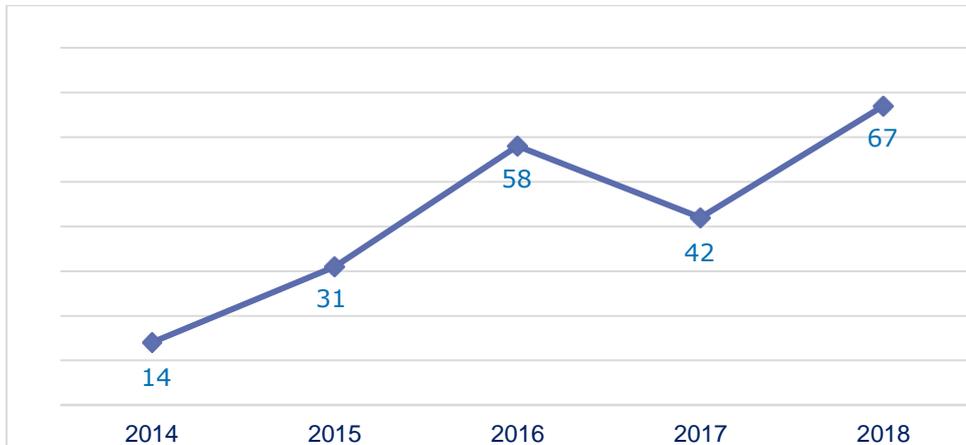
In 2018, the Commission opened own-initiative infringement cases over:

- failure to comply with the Decision on the use of the 470-790 MHz frequency band in the Union<sup>1</sup>.

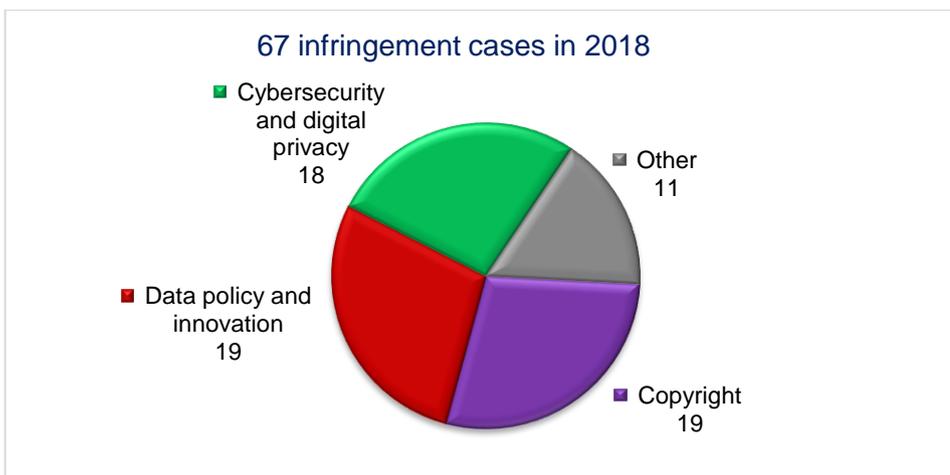
<sup>1</sup> Decision [2017/899/EU](#).

#### IV. INFRINGEMENT CASES

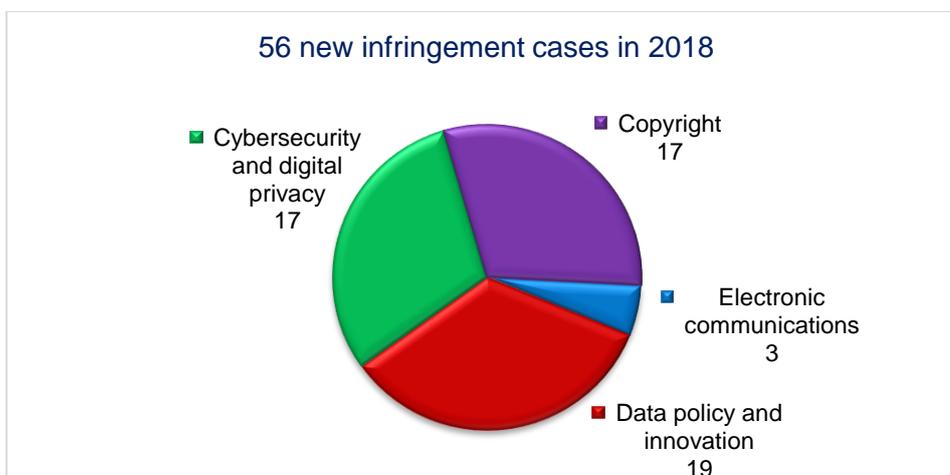
##### 1. Infringement cases open on 31 December (2014-2018)



##### 2. Infringement cases open on 31 December 2018: main policy sectors



##### 3. New infringement cases opened in 2018: main policy sectors



#### 4. Key infringement cases and referrals to the Court

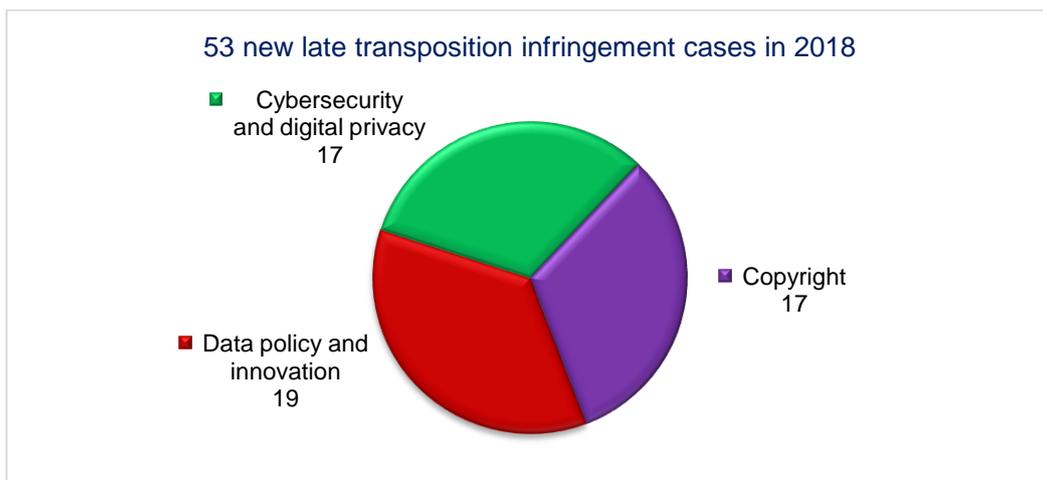
- a) The Commission opened 56 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following:
  - *Croatia, Netherlands and Belgium*: non-compliance with the Decision on the use of the 470-790 MHz frequency band in the Union;<sup>2</sup>
  - *Croatia and Netherlands*: lack of adoption of a roadmap, or notification of documents which do not fulfil the key requirements for a roadmap.
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

#### V. TRANSPOSITION OF DIRECTIVES

##### 1. New late transposition infringement cases (2014-2018)



##### 2. New late transposition infringement cases opened in 2018: main policy sectors



<sup>2</sup> Decision [2017/899/EU](#).

### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 53 cases for late transposition in 2018. They concern the Directives on:
- security of network and information systems<sup>3</sup>;
  - the accessibility of the websites and mobile applications of public sector bodies<sup>4</sup>;
  - certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled<sup>5</sup>.
- b) The Commission referred five non-communication cases to the Court under Articles 258 and 260(3) TFEU:
- *Bulgaria, Spain, Luxembourg, Poland and Romania*: for non-communication of national measures transposing the Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market<sup>6</sup>.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned:

- *Hungary, Romania, Slovenia and Spain*: delays in conducting market reviews, in breach of the Directive on a common regulatory framework for electronic communications networks and services<sup>7</sup>;
- *Greece*: lack of independence of the National Regulatory Authority and assignment of rights of use of radio spectrum<sup>8</sup>;
- *Spain*: non-conformity with the Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property<sup>9</sup>;
- *Czechia*: non-conformity with the Directive on the authorisation of electronic communications networks and services<sup>10</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>11</sup>

There were no major Court rulings in 2018 in this area.

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<sup>3</sup> Directive [2016/1148/EU](#).

<sup>4</sup> Directive [2016/2102/EU](#).

<sup>5</sup> Directive [2017/1564/EU](#).

<sup>6</sup> Commission v Bulgaria, [C-27/18](#); Commission v Spain, [C-207/18](#) Commission v Luxembourg, [C-20/18](#), Commission v Poland, [C-206/18](#), Commission v Romania, [C-116/18](#); Directive [2014/26/EU](#). Subsequently these Member States took the necessary steps to ensure compliance with EU law and the Commission has therefore withdrawn these cases from the Court.

<sup>7</sup> Directive [2002/21/EC](#).

<sup>8</sup> Directives [2002/20/EC](#) and [2002/21/EC](#).

<sup>9</sup> Directive [2006/115/EC](#).

<sup>10</sup> Directive [2002/20/EC](#).

<sup>11</sup> These rulings are almost exclusively handed down on infringement procedures.

## 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Austria*: The owner of an internet connection used for copyright infringements through file-sharing cannot be held liable to pay damages if he can name at least one family member who might have had access to that connection, without providing further details as to when and how the internet was used by that family member<sup>12</sup>.
- *Germany*: The case concerns the concept of ‘communication to the public’, within the meaning of Article 3(1) of the Directive on the harmonisation of certain aspects of copyright and related rights in the information society. The preliminary ruling found that this concept must be interpreted as meaning that it covers the posting on one website of a photograph previously posted, without any restriction preventing it from being downloaded and with the consent of the copyright holder, on another website<sup>13</sup>.
- *Netherlands*: The taste of a food product can be protected by copyright if it can be classified as a ‘work’ within the meaning of the Directive on rights in the information society. Classification as a ‘work’ requires that the subject matter concerned is an original intellectual creation. Secondly, there must be an ‘expression’ of that original intellectual creation<sup>14</sup>.

## VIII. OUTLOOK

Important implementation work in 2019 includes:

- monitoring implementation of the Digital Single Market strategy;
- monitoring the correct transposition of the Directive on security of network and information systems<sup>15</sup>, the Web Accessibility Directive<sup>16</sup> and the Marrakesh Treaty Directive<sup>17</sup>;
- monitoring the application of the Roam-like-at-home rules, the Portability Regulation<sup>18</sup>, the eIDAS Regulation<sup>19</sup>, the Geo-blocking Regulation<sup>20</sup> and the Regulation setting the rules for intra-EU calls<sup>21</sup>;
- further enforcement action to ensure correct implementation of the 112 emergency number across the EU<sup>22</sup>;
- continued efforts to free up spectrum by monitoring the implementation of the 700 MHz Decision<sup>23</sup>, which will facilitate the further roll-out of fifth-generation mobile network technologies.

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<sup>12</sup> Bastei Lübbe [C-149/17](#).

<sup>13</sup> Renckhoff, [C-161/17](#); Directive [2001/29/EC](#).

<sup>14</sup> Directive [2001/29/EC](#), Levola Hengelo, [C-310/17](#).

<sup>15</sup> Directive [2016/1148/EU](#).

<sup>16</sup> Directive [2016/2102/EU](#).

<sup>17</sup> Directive [2017/1564/EU](#).

<sup>18</sup> Regulation (EU) No [1128/2017](#).

<sup>19</sup> Regulation (EU) No [910/2014](#).

<sup>20</sup> Regulation (EU) No [302/2018](#).

<sup>21</sup> Regulation (EU) No [1971/2018](#).

<sup>22</sup> Directive [2002/22/EC](#).

<sup>23</sup> Decision [2017/899/EU](#).

Employment, social affairs and inclusion

I. COMPLAINTS

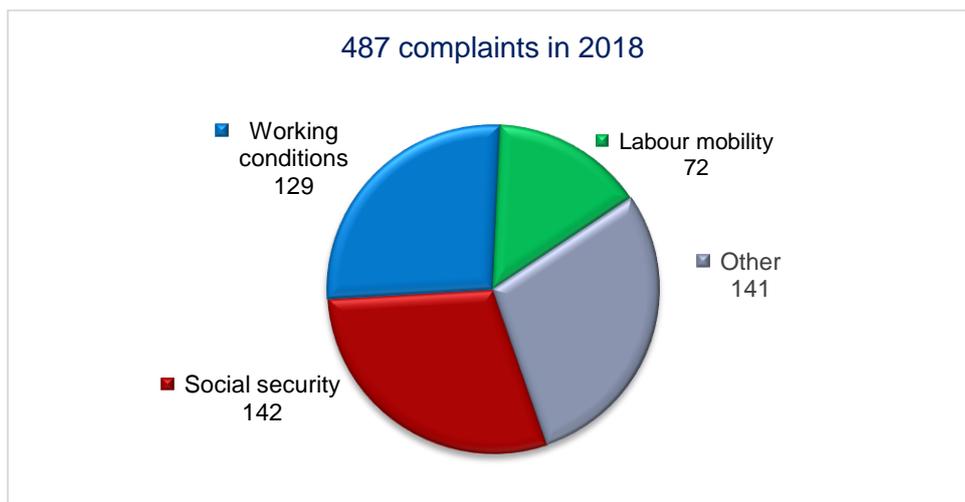
1. New complaints received from members of the public (2014-2018)



2. Public complaints open at year-end

344	>	Complaints open at end-2017
487	>	New complaints registered in 2018
546	>	Complaints handled in 2018
<hr/>		
= 285	>	Complaints open at end-2018

3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

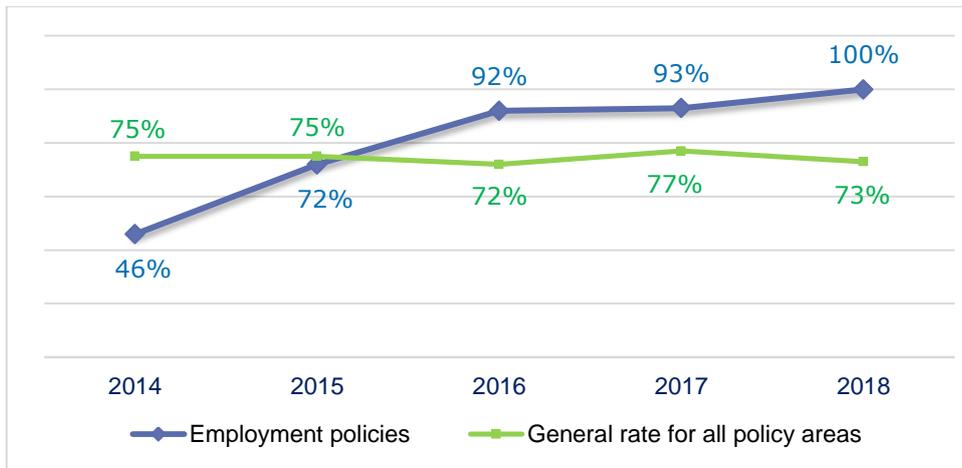
### 1. New EU Pilot files (2014-2018)



### 2. EU Pilot files open at year-end

At the end of 2018, 14 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2014-2018)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

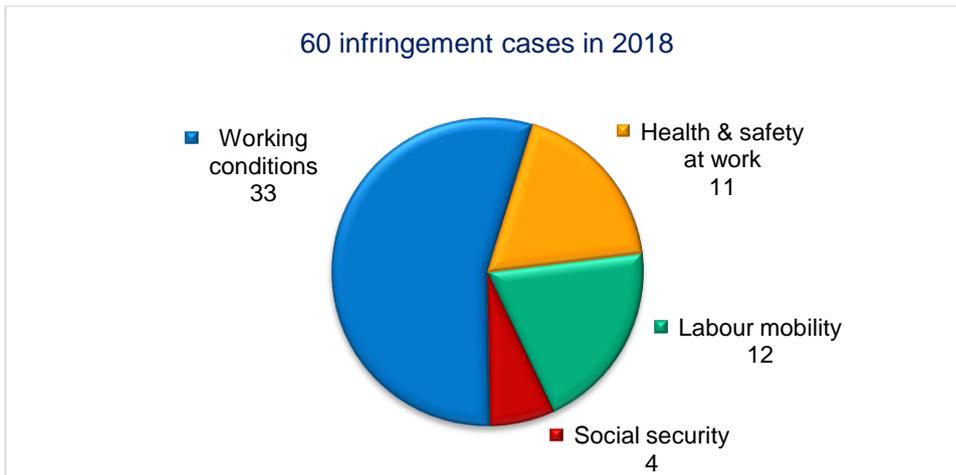
In 2018 the Commission opened own-initiative infringement cases on free movement of workers and the health of workers at work.

#### IV. INFRINGEMENT CASES

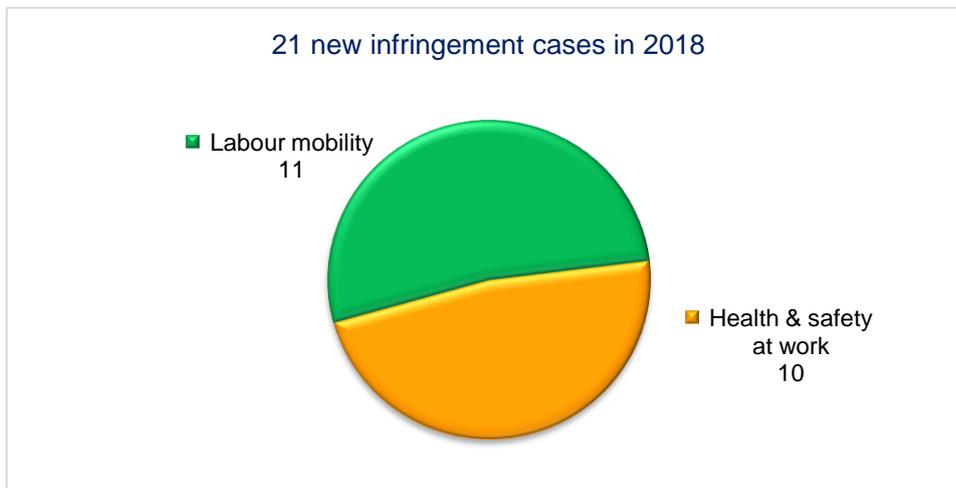
##### 1. Infringement cases open on 31 December (2014-2018)



##### 2. Infringement cases open on 31 December 2018: main policy sectors



##### 3. New infringement cases opened in 2018: main policy sectors



#### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 21 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following.
- *Italy and Portugal*: Failure to communicate national measures transposing the EU rules<sup>1</sup> which ensure the right of seafarers to fair and just working conditions as well as their right to information and consultation<sup>2</sup>.
  - *United Kingdom*: Discrimination on the grounds of nationality between workers from EU Member States<sup>3</sup>. The United Kingdom's rules on housing benefit treat beneficiaries who temporarily leave their home but stay within Great Britain (England, Scotland and Wales) more favourably than those who leave those areas during a temporary absence. These rules therefore disadvantage workers from other Member States since they are more likely than workers of UK nationality to leave the United Kingdom temporarily<sup>4</sup>.
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

#### V. TRANSPOSITION OF DIRECTIVES

##### 1. New late transposition infringement cases (2014-2018)



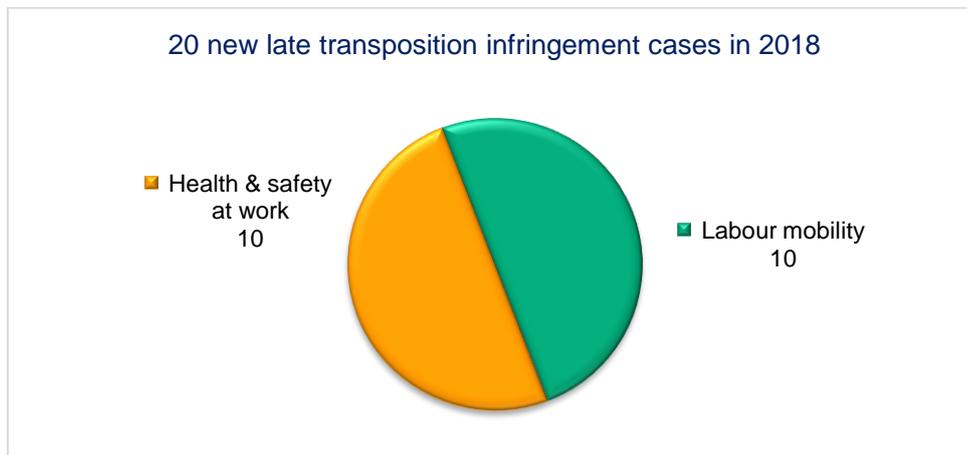
<sup>1</sup> Directive [2015/1794/EU](#).

<sup>2</sup> [MEMO/18/3446](#).

<sup>3</sup> Article 45 [TFEU](#) and Regulation (EU) No [492/2011](#).

<sup>4</sup> [MEMO/18/6247](#).

## 2. New late transposition infringement cases opened in 2018: main policy sectors



## 3. Key infringement cases and referrals to the Court

- a) The Commission opened 20 cases for late transposition in 2018. Among the directives concerned were those:
  - on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights<sup>5</sup>;
  - establishing a fourth list of indicative occupational exposure limit values from the risks related to chemical agents at work .<sup>6</sup>
- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned:

- *Czechia and Luxembourg*: failure to communicate national measures transposing the Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers<sup>7</sup>;
- *Denmark*: non-conformity of the provisions of national legislation on annual leave entitlements with the Working Time Directive;<sup>8</sup>
- *Greece*: non-conformity of the provisions of national legislation on average weekly working time and minimum periods of daily rest or of compensatory rest with the Working Time Directive in the healthcare sector<sup>9</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

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<sup>5</sup> Directive [2014/50/EU](#).

<sup>6</sup> Directive [2017/164/EU](#).

<sup>7</sup> Directive [2014/54/EU](#).

<sup>8</sup> Directive [2003/88/EC](#).

<sup>9</sup> Directive [2003/88/EC](#).

The Court gave the following ruling<sup>10</sup>.

- *Belgium* has failed to comply with EU rules on the coordination of social security systems<sup>11</sup>. The Court invalidated Belgian provisions granting national authorities the power to decide unilaterally on the existence of fraud or abuse in the case of posted workers without contacting the authorities of the Member State which had issued the portable document<sup>12</sup>.

## 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Belgium*: On posting of workers, the Court of Justice confirmed the binding nature of the portable document delivered by the Member State of the sending company<sup>13</sup>. Nevertheless, the receiving Member State can check the validity of that document and contact the issuing Member State in case of doubt about its validity or the accuracy of the facts on which it is based. The latter is obliged to carry out a proper assessment of the facts and ensure that the information is correct, in accordance with the principle of cooperation laid down in Article 4(3) TEU.
- *Belgium*: On the Working Time Directive, the Court of Justice clarified that that voluntary firefighters can be regarded as workers if they pursue real, genuine activities for and under the direction of another person in return for which they receive remuneration. The Court further clarified that stand-by time, which the worker spends at home with the duty to respond to calls from his employer within 8 minutes and during which the worker's opportunities to carry out other activities are significantly restricted must be regarded as the 'working time' within the meaning of the Directive<sup>14</sup>.
- *Austria*: A worker posted by an employer to carry out work in another Member State and who is sent to replace a worker posted by a different employer cannot remain subject to the social security legislation of the Member States in which his employer usually carries on its activities<sup>15</sup>.
- *Germany*: The Court clarified further the consequences for the right to annual leave of terminating a contract and ruled that Article 31(2) of the Charter of Fundamental Rights of the European Union on the right to a period of paid annual leave has horizontal direct effect and that it can be invoked in disputes between a worker and his or her private sector employer<sup>16</sup>.
- *Germany*: The Court also ruled that during their minimum period of annual leave guaranteed by EU law, workers are entitled to their normal remuneration, in spite of periods of short-time work during the reference period for that leave. A worker who carried out lower-paid short-time work during that period may not receive a lower remuneration for the corresponding annual leave<sup>17</sup>.
- *Italy*: Workers who have been on abusive successive fixed-term contracts are entitled to two types of compensation for the past abuse they have faced: (a) a lump sum compensation and (b) an additional possibility to obtain full compensation for the harm suffered. This harm is presumed to have occurred unless the employer can prove otherwise<sup>18</sup>.

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<sup>10</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>11</sup> Regulation (EC) No [883/2004](#).

<sup>12</sup> *Commission v Belgium*, [C-356/15](#).

<sup>13</sup> *Altun and Others*, [C-359/16](#).

<sup>14</sup> *Matzak*, [C-518/15](#).

<sup>15</sup> *Alpenrind and Others*, [C-527/16](#).

<sup>16</sup> *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, [C-684/16](#); *Bauer* [C-569/16](#).

<sup>17</sup> *Hein*, [C-385/17](#).

<sup>18</sup> *Santoro*, [C-494/16](#).

- *Italy*: National legislation which excludes certain sectors from effective sanction in case of misuse of successive fixed-term contracts is not compliant with the EU rules on the framework agreement on fixed-term work<sup>19</sup>.
- *Romania*: The work performed by a foster parent under an employment contract with a public authority is not covered by the provisions of the Working Time Directive<sup>20</sup>.
- *Romania*: While on parental leave a worker does not accrue the right to paid annual leave under the provisions of the Working Time Directive<sup>21</sup>.
- *Spain*: The two types of termination of the employment relationship (dismissal under objective reasons and termination of fixed-term contract) are not comparable and, therefore, different levels of compensation can be granted<sup>22</sup>.

## VIII. OUTLOOK

Important implementation work in 2019 includes:

- finalising the assessment of the conformity of national transposition measures with the Directives on the free movement of workers and the enforcement of posting of workers<sup>23</sup>; monitoring the complete and timely transposition of the Directive on minimum requirements concerning supplementary pension rights<sup>24</sup> and of the Work in Fishing Directive<sup>25</sup>;
- assessing the conformity of national transposition measures with the Directives on working time in inland waterways transport and protection of seafarers<sup>26</sup>.

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<sup>19</sup> Sciotto, [C-331/17](#); Council Directive [1999/70/EC](#).

<sup>20</sup> Sindicatul Familia Constanța and Others, [C-147/17](#).

<sup>21</sup> Dicu, [C-12/17](#).

<sup>22</sup> Montero Mateos, [C-677/16](#), Grupo Norte Facility, [C-574/16](#) and de Diego Porras, [C-619/17](#).

<sup>23</sup> Directives [2014/54/EU](#) and [2014/67/EU](#).

<sup>24</sup> Directive [2014/50/EU](#).

<sup>25</sup> Directive [2017/159/EU](#).

<sup>26</sup> Directives [2014/112/EU](#) and [2015/1794](#).

Energy

I. COMPLAINTS

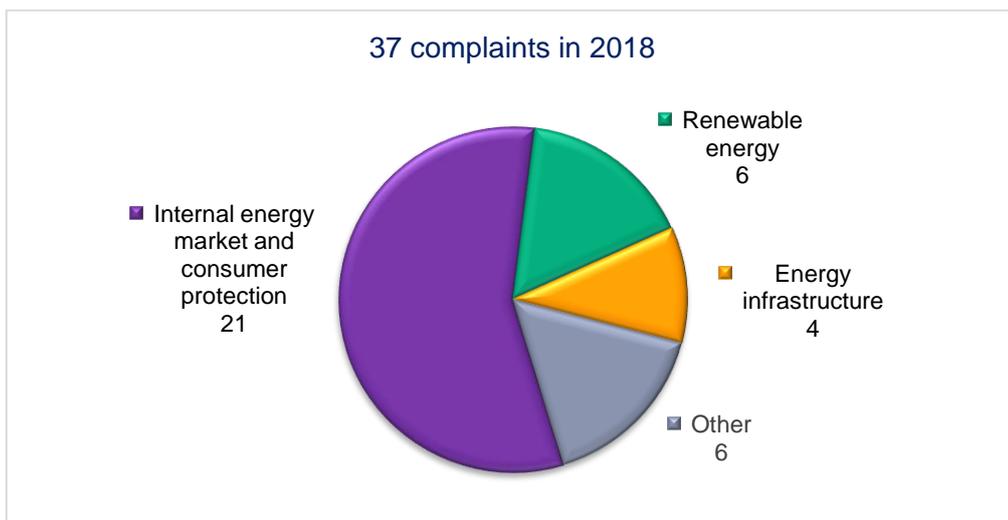
1. New complaints received from members of the public (2014-2018)



2. Public complaints open at year-end

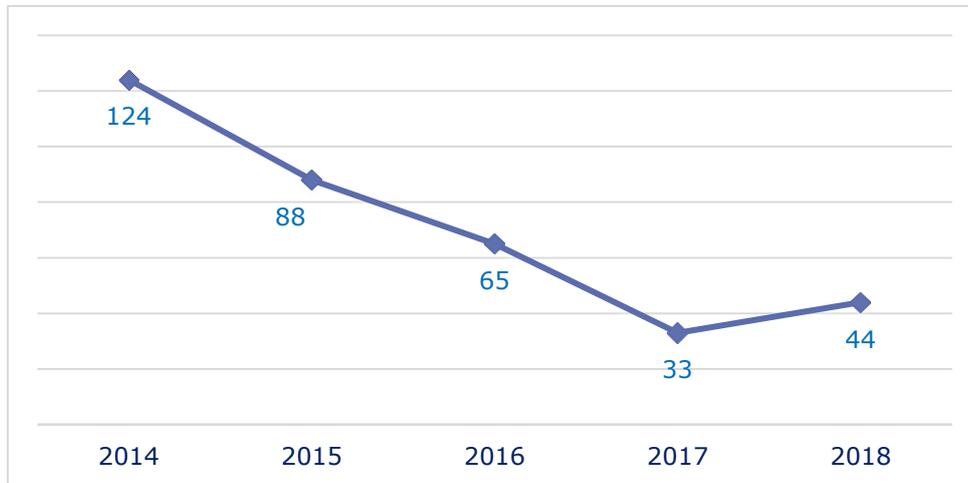
110	>	Complaints open at end-2017
37	>	New complaints registered in 2018
72	>	Complaints handled in 2018
<b>= 75</b>	>	<b>Complaints open at end-2018</b>

3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

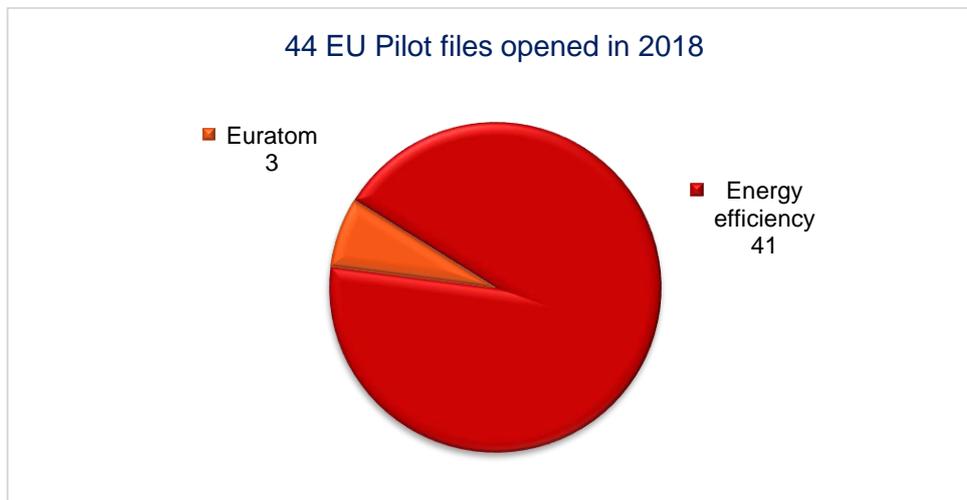
### 1. New EU Pilot files (2014-2018)



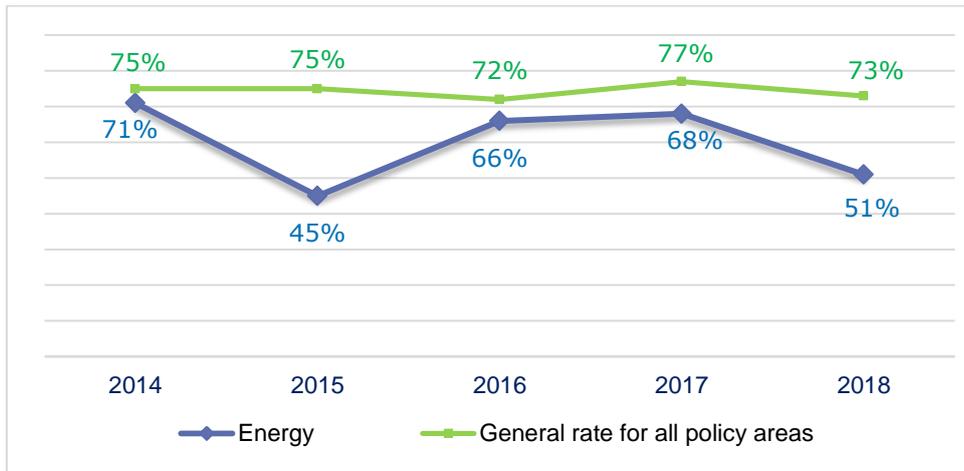
### 2. EU Pilot files open at year-end

At the end of 2018, 41 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2018: main policy sectors



4. EU Pilot files: resolution rate for policies (2014-2018)



III. OWN-INITIATIVE CASES

New own-initiative infringement cases

In 2018, the Commission opened own-initiative infringement cases over:

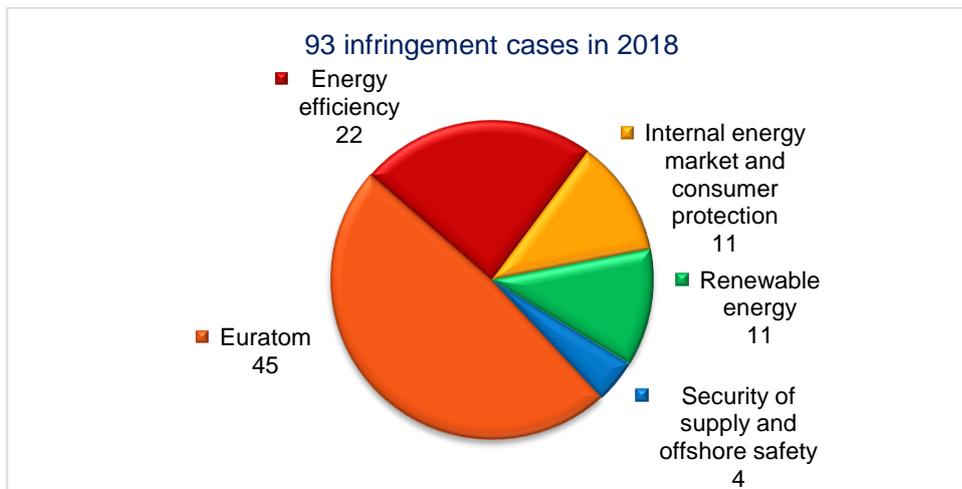
- energy efficiency;
- nuclear safety;
- basic safety standards.

IV. INFRINGEMENT CASES

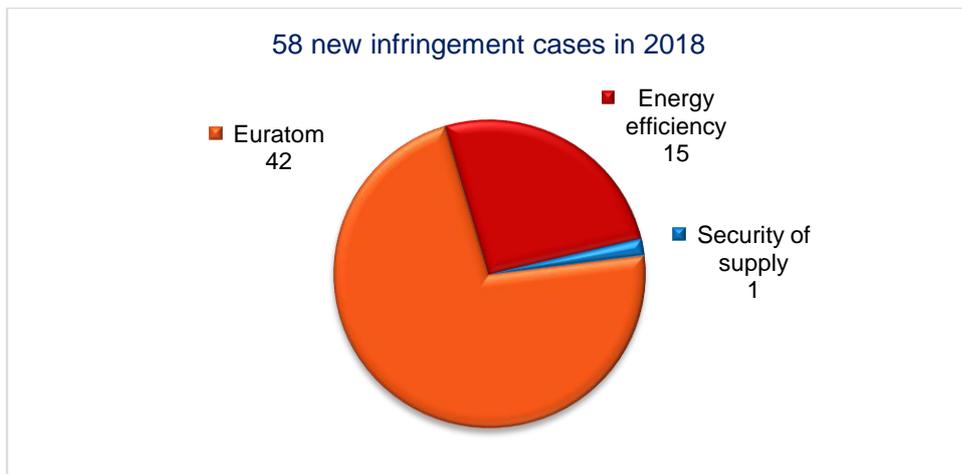
1. Infringement cases open on 31 December (2014-2018)



## 2. Infringement cases open on 31 December 2018: main policy sectors



## 3. New infringement cases opened in 2018: main policy sectors



## 4. Key infringement cases and referrals to the Court

- a) The Commission opened 58 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following:
- *Germany, Ireland, Greece, Spain, Cyprus, Hungary, Malta, Netherlands, Austria, Romania, Slovakia, Slovenia, Finland, Sweden, and United Kingdom*: non-compliance with the requirements of the Energy Efficiency Directive<sup>1</sup>;
  - *Spain*: failure to ensure individual metering and billing for heat energy in multi-apartment buildings, as required under the Energy Efficiency Directive<sup>2</sup>;
  - *Greece*: failure to adopt and notify the long-term renovation strategy in commercial and residential buildings, as required by the Energy Efficiency Directive<sup>3</sup>;
  - *Poland*: failure to comply with the EU requirements on the security of gas supply<sup>4</sup>;
  - *Bulgaria*: non-compliance with the requirements of the Third Energy Package Directives (Electricity and Gas Directives)<sup>5</sup>;

<sup>1</sup> Directive [2012/27/EU](#), [MEMO/18/4486](#) and [MEMO/18/6247](#).

<sup>2</sup> Directive [2012/27/EU](#), [MEMO/18/1444](#).

<sup>3</sup> Directive [2012/27/EU](#), [MEMO/18/1444](#).

<sup>4</sup> Regulation (EU) No [994/2010](#), [MEMO/18/1444](#).

<sup>5</sup> Directives [2009/72/EC](#) and [2009/73/EC](#), [MEMO/18/349](#).

Energy

- *Slovenia and Netherlands*: non-compliance with the requirements of the Energy Performance of Buildings Directive<sup>6</sup>;
  - *Belgium, Spain and Poland* : lack of transposition measures for the Nuclear Safety Directive<sup>7</sup>;
  - *Czechia, Denmark, Estonia, Ireland Croatia,, Italy, Latvia, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania and United Kingdom*: failure to correctly transpose certain requirements of the Radioactive Waste Directive<sup>8</sup>;
  - *Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Ireland, Greece, Spain, Lithuania, Malta, Netherlands, Poland, Romania, Slovenia and United Kingdom*: failure to adopt a national programme for the implementation of spent fuel and radioactive waste management policy compliant with the requirements of the Radioactive Waste Directive<sup>9</sup>;
  - *Cyprus, Ireland, Greece, Italy, Luxembourg, Malta, Portugal, Finland and Sweden*: lack of measures transposing the Basic Safety Standards Directive<sup>10</sup>.
- b) The Commission referred five cases to the Court under Article 258 TFEU. They concern
- *Germany*<sup>11</sup> and *Hungary*<sup>12</sup>: non-compliance with the requirements of the Third Energy Package Directives (Electricity and Gas Directives)<sup>13</sup>;
  - *Croatia*<sup>14</sup>, *Italy*<sup>15</sup> *Austria*<sup>16</sup>, failure to notify the national programme for the implementation of a spent *and* fuel and radioactive waste management policy<sup>17</sup>.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

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<sup>6</sup> Directive [2010/31/EU](#), [MEMO/18/349](#), [MEMO/18/3446](#).

<sup>7</sup> Directive [2014/87/Euratom](#), [MEMO/18/3986](#).

<sup>8</sup> Directive [2011/70/Euratom](#), [MEMO/18/3986](#), [MEMO/18/3446](#).

<sup>9</sup> Directive [2011/70/Euratom](#), [MEMO/18/3446](#).

<sup>10</sup> Directive [2013/59/Euratom](#), [MEMO/18/3446](#).

<sup>11</sup> Commission v Germany, [C-718/18](#); [IP/18/4487](#).

<sup>12</sup> Commission v Hungary, [C-771/18](#); [IP/18/4487](#).

<sup>13</sup> Directives [2009/72/EC](#) and [2009/73/EC](#).

<sup>14</sup> Commission v Croatia; [C-391/18](#).

<sup>15</sup> Commission v Italy; [C-434/18](#).

<sup>16</sup> Commission v Austria, [C-487/18](#); [IP/18/3448](#). Austria subsequently took the necessary steps to ensure compliance with EU law and the Commission has therefore withdrawn this case from the Court.

<sup>17</sup> Directive [2011/70/Euratom](#), [MEMO/18/3446](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2014-2018)



### 2. New late transposition infringement cases opened in 2018: main policy sectors

All the 11 new late transposition infringement cases opened in 2018 concern Euratom legislation.

### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 11 cases for late transposition in 2018. They concern:
  - the Basic Safety Standards Directive<sup>18</sup>;
  - the Nuclear Safety Directive<sup>19</sup>.
- b) The Commission did not refer any case to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned:

- *France, Netherlands and Portugal*: incorrect transposition of the Third Energy Package Directives<sup>20</sup>;
- *Croatia and Romania*: incomplete transposition of the Offshore Safety Directive<sup>21</sup>;
- *Latvia*: failure to communicate all national measures transposing the Radioactive Waste Directive<sup>22</sup>;
- *Belgium*: incomplete transposition of the Directive on radioactive substances in water intended for human consumption<sup>23</sup>;

<sup>18</sup> Directive [2013/59/Euratom](#).

<sup>19</sup> Directive [2014/87/Euratom](#).

<sup>20</sup> Directives [2009/72/EC](#) and [2009/73/EC](#).

<sup>21</sup> Directive [2013/30/EU](#).

<sup>22</sup> Directive [2011/70/Euratom](#).

<sup>23</sup> Directive [2013/51/Euratom](#).

- *Czechia*: non-compliance with the Security of Gas Supply Regulation<sup>24</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

The Court gave the following rulings<sup>25</sup>.

- The General Court annulled the Regulation<sup>26</sup> on the energy labelling of vacuum cleaners, because it considered that the Commission had adopted a testing method which was not close enough to the actual conditions of use of the product<sup>27</sup>;
- The General Court rejected an action for annulment of the Commission decisions reducing the financial contribution initially granted under two projects in the field of trans-European energy networks<sup>28</sup>.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Belgium*: The display of the energy label for vacuum cleaners without specifying the testing conditions that led to the energy classification indicated on the respective label does not constitute an unfair commercial practice. Supplementary labels reproducing or clarifying the information displayed on the energy label can be misleading in certain cases<sup>29</sup>.
- *Slovakia*: Member States may not impose a charge on the export of electricity generated in their own territory<sup>30</sup>.
- *Spain*: Member States may require a contribution to an energy efficiency fund from energy undertakings designated on the basis of explicitly stated, objective and non-discriminatory criteria. This obligation, which substitutes an energy efficiency obligation scheme, should nonetheless comply with all the requirements of the Energy Efficiency Directive and reach the same level of savings<sup>31</sup>.

## VIII. OUTLOOK

Important implementation work in 2019 includes:

- *assessing the national energy and climate plans adopted by the Member States pursuant to the Governance Regulation*<sup>32</sup>;
- *issuing guidance documents to facilitate implementation of the revised Energy Efficiency Directive*<sup>33</sup> and the revised Energy Performance of Buildings Directive<sup>34</sup>;

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<sup>24</sup> Regulation (EU) No [994/2010](#).

<sup>25</sup> These rulings do not concern infringement procedures.

<sup>26</sup> Commission Delegated Regulation (EU) No [665/2013](#).

<sup>27</sup> Dyson v Commission, [T-544/13 RENV](#) and [Court press release No 168/18](#).

<sup>28</sup> Terna v Commission, [T-387/16](#).

<sup>29</sup> Dyson, [C-632/16](#) and Court press release [No 117/18](#).

<sup>30</sup> FENS, [C-305/17](#) and Court press release [No 189/18](#).

<sup>31</sup> Directive [2012/27/EU](#), Saras Energía, [C-561/16](#).

<sup>32</sup> Regulation (EU) No [1999/2018](#).

<sup>33</sup> Directive [2012/27/EU](#).

<sup>34</sup> Directive [2010/31/EU](#).

Energy

- legal action to ensure correct and complete transposition of the Radioactive Waste Directive<sup>35</sup>, the Nuclear Safety Directive<sup>36</sup>, the Basic Safety Standards Directive<sup>37</sup>, the Indirect Land Use Change Directive<sup>38</sup> and the Energy Efficiency Directive<sup>39</sup>.

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<sup>35</sup> Directive [2011/70/Euratom](#).

<sup>36</sup> Directive [2014/87/Euratom](#).

<sup>37</sup> Directive [2013/59/Euratom](#).

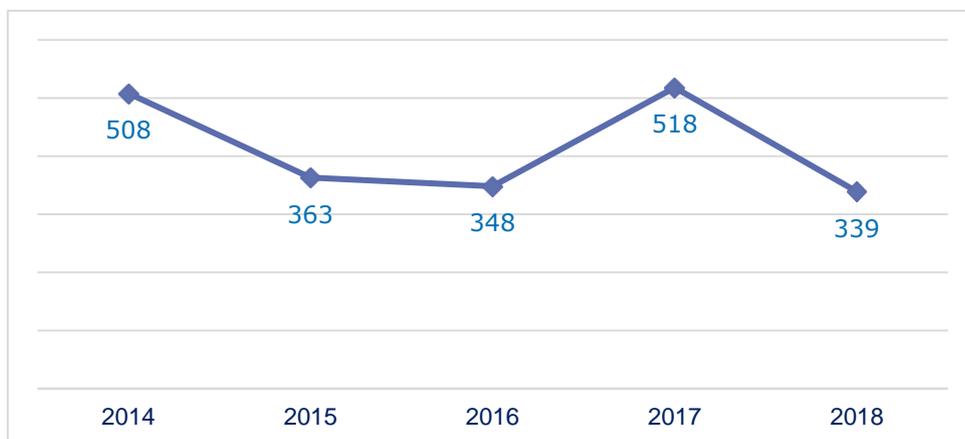
<sup>38</sup> Directive [2015/1513/EU](#).

<sup>39</sup> Directive [2012/27/EU](#).

Environment

I. COMPLAINTS

1. New complaints received from members of the public (2014-2018)



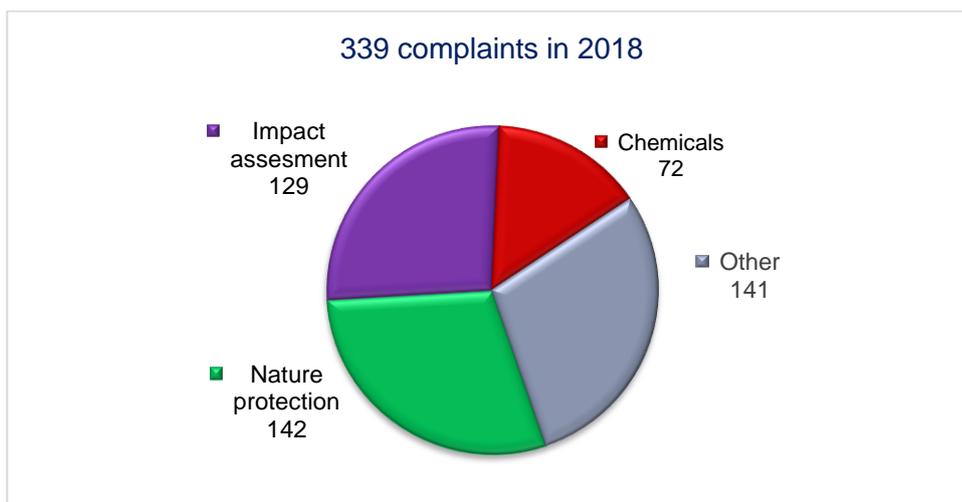
2. Public complaints open at year-end

590 > Complaints open at end-2017  
339 > New complaints registered in 2018  
388 > Complaints handled in 2018  

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**= 541** > Complaints open at end-2018

3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

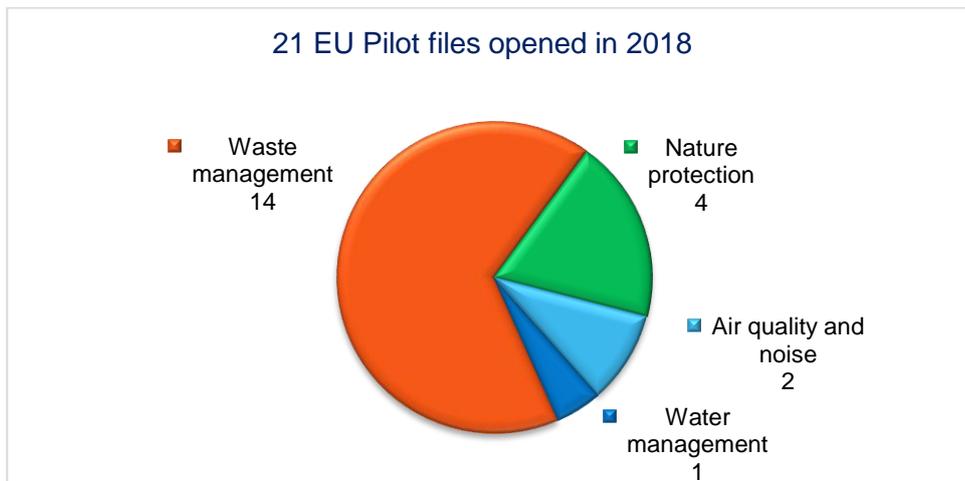
### 1. New EU Pilot files (2014-2018)



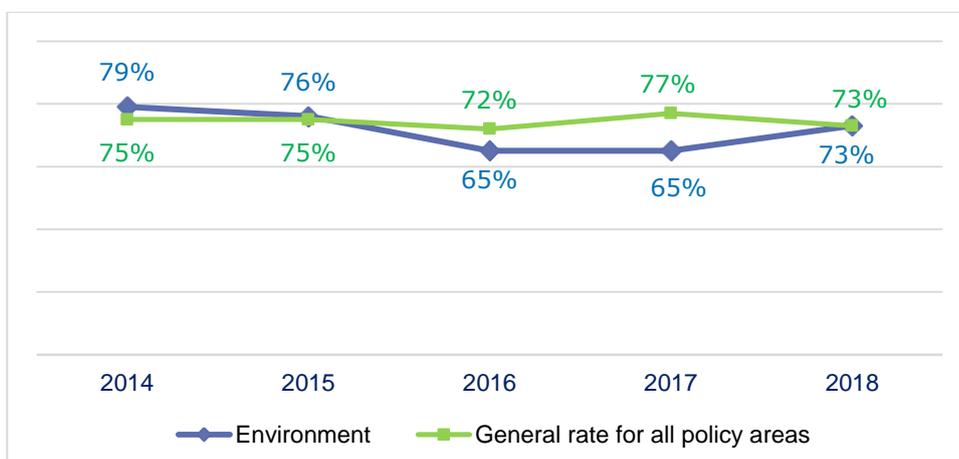
### 2. EU Pilot files open at year-end

At the end of 2018, 180 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2018: main policy sectors



### 4. EU Pilot files: resolution rate for policies (2014-2018)



### III. OWN-INITIATIVE CASES

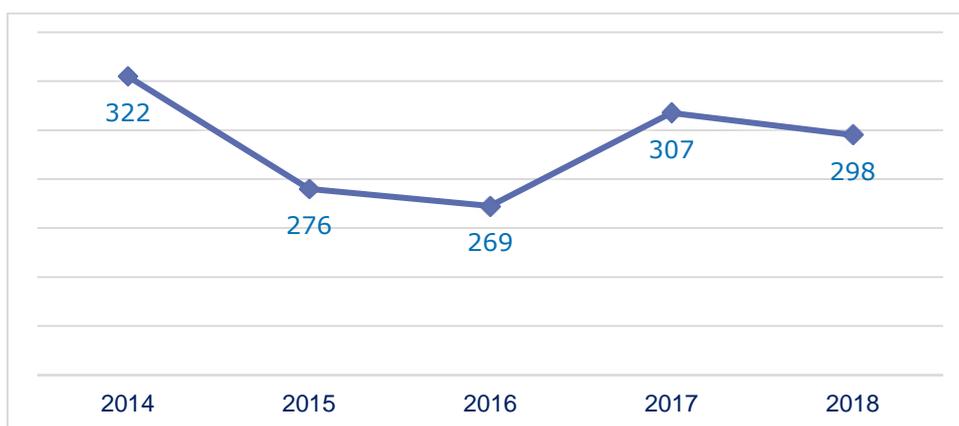
#### New own-initiative infringement cases

In 2018, the Commission opened own-initiative infringement cases over:

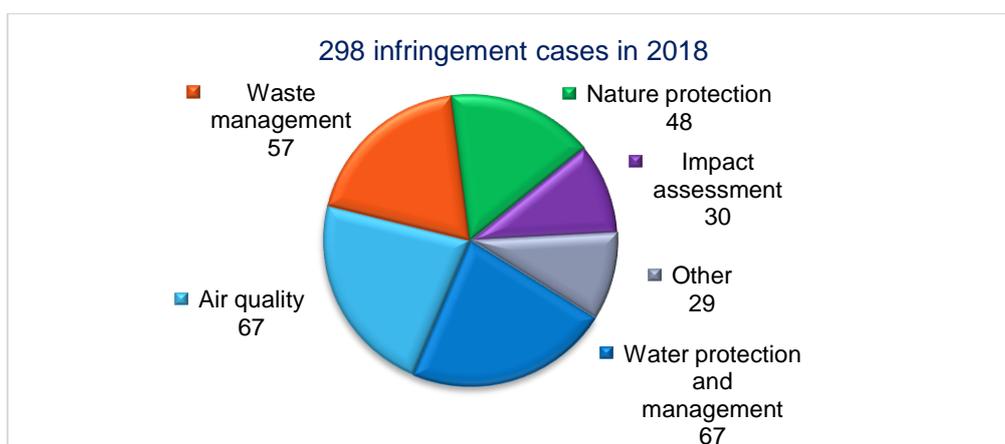
- incorrect transposition of the Directive on the protection of animals used for scientific purposes<sup>1</sup>;
- failure to ensure adequate protection of species and habitats;
- non-compliance with EU rules on ambient air quality<sup>2</sup>;
- inadequate treatment of urban waste water;
- insufficient protection of waters against pollution caused by nitrates from agricultural sources;
- failure to comply with the Water Framework Directive<sup>3</sup>;
- failure to comply with the requirements of the Floods Directive<sup>4</sup>;
- non-compliance with the EU provisions on waste.

### IV. INFRINGEMENT CASES

#### 1. Infringement cases open on 31 December (2014-2018)



#### 2. Infringement cases open on 31 December 2018: main policy sectors



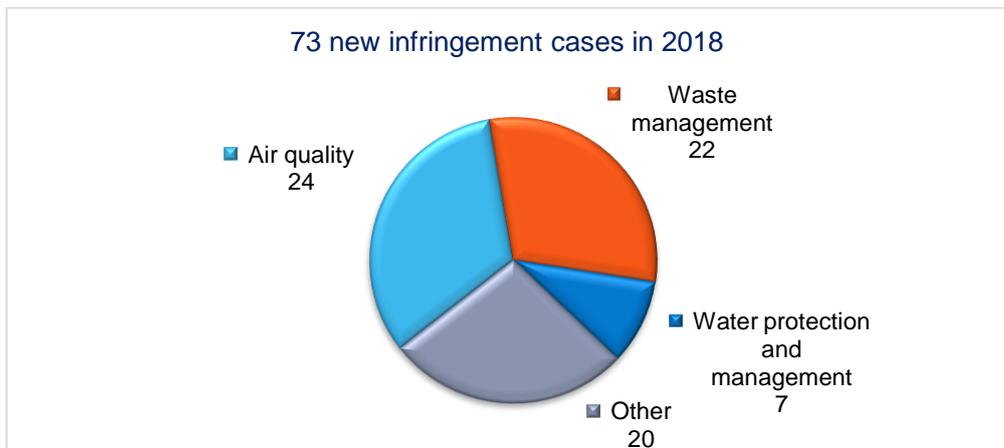
<sup>1</sup> Directive [2010/63/EU](#).

<sup>2</sup> Directive [2008/50/EC](#).

<sup>3</sup> Directive [2000/60/EC](#).

<sup>4</sup> Directive [2007/60/EC](#).

### 3. New infringement cases opened in 2018: main policy sectors



### 4. Key infringement cases and referrals to the Court

a) The Commission opened 73 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following:

- *Estonia, Germany, Portugal, Romania, Spain and Slovakia*: incorrect transposition of the Directive on the protection of animals used for scientific purposes<sup>5</sup>;
- *Bulgaria and Czechia*: non-compliant transposition of the Air Quality Directive<sup>6</sup>;
- *Belgium*: failure to comply with the nitrogen dioxide (NO<sub>2</sub>) limit values set by the Air Quality Directive<sup>7</sup>;
- *Bulgaria*: failure to comply with a Court judgment finding that the PM<sub>10</sub><sup>8</sup> limit values set by the Air Quality Directive have been exceeded<sup>9</sup>;
- *Cyprus and Lithuania*: failure to ensure adequate protection of indigenous habitats and species by designating Sites of Community Importance under the Habitats Directive<sup>10</sup>;
- *Greece<sup>11</sup> and Ireland<sup>12</sup>*: failure to establish Special Areas of Conservation, as well as conservation objectives and measures to maintain or restore the species and habitats to a favourable condition, as required by the Habitats Directive<sup>13</sup>;
- *Italy and Spain*: insufficient protection of waters against pollution caused by nitrates from agricultural sources<sup>14</sup>;
- *Cyprus<sup>15</sup>, Estonia<sup>16</sup>, Italy<sup>17</sup>, Poland<sup>18</sup>, Romania<sup>19</sup> and Sweden<sup>20</sup>*: failure to ensure that urban waste water is adequately treated<sup>21</sup>;

<sup>5</sup> Directive [2010/63/EU, MEMO/18/4486](#).

<sup>6</sup> Directive [2008/50/EC, MEMO/18/6247](#).

<sup>7</sup> Directive [2008/50/EC, MEMO/18/6247](#).

<sup>8</sup> PM<sub>10</sub> is an air pollutant consisting of small particles with an aerodynamic diameter less than or equal to a nominal 10 micrometres. The particles' small size allows them to penetrate deep into the lungs where they may be deposited and cause adverse health effects. (Source: European Environment Agency).<sup>9</sup> Directive [2008/50/EC, MEMO/18/6247](#), *Commission v Bulgaria*, [C-488/15](#).

<sup>9</sup> Directive [2008/50/EC, MEMO/18/6247](#), *Commission v Bulgaria*, [C-488/15](#).

<sup>10</sup> Directive [92/43/EEC, MEMO/18/3446](#).

<sup>11</sup> [MEMO/18/1444](#).

<sup>12</sup> [MEMO/18/6247](#).

<sup>13</sup> Directive [92/43/EEC](#).

<sup>14</sup> Directive [91/676/EEC, MEMO/18/6247](#).

<sup>15</sup> [MEMO/18/3986](#).

- *Italy*: failure to comply with a Court judgment finding that urban waste water is not adequately collected and treated<sup>22</sup>;
- *Austria*<sup>23</sup> and *Finland*<sup>24</sup>: authorising hunting of wild bird in breach of the Birds Directive<sup>25</sup>.

b) The Commission referred 10 cases to the Court under Article 258 TFEU. They concern

- *Hungary*<sup>26</sup>, *Italy*<sup>27</sup> and *Romania*<sup>28</sup>: exceedance of the PM<sub>10</sub> limit values set by the Air Quality Directive<sup>29</sup>;
- *France*<sup>30</sup>, *Germany*<sup>31</sup> and *United Kingdom*<sup>32</sup>: exceedance of the nitrogen dioxide (NO<sub>2</sub>) limit values set by the Air Quality Directive<sup>33</sup>;
- *Portugal*: failure to establish Special Areas of Conservation for the protection of natural habitats and species, and to establish the necessary conservation measures for these sites, as required by the Habitats Directive<sup>34</sup>;
- *Croatia*: failure to ensure adequate protection of human health and the environment from industrial waste in Biljane Donje<sup>35</sup>;
- *Spain*: failure to adopt waste management plans and to revise these plans in accordance with the Waste Framework Directive<sup>36</sup>;
- *Spain*: failure to adopt and review the river basin management plans for the Canary Islands<sup>37</sup>.

c) The Commission referred one case to the Court under Article 260(2) TFEU. It concerns

- *Ireland*: failure to comply with a Court judgment establishing that Ireland had failed to apply correctly the EU provisions on environmental impact assessments in relation to the Derrybrien windfarm<sup>38</sup>.

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16 [MEMO/18/3986](#).

17 [MEMO/18/4486](#).

18 [MEMO/18/349](#).

19 [MEMO/18/3986](#).

20 [MEMO/18/6247](#).

21 Directive [91/271/EEC](#).

22 Directive [91/271/EEC](#), [MEMO/18/3446](#), Commission v Italy, [C-85/13](#).

23 [IP/18/3449](#).

24 [IP/18/1446](#).

25 Directive [2009/147/EC](#).

26 Commission v Hungary, [C-637/18](#); [IP/18/3450](#).

27 Commission v Italy, [C-644/18](#); [IP/18/3450](#).

28 Commission v Romania, [C-638/18](#); [IP/18/3450](#).

29 Directive [2008/50/EC](#).

30 Commission v France, [C-636/18](#); [IP/18/3450](#).

31 Commission v Germany, [C-635/18](#); [IP/18/3450](#).

32 Commission v United Kingdom, [C-664/18](#); [IP/18/3450](#).

33 Directive [2008/50/EC](#).

34 Directive [92/43/EEC](#), Commission v Portugal, [C-290/18](#); [IP/18/356](#).

35 Directive [2008/98/EC](#), Commission v Croatia, [C-250/18](#); [IP/18/1448](#).

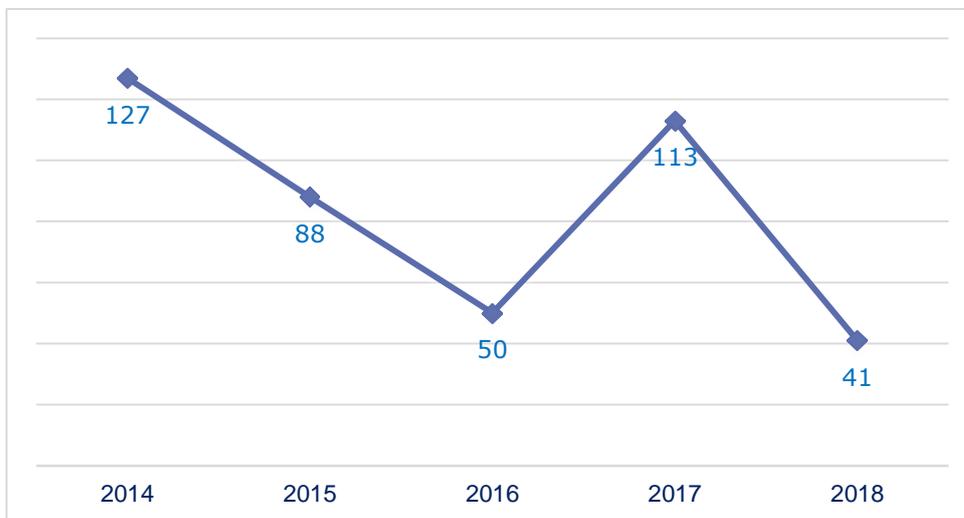
36 Directive [2008/98/EC](#), Commission v Spain, [C-642/18](#); [IP/18/3987](#).

37 Directive [2000/60/EC](#), Commission v Spain, [C-556/18](#); [IP/18/1445](#).

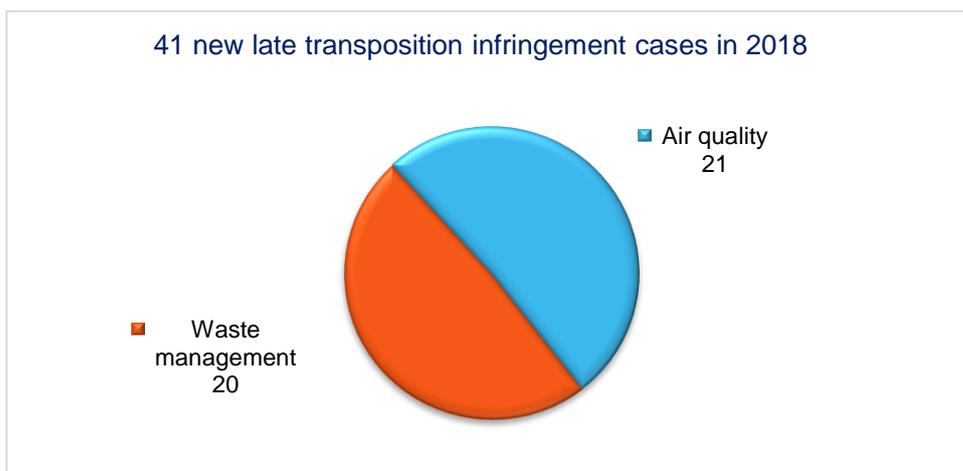
38 Directive [85/337/EEC](#) amended by Directive [97/11/EC](#), Commission v Ireland, [C-261/18](#); [IP/18/355](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2014-2018)



### 2. New late transposition infringement cases opened in 2018: main policy sectors



### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 41 cases for late transposition in 2018. They included:
- the Directive on the reduction of national emissions of certain atmospheric pollutants<sup>39</sup>;
  - the Directive on the limitation of emissions of certain pollutants from medium combustion plants<sup>40</sup>;
  - the Directive on end-of-life vehicles<sup>41</sup>;
  - a Commission Directive<sup>42</sup> amending for the purposes of adapting to technical progress the Directive on hazardous substances in electrical and electronic equipment<sup>43</sup>.

<sup>39</sup> Directive [2016/2284/EU](#).

<sup>40</sup> Directive [2015/2193/EU](#).

<sup>41</sup> Directive [2017/2096/EU](#).

- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned mainly:

- *United Kingdom*: failure to correctly transpose and apply the Strategic Environmental Assessment Directive regarding plans decided on by Parliament<sup>44</sup>;
- *Slovenia*: incorrect transposition of the Strategic Environmental Assessment Directive and the Environmental Impact Assessment Directive regarding public participation and access to justice in spatial planning<sup>45</sup>;
- *Poland and Bulgaria*: incorrect application of the Nitrates Directive through insufficient designation of nitrate vulnerable zones and shortcomings in the action plans<sup>46</sup>;
- *Belgium*: exceedance of the PM<sub>10</sub> limit values set by the Air Quality Directive<sup>47</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

The Court gave the following rulings<sup>48</sup>.

- *Bulgaria* has failed to fulfil its obligations under the Birds Directive by not having classified as a Special Protection Area the entire Important Bird Area covering the Rila Mountains<sup>49</sup>.
- *Germany* has failed to comply with the Nitrates Directive by not having taken additional measures or reinforced action as soon as it became apparent that the action programme was not sufficient to achieve the objectives set by the Directive. These are to reduce water pollution caused by nitrates from agricultural sources and prevent further such pollution<sup>50</sup>.
- *Greece* has failed to comply with an earlier Court judgment<sup>51</sup> that it had failed to fulfil its obligations under the Urban Waste Water Treatment Directive by not taking the measures necessary for the installation of a collection system for urban waste water from the Thriasio Pedio area and by not subjecting the area's waste water to more stringent treatment before its discharge into the sensitive area of the Gulf of Elefsina. The Court ordered Greece to pay a lump sum of EUR 5 million and a sliding-scale periodic penalty payment of EUR 3 276 000 for each six-month period of delay until full compliance is achieved<sup>52</sup>.
- *Italy* has failed to comply in full with an earlier Court judgment<sup>53</sup> since no proof has been provided of the existence of appropriate urban waste water collection and treatment systems in 74 of the 109 agglomerations concerned by the first judgment. The Court

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<sup>42</sup> Directive [2017/1009/EU](#).

<sup>43</sup> Directive [2011/65/EU](#).

<sup>44</sup> Directive [2001/42/EC](#).

<sup>45</sup> Directives [2001/42/EC](#) and [2011/92/EU](#).

<sup>46</sup> Directive [91/676/EEC](#).

<sup>47</sup> Directive [2008/50/EC](#).

<sup>48</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>49</sup> Directive [2009/147/EC](#), *Commission v Bulgaria*, [C-97/17](#).

<sup>50</sup> Directive [91/676/EEC](#), *Commission v Germany*, [C-543/16](#).

<sup>51</sup> *Commission v Greece*, [C-119/02](#).

<sup>52</sup> *Commission v Greece*, [C-328/16](#) and Court press release [No 17/18](#).

<sup>53</sup> *Commission v Italy*, [C-565/10](#).

found that Italy's failure to fulfil its obligations is particularly serious in so far as the lack or inadequacy of urban waste water collection or treatment systems could harm the environment. The Court ordered Italy to pay a lump sum of EUR 25 million and a penalty payment of EUR 30 112 500 for every 6 months of delay until full compliance is achieved<sup>54</sup>.

- *Malta* has failed to comply with the Birds Directive in adopting a certain derogation regime allowing the capture of seven species of wild birds<sup>55</sup>.
- *Poland* has been persistently exceeding the EU air quality limit values for particulate matter (PM<sub>10</sub>) in several zones and agglomerations throughout the whole country. Furthermore, Poland has failed to incorporate in its air quality programmes appropriate measures to ensure that the exceedance period is kept as short as possible<sup>56</sup>.
- *Poland* has incorrectly transposed into national legislation the requirements of the Environmental Impact Assessment Directive on exploratory drilling. The national legislation found to be non-compliant excludes exploratory works for shale gas carried out at a depth of up to 5 000 m, with the exception of drilling to a depth of at least 1 000 m in 'sensitive' areas, such as nature protection zones or water protection zones<sup>57</sup>.
- *Poland* has failed to fulfil its obligations under the Habitats and Birds Directives regarding management of the Białowieża Forest. The operations at issue resulted in the loss of part of the Natura 2000 site and therefore could not constitute conservation measures<sup>58</sup>.
- *Romania* has breached the Landfill Directive by failing to close down 68 landfills which had not received authorisation to continue operating<sup>59</sup>.
- *Slovakia* has failed to comply with an earlier Court judgment<sup>60</sup> that it had failed to fulfil its obligations under the Landfill Directive by authorising the operation of the Žilina-Považský Chlmec landfill site without a site-conditioning plan and in the absence of a definite decision on its continued operation on the basis of an approved site-conditioning plan. The Court ordered Slovakia to pay a lump sum of EUR 1 000 000 and a daily penalty of EUR 5 000 until full compliance is achieved<sup>61</sup>.
- *Slovenia* has failed to fulfil its obligations under the Landfill Directive. Twenty landfills which had not been granted authorisation to continue operation have not been closed and rehabilitated, and another landfill has not been brought into compliance with the requirements of the Directive<sup>62</sup>.
- *Spain* has failed to comply with an earlier Court judgment<sup>63</sup> as 17 of the 43 agglomerations of over 15 000 population equivalent concerned by the first judgment had still not been equipped with systems for collecting or treating urban waste water. The Court ordered Spain to pay a lump sum of EUR 12 million and a penalty payment of EUR 10 950 000 per six-month period of delay until full compliance is achieved<sup>64</sup>.
- *United Kingdom* has not proposed a sufficient number of Sites of Community Importance under the Habitats Directive for the species harbour porpoise. It has thereby failed to contribute to the creation of the Natura 2000 network in proportion to the representation of the habitats of that species within its territory<sup>65</sup>.

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<sup>54</sup> Commission v Italy, [C-251/17](#) and Court press release [No 74/18](#).

<sup>55</sup> Directive [2009/147/EC](#), Commission v Malta, [C-557/15](#) and Court press release [No 90/18](#).

<sup>56</sup> Commission v Poland, [C-336/16](#) and Court press release [No 19/18](#).

<sup>57</sup> Commission v Poland, [C-526/16](#).

<sup>58</sup> Commission v Poland, [C-441/17](#) and Court press release [No 48/18](#).

<sup>59</sup> Directive [1999/31/EC](#), Commission v Romania, [C-301/17](#).

<sup>60</sup> Commission v Slovakia, [C-331/11](#).

<sup>61</sup> Directive [1999/31/EC](#), Commission v Slovakia, [C-626/16](#) and Court press release [No 99/18](#).

<sup>62</sup> Directive [1999/31/EC](#), Commission v Slovenia, [C-506/17](#).

<sup>63</sup> Commission v Spain, [C-343/10](#).

<sup>64</sup> Commission v Spain, [C-205/17](#) and Court press release [No 120/18](#).

<sup>65</sup> Directive [92/43/EEC](#), Commission v United Kingdom, [C-669/16](#).

## 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Belgium*: Regional town planning regulations laying down certain requirements for the completion of building projects fall under the definition of ‘plans and programmes’ which are likely to have significant environmental effects, within the meaning of the Strategic Environmental Assessment Directive. Consequently, they must be subjected to an environmental impact assessment.<sup>66</sup>
- *Ireland*: If a project to be carried out on a site designated for the protection and conservation of certain species includes measures aiming to ensure that the part of the site likely to provide a suitable habitat for the species will not be reduced and could even be enhanced, those measures do not constitute mitigation measures. Therefore, they may not be taken into account for the purpose of the appropriate assessment of the implications of the project for the site. Such measures may be seen as compensatory measures, necessary to protect the overall coherence of the Natura 2000 network<sup>67</sup>.
- *Ireland*: An ‘appropriate assessment’ required under the Habitats Directive<sup>68</sup> must i) catalogue all habitat types and species for which the Natura 2000 site is protected and ii) examine the implications of the proposed project for the species present on the site (other than those for which the site has been listed) and the implications for habitat types and species outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site. The developer of the project is free to determine later, after the development consent has been granted, certain parameters relating to the construction phase only if those parameters will not adversely affect the integrity of the site. If a scientific expert opinion recommends obtaining additional information and the authority competent to issue the environmental permit rejects these findings, the ‘appropriate assessment’ must present explicitly and in detail the reasons which led the permitting authority to conclude that there is no reasonable scientific doubt over the effects of the work envisaged on the site concerned. The Environmental Impact Assessment Directive<sup>69</sup> requires that the project developer supplies information that expressly addresses the significant effects of the project on all species identified in the environmental impact statement. Studying the ‘main alternatives’ means that the developer must indicate the reasons for his choice, taking into account at least the environmental effects, whether those alternatives were initially envisaged by him or by the competent authority or whether they were recommended by some stakeholders<sup>70</sup>.

## VIII. OUTLOOK

Important implementation work in 2019 includes:

- legal action to ensure swift, complete and correct transposition of all EU environmental directives across the EU, in line with the priorities set out in the Communication ‘EU law: Better results through better application’<sup>71</sup>;
- pursuing action to ensure full implementation of the Natura 2000 network, including designation of Sites of Community Importance and of Special Areas of Conservation under the Habitats Directive<sup>72</sup> across the EU;
- continuing action to ensure full compliance with the Air Quality Directive as regards PM<sub>10</sub> and nitrogen dioxide (NO<sub>2</sub>) limit values, as well as monitoring systems across the EU<sup>73</sup>;

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<sup>66</sup> Directive [2001/42/EC](#), Inter-Environnement Bruxelles and Others, [C-671/16](#).

<sup>67</sup> Directive [92/43/EEC](#), Grace and Sweetman, [C-164/17](#).

<sup>68</sup> Directive [92/43/EEC](#).

<sup>69</sup> Directive [2011/92/EU](#).

<sup>70</sup> Holohan and Others, [C-461/17](#).

<sup>71</sup> [C/2016/8600](#), OJ C 18, 19.1.2017, p. 10–20.

<sup>72</sup> Directive [92/43/EEC](#).

- pursuing legal action to ensure full implementation of the Water Framework Directive<sup>74</sup>, the Urban Waste Water Treatment Directive<sup>75</sup> and the Nitrates Directive<sup>76</sup>.

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<sup>73</sup> Directive [2008/50/EC](#).

<sup>74</sup> Directive [2000/60/EC](#).

<sup>75</sup> Directive [91/271/EEC](#).

<sup>76</sup> Directive [91/676/EEC](#).

Financial stability, financial services and Capital Markets Union

## I. COMPLAINTS

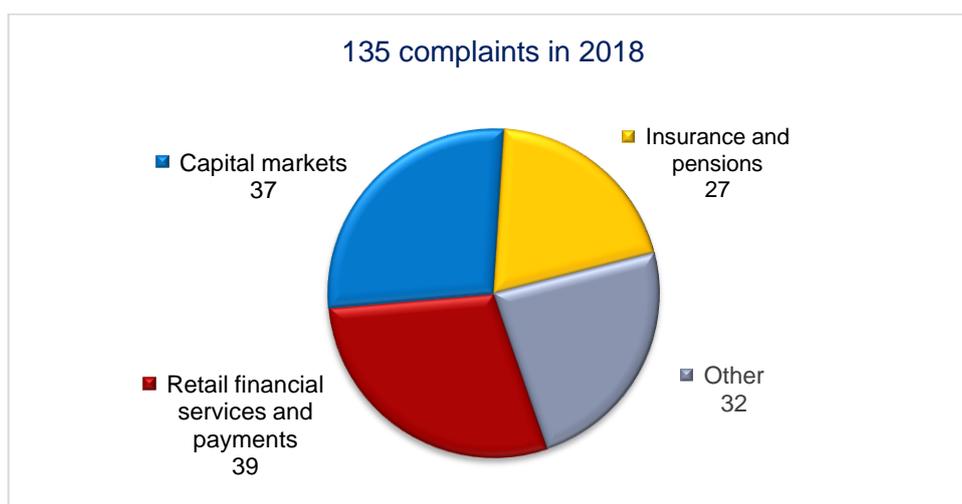
### 1. New complaints received from members of the public in 2018

The Commission received 135 complaints from members of the public in this area in 2018 and 155 in 2017.

### 2. Public complaints open at year-end

103	>	Complaints open at end-2017
135	>	New complaints registered in 2018
127	>	Complaints handled in 2018
<hr/>		
= 111	>	Complaints open at end-2018

### 3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

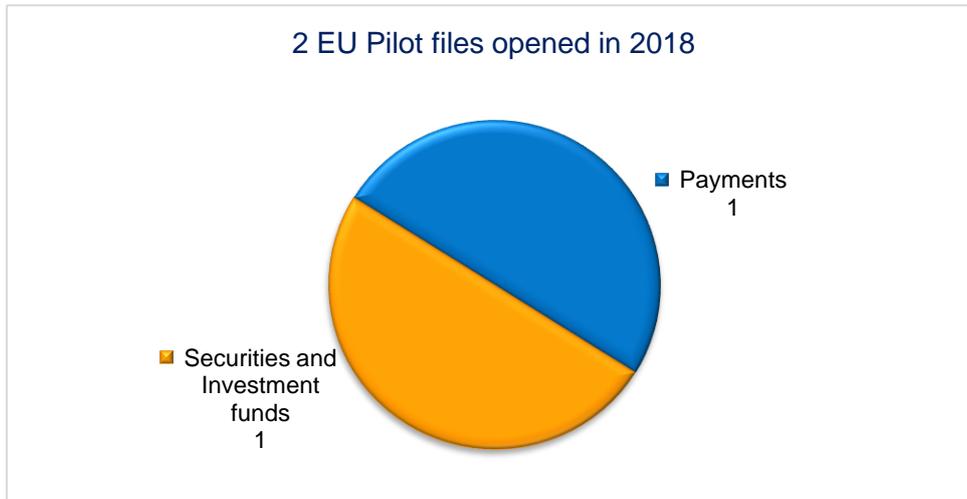
### 1. New EU Pilot files (2016-2018)

The Commission opened two new EU Pilot files in this area in 2018.

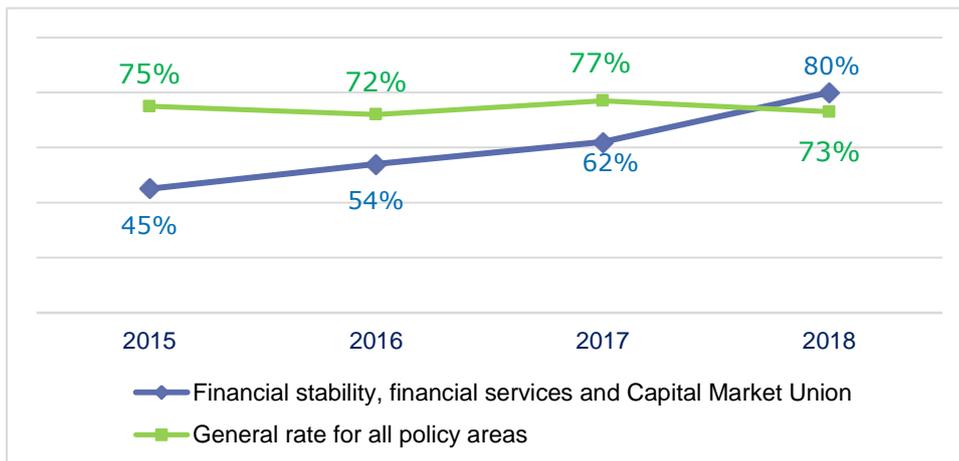
### 2. EU Pilot files open at year-end

At the end of 2018 eight EU Pilot files remained open.

### 3. New EU Pilot files opened in 2018: main policy sectors



### 4. EU Pilot files: policies' combined resolution rate in 2015-2018



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

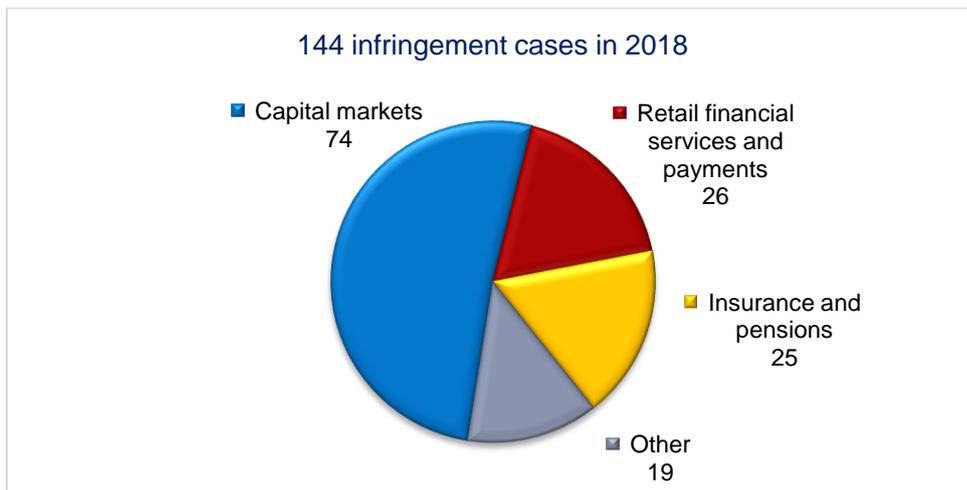
In 2018 the Commission's own-initiative infringement cases concerned the investor compensation schemes.

#### IV. INFRINGEMENT CASES

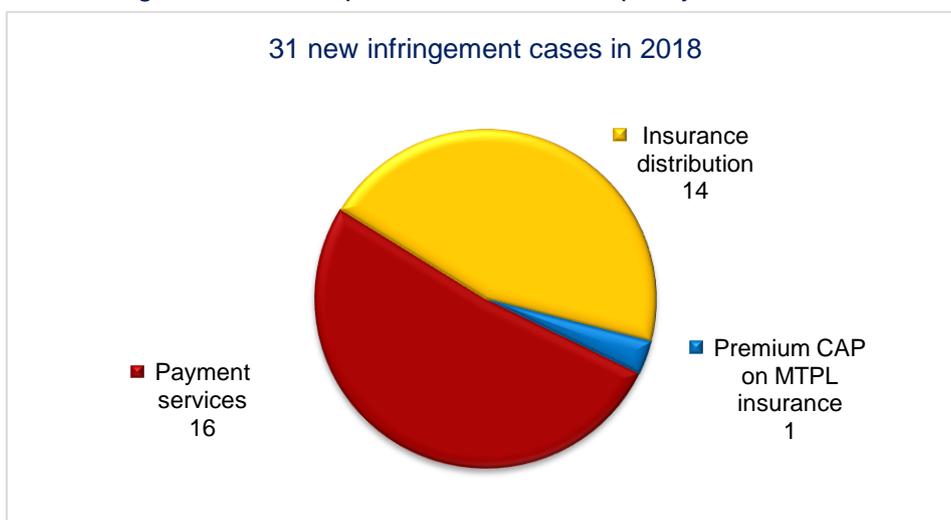
##### 1. Infringement cases open on 31 December (2016-2018)



##### 2. Infringement cases open on 31 December 2018: main policy sectors



##### 3. New infringement cases opened in 2018: main policy sectors

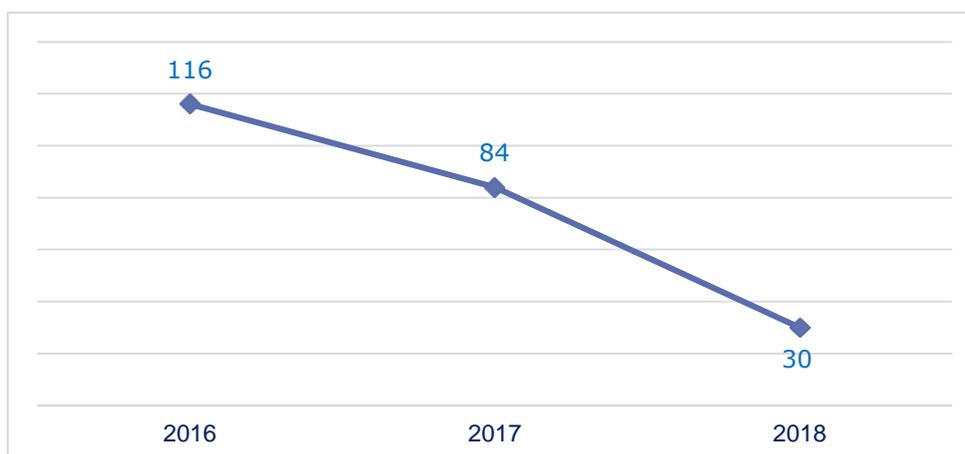


#### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 31 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following:
- *Belgium, Bulgaria, Greece, Spain, Croatia, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Romania and Sweden*: non-communication of national measures transposing the Payment Services Directive<sup>1</sup>;
  - *Belgium, Bulgaria, Germany, Greece, Spain, France, Croatia, Cyprus, Luxembourg, Latvia, Austria, Portugal, Romania and Slovenia*: non-communication of national measures transposing the Insurance Distribution Directive;<sup>2</sup>
  - *Bulgaria, Croatia, Greece, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovenia, Spain and Sweden*: non-communication of national measures transposing the revised Markets in Financial Instruments Directive;<sup>3</sup>
  - *Cyprus*: incorrect application of the Investor Compensation Schemes Directive<sup>4</sup>;
  - *Romania*: non-conformity of certain provisions of Romanian legislation on motor third-party liability insurance with the provisions of the Solvency II and Motor Insurance Directives<sup>5</sup>.
- b) The Commission referred one case to the Court under Article 258 TFEU. It concerns:
- *Slovenia*: failure to communicate national measures transposing the Delegated Directive implementing the Markets in Financial Instruments Directive<sup>6</sup>.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2016-2018)



<sup>1</sup> Directive [2015/2366/EU](#).

<sup>2</sup> Directive [2016/97/EU](#).

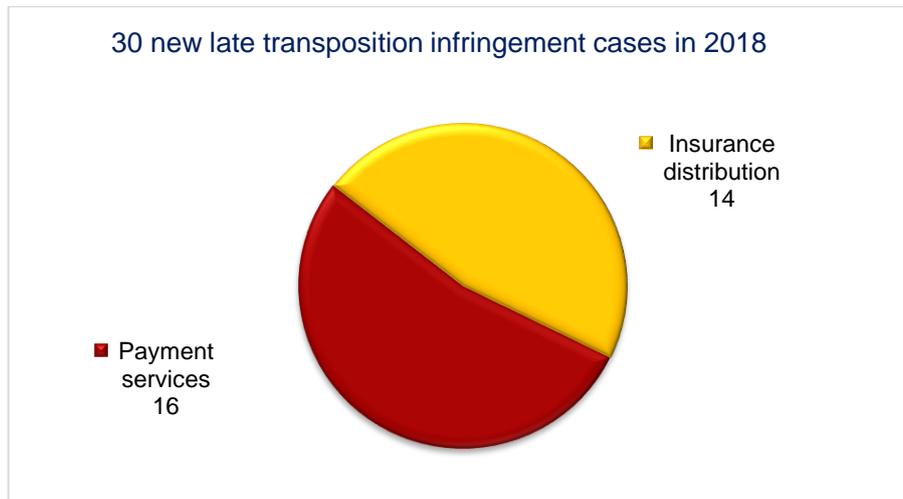
<sup>3</sup> Directive [2014/65/EU](#); [MEMO/18/349](#).

<sup>4</sup> Directive [97/9/EC](#).

<sup>5</sup> Directives [2009/138/EC](#) and [2009/103/EC](#); [MEMO/18/4486](#).

<sup>6</sup> Commission v Slovenia [C-631/18](#); Directive [2017/593EU](#).

## 2. New late transposition infringement cases opened in 2018: main policy sectors



## 3. Key infringement cases and referrals to the Court

- a) The Commission opened 30 cases for late transposition in 2018. Most concern
  - the Payment Services Directive<sup>7</sup>;
  - the Insurance Distribution Directive<sup>8</sup>.
- b) The Commission referred three cases to the Court under Articles 258 and 260(3) TFEU. They concern
  - *Spain*: failure to communicate national measures transposing the Payments Accounts Directive<sup>9</sup>;
  - *Slovenia*: failure to communicate national measures transposing the revised Markets in Financial Instruments Directive<sup>10</sup>;
  - *Slovenia*: failure to communicate national measures transposing the Audit Directive.<sup>11</sup>

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned:

- *Cyprus, Ireland, Latvia and Portugal*: failure to communicate national measures transposing the Solvency II Directive<sup>12</sup>;
- *Luxembourg, Croatia, Czechia, Denmark, Greece and Finland*: failure to communicate national measures transposing the Mortgage Credit Directive<sup>13</sup>;
- *Poland*: failure to communicate national measures transposing the Alternative Investment Fund Managers Directive<sup>14</sup>;

<sup>7</sup> Directive [2015/2366/EU](#).

<sup>8</sup> Directive [2016/97/EU](#).

<sup>9</sup> Commission v Spain, [C-430/18](#); [Directive 2014/92/EU](#).

<sup>10</sup> Commission v Slovenia [C-628/18](#); [Directive 2014/65/EU](#).

<sup>11</sup> Commission v Slovenia [C-69/18](#); [Directive 2014/56/EU](#).

<sup>12</sup> Directive [2009/138/EC](#), [MEMO/18/349](#).

<sup>13</sup> Directive [2014/17/EU](#), [MEMO/18/1444](#).

<sup>14</sup> Directive [2011/61/EU](#), [MEMO/18/349](#).

- *Latvia, Romania, Portugal, Poland, Greece, Bulgaria, Belgium and Malta*: failure to communicate national measures transposing the Directive concerning undertakings for collective investment in transferable securities<sup>15</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

The Court gave the following ruling<sup>16</sup>:

- *Spain* has not fulfilled its obligations as it failed to take the necessary measures to implement the 'Whistleblowing' Directive<sup>17</sup> into national legislation on time<sup>18</sup>.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Hungary*: National legislation restricting usufructuary rights over agricultural land breaches the free movement of capital. The Court concluded that the claimants could enjoy the property in which they invested capital and the national legislation was potentially discriminatory as it favoured close family members of the landowners, who were mainly Hungarian citizens<sup>19</sup>.
- *Germany*: An arbitration clause included in a bilateral agreement between Member States which allows EU investors to bring claims against Member States before arbitral tribunals is not compatible with EU law<sup>20</sup>.

## VIII. OUTLOOK

Important implementation work in 2019 includes the following.

- Monitoring the timely implementation of the Insurance Distribution Directive<sup>21</sup> and the Payment Services Directive<sup>22</sup>.
- Assessing the conformity of national transposition measures with a number of financial services directives. These include the Accounting and Audit Directives<sup>23</sup>, the Transparency Directive<sup>24</sup>, the Mortgage Credit Directive<sup>25</sup>, the Payment Accounts Directive<sup>26</sup>, the Payment Services Directive<sup>27</sup>, the Directive on disclosure of non-financial information by certain large undertakings<sup>28</sup>, the Alternative Investment Fund Managers Directive<sup>29</sup> and the UCITS V Directive<sup>30</sup>.

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<sup>15</sup> Directive [2014/91/EU](#).

<sup>16</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>17</sup> Commission Implementing Directive [2015/2392/EU](#) on Regulation (EU) No [596/2014](#).

<sup>18</sup> Commission v Spain, [C-599/17](#).

<sup>19</sup> SEGRO, [C-52/16](#).

<sup>20</sup> Achmea, [C-284/16](#).

<sup>21</sup> Directive [2016/97/EU](#).

<sup>22</sup> Directive [2015/2366/EU](#).

<sup>23</sup> Directive [2014/56/EU](#).

<sup>24</sup> Directive [2013/50/EU](#).

<sup>25</sup> Directive [2014/17/EU](#).

<sup>26</sup> Directive [2014/56/EU](#).

<sup>27</sup> Directive [2015/2366/EU](#).

<sup>28</sup> Directive [2014/95/EU](#).

<sup>29</sup> Directive [2011/61/EU](#).

<sup>30</sup> Directive [2014/91/EU](#).

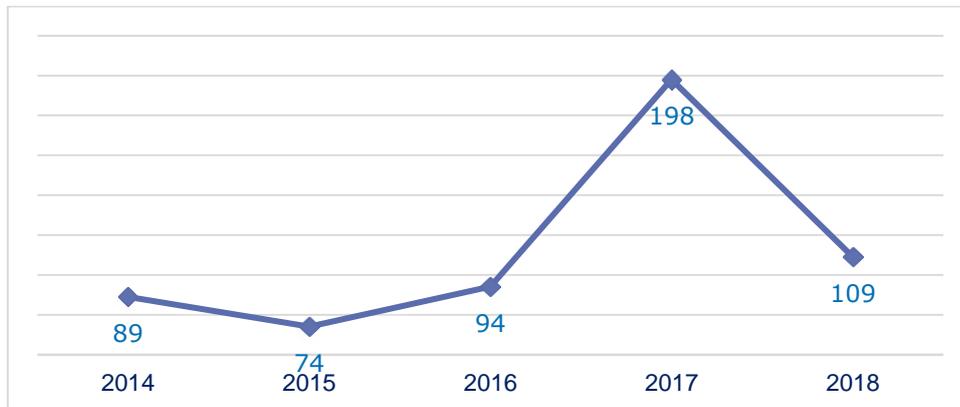
- Ensuring that Member States take appropriate measures to implement the Achmea ruling.<sup>31</sup>

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<sup>31</sup> Achmea, [C-284/16](#).

## I. COMPLAINTS

### 1. New complaints received from members of the public (2014-2018)



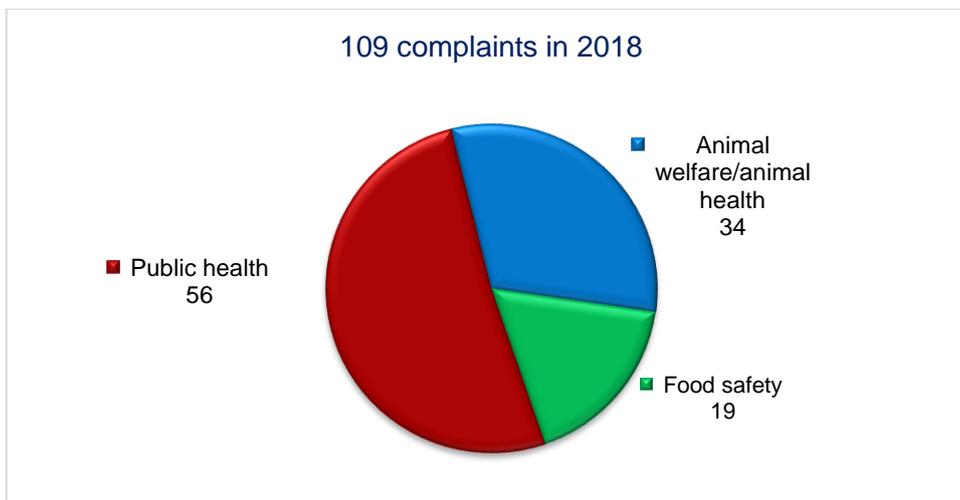
### 2. Public complaints open at year-end

- 81 > Complaints open at end-2017
- 109 > New complaints registered in 2018
- 116 > Complaints handled in 2018

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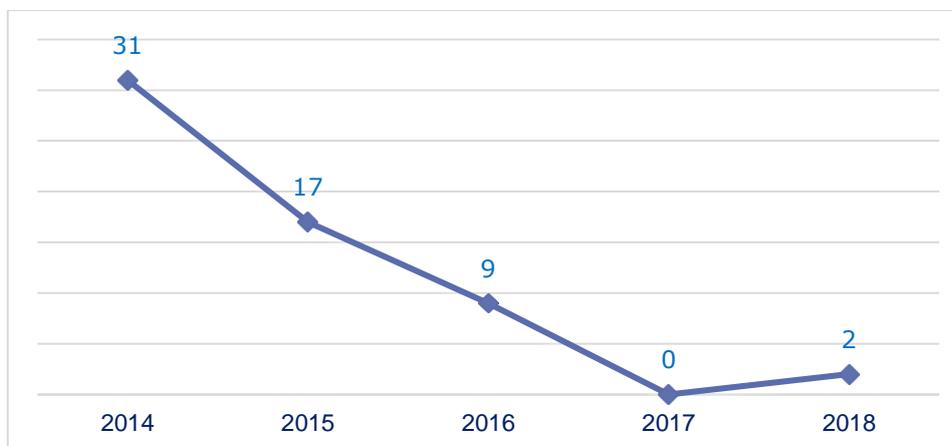
- = 74** > Complaints open at end-2018

### 3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

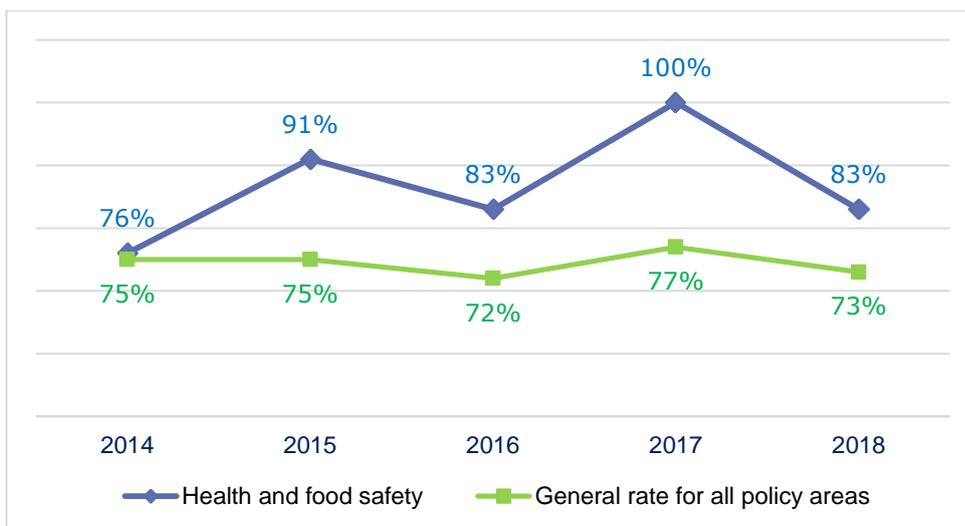
### 1. New EU Pilot files (2014-2018)



### 2. EU Pilot open at year-end

At the end of 2018, 13 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2014-2018)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2018 the Commission opened own-initiative infringement cases over:

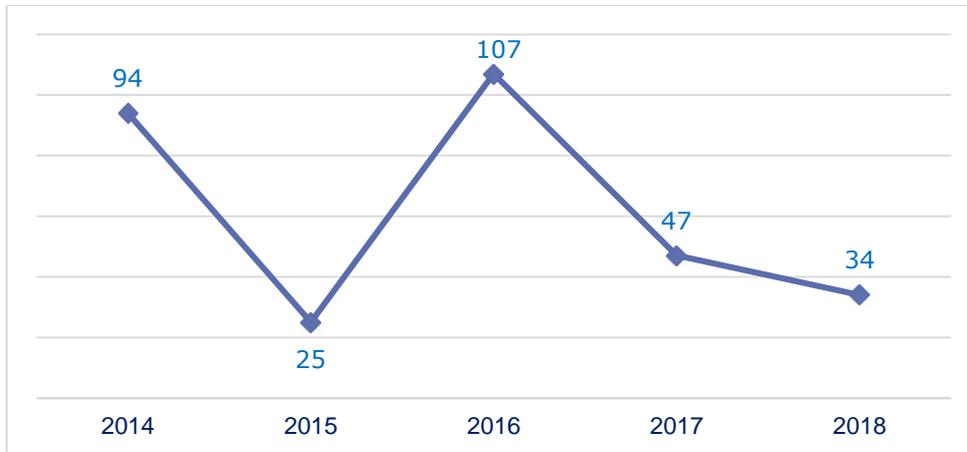
- patient rights under the Cross-border Health Directive<sup>1</sup>;
- trade in equidae intended for competitions<sup>2</sup>.

<sup>1</sup> Directive [2011/24/EU](#).

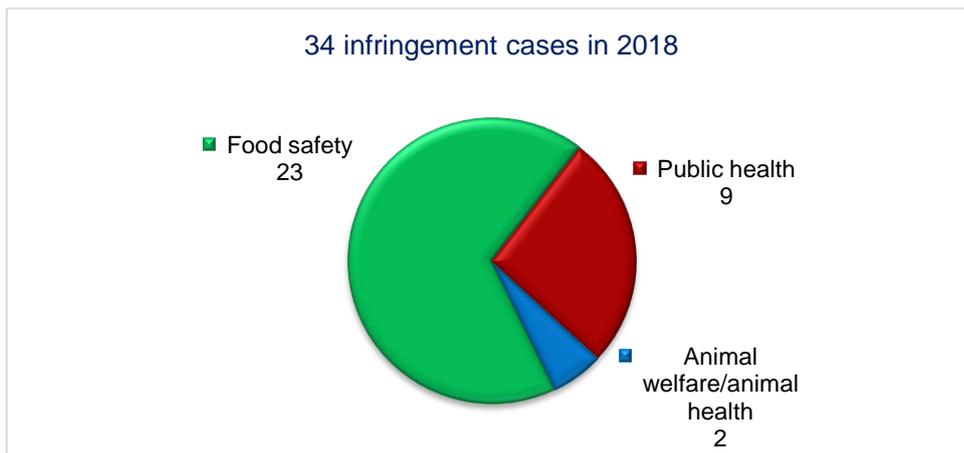
<sup>2</sup> Directive [90/428/EEC](#).

#### IV. INFRINGEMENT CASES

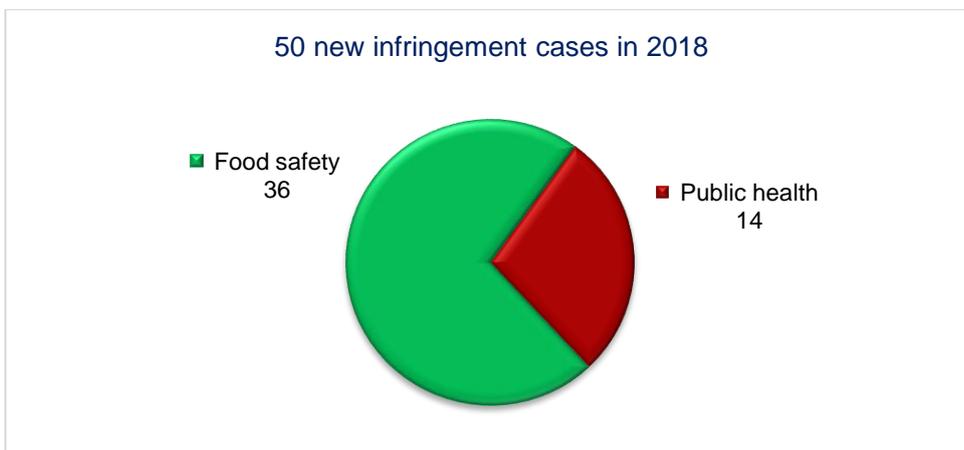
##### 1. Infringement cases open on 31 December (2014-2018)



##### 2. Infringement cases open on 31 December 2018: main policy sectors



##### 3. New infringement cases opened in 2018: main policy sectors



#### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 50 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following:
- *Bulgaria, Czechia, Denmark, Spain, France, Ireland, Italy, Cyprus, Luxembourg, Poland, Romania, Slovenia, Sweden, United Kingdom*: non-communication of national measures transposing the Commission Directive amending the Directive on quality system standards and specifications for blood establishments<sup>3</sup>;
  - *Bulgaria, Czechia, Ireland, Italy, Luxembourg, Hungary, Malta, Romania, Slovakia, Sweden, United Kingdom*: non-communication of national measures transposing the Directive on protective measures against the introduction into the Community of organisms harmful to plants<sup>4</sup>;
  - *Bulgaria, Ireland, Cyprus, Luxembourg, Malta, Netherlands, Romania, Slovakia, United Kingdom*: non-communication of national measures transposing the Directive on the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species and vegetable species<sup>5</sup>.
- b) The Commission referred two cases to the Court under Article 258 TFEU. They concern
- *Italy*: non-communication of national measures transposing certain technical requirements on testing of human tissues and cells<sup>6</sup>;
  - *Italy*: failure to adequately prevent further spread of the quarantine harmful organism *Xylella fastidiosa* in Apulia<sup>7</sup>.
  - *Slovenia*:<sup>8</sup>
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2014-2018)



<sup>3</sup> Commission Directive [2016/1214/EU](#).

<sup>4</sup> Commission Implementing Directive [2017/1279/EU](#).

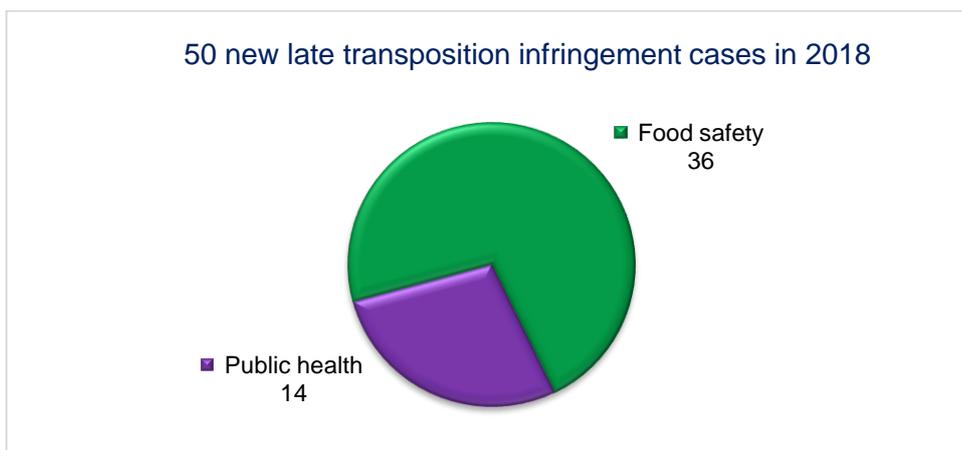
<sup>5</sup> Commission Implementing Directive [2018/100/EU](#).

<sup>6</sup> Commission v Italy, [C-481/18](#).

<sup>7</sup> Commission v Italy, [C-443/18](#).

<sup>8</sup> Commission v Slovenia, [C-631/18](#).

## 2. New late transposition infringement cases opened in 2018: main policy sectors



## 3. Key infringement cases and referrals to the Court

- a) The Commission opened 50 cases for late transposition in 2018. Most concern the:
- Commission Directive amending the Directive on quality system standards and specifications for blood establishments<sup>9</sup>;
  - Directive on protective measures against the introduction into the Community of organisms harmful to plants<sup>10</sup>;
  - Directive on the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species and vegetable species<sup>11</sup>;
- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned:

- *Lithuania*: incomplete transposition of the Directives on the quality and safety of reproductive cells<sup>12</sup>;
- *Germany*: non-compliance with the principle of mutual recognition of 'old authorisations' for plant protection products<sup>13</sup>;
- *Bulgaria, France, Latvia, Hungary and Finland*: non-communication of national measures transposing the Directive on tobacco products<sup>14</sup>;
- *Bulgaria, Czechia, Denmark, Spain, France, Ireland, Italy, Cyprus, Luxembourg, Poland, Romania, Slovenia, Sweden and United Kingdom*: non-communication of national measures transposing the Commission Directive amending the Directive on quality system standards and specifications for blood establishments<sup>15</sup>;

<sup>9</sup> Commission Directive [2016/1214/EU](#).

<sup>10</sup> Commission Implementing Directive [2017/1279/EU](#).

<sup>11</sup> Commission Implementing Directive [2018/100/EU](#).

<sup>12</sup> Directives [2004/23/EC](#), [2006/17/EC](#) and [2006/86/EC](#).

<sup>13</sup> Regulation (EC) No [1107/2009](#).

<sup>14</sup> Directive [2014/40/EU](#).

<sup>15</sup> Directive [2016/1214/EU](#).

- *Belgium, Czechia, Italy, Cyprus, Luxembourg, Austria, Slovakia and United Kingdom*: non-communication of national measures transposing the Directive on the inclusion of new species and the botanical name of the species *Lolium x boucheanum* Kunth<sup>16</sup>;
- *Bulgaria, Czechia, Ireland, Italy, Luxembourg, Hungary, Malta, Romania, Slovakia and Sweden*: non-communication of national measures transposing the Directive on protective measures against the introduction into the Community of organisms harmful to plants<sup>17</sup>;
- *Ireland, Netherlands and Portugal*: non-communication of national measures transposing the Directive on the movement of seeds of *Solanum tuberosum* L. originating in the Union<sup>18</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2018 in this area.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Belgium*: Ritual slaughter without stunning may take place only in an approved slaughterhouse. The obligation to carry out ritual slaughter in an approved slaughterhouse simply aims, from a technical point of view, to organise and manage the freedom to carry out slaughter without prior stunning for religious purposes. Such a technical framework is not in itself of such a nature as to restrict the right to freedom of religion of practising Muslims<sup>19</sup>.
- *Germany*: Approval granted to chewing tobacco can only cover products that release their essential ingredients by being chewed<sup>20</sup>.
- *France*: Organisms obtained by mutagenesis are genetically modified organisms and are, in principle, subject to the obligations laid down by the GMO Directive<sup>21</sup>. However, organisms obtained by mutagenesis techniques that have conventionally been used in a number of applications and have a long safety record are exempt from those obligations. Member States are nevertheless free to subject them, in compliance with EU law, to the obligations laid down by the Directive or to other obligations<sup>22</sup>.
- *Italy*: The organisation and management of health services are the responsibility of the Member States, as regards setting the prices of medicinal products and their inclusion in the scope of the national healthcare insurance system. In exercising those powers, the Member States must comply with EU law<sup>23</sup>.
- *United Kingdom*: A prohibition on placing on the market tobacco products for oral use is intended not to restrict the right to health but, on the contrary, to give

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<sup>16</sup> Directive [2016/2109/EU](#).

<sup>17</sup> Directive [2017/1279/EU](#).

<sup>18</sup> Directive [2017/1920/EU](#).

<sup>19</sup> Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others, [C-426/16](#) and [press release](#).

<sup>20</sup> Günter Hartmann Tabakvertrieb, [C-425/17](#).

<sup>21</sup> Directive [2001/18/EC](#).

<sup>22</sup> Confédération paysanne and Others, [C-528/16](#) and [press release](#).

<sup>23</sup> Novartis Farma, [C-29/17](#) and [press release](#).

expression to that right and, consequently, to ensure a high level of protection of health for all consumers<sup>24</sup>.

- *United Kingdom*: A product composed of several active ingredients with a combined effect is 'protected by a basic patent in force', even if the combination of active ingredients of which that product is composed is not expressly mentioned in the claims of the basic patent<sup>25</sup>.
- *United Kingdom*: A supplementary protection certificate for medicinal products is to be interpreted as meaning that an end of procedure notice issued by the reference Member State before the expiry of the basic patent may not be treated as equivalent to a marketing authorisation. Consequently, a supplementary protection certificate may not be obtained on the basis of such a notice<sup>26</sup>.

## VIII. OUTLOOK

Important implementation work in 2019 includes:

- monitoring the timely and correct implementation of Directives on:
  - the application of patients' rights in cross-border healthcare<sup>27</sup>;
  - the manufacture, presentation and sale of tobacco and related products<sup>28</sup>;
- following up on national authorities' enforcement of EU rules in the plant health sector, in particular the monitoring of cases relating to the *Xylella fastidiosa*;
- following up on national authorities' enforcement of EU rules on the Sustainable Use of Pesticides Directive<sup>29</sup> on the animal welfare issue of 'tail docking'<sup>30</sup>.

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<sup>24</sup> Swedish Match, [C-151/17](#) and [press release](#).

<sup>25</sup> Teva UK and Others, [C-121/17](#).

<sup>26</sup> Merck Sharp, [C-567/16](#).

<sup>27</sup> Directive [2011/24/EU](#).

<sup>28</sup> Directive [2014/40/EU](#).

<sup>29</sup> Directive [2009/128/EC](#).

<sup>30</sup> Directive [2008/120/EC](#).

Internal market, industry, entrepreneurship and SMEs

I. COMPLAINTS

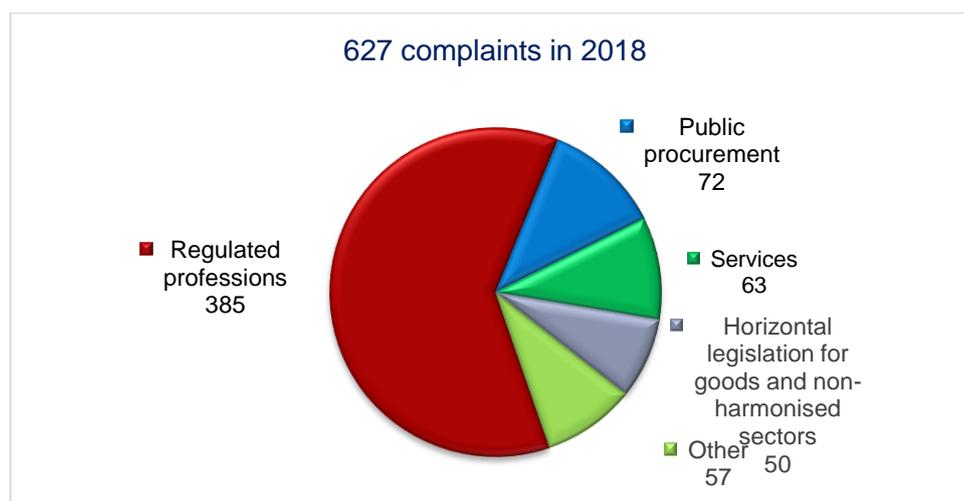
1. New complaints received from members of the public (2016-2018)

The Commission received 627 complaints from the members of the public in the area of internal market, industry, entrepreneurship and SMEs in 2018, compared with 476 in 2017 and 483 in 2016.

2. Public complaints open at year-end

641	>	Complaints open at end-2017
627	>	New complaints registered in 2018
540	>	Complaints handled in 2018
<b>= 728</b>	>	<b>Complaints open at end-2018</b>

3. New complaints registered in 2018: main policy sectors



II. EU PILOT

1. New EU Pilot files (2015-2018)



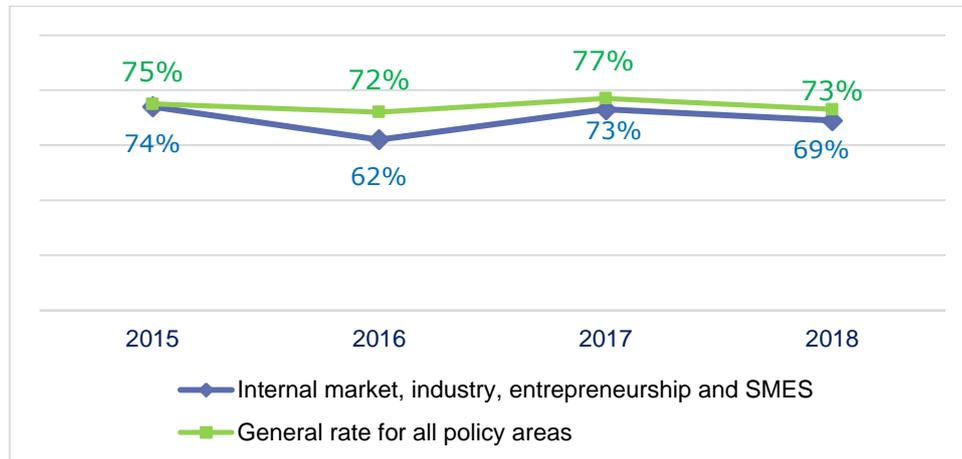
## 2. EU Pilot files open at year-end

At the end of 2018, 43 EU Pilot files remained open.

## 3. New EU Pilot files opened in 2018: main policy sectors

In 2018 the Commission opened two new EU Pilot files on public procurement.

## 4. EU Pilot files: resolution rate for policies (2015-2018)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2018 the Commission opened own-initiative infringement cases over:

- Recognition of professional qualifications<sup>1</sup>.

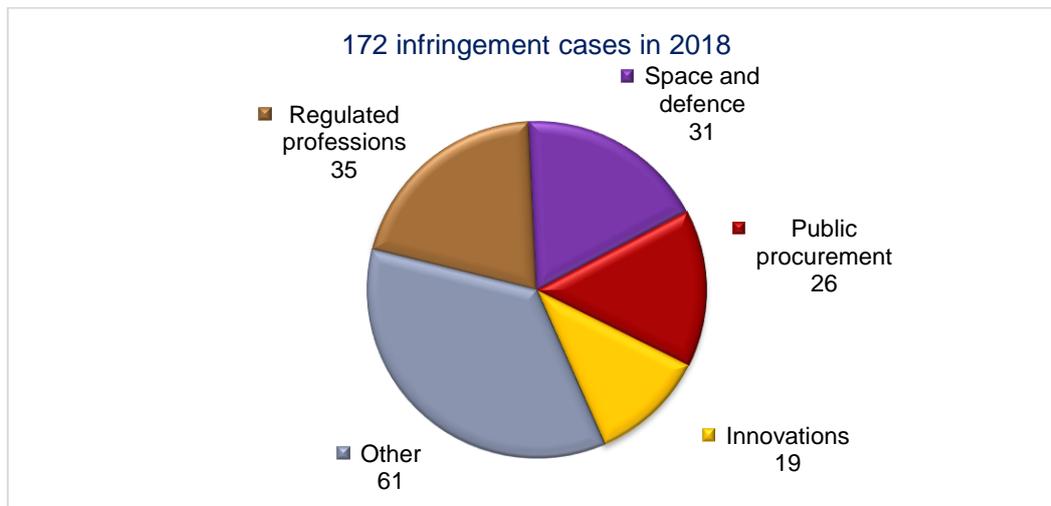
## IV. INFRINGEMENT CASES

### 1. Infringement cases open on 31 December 2018

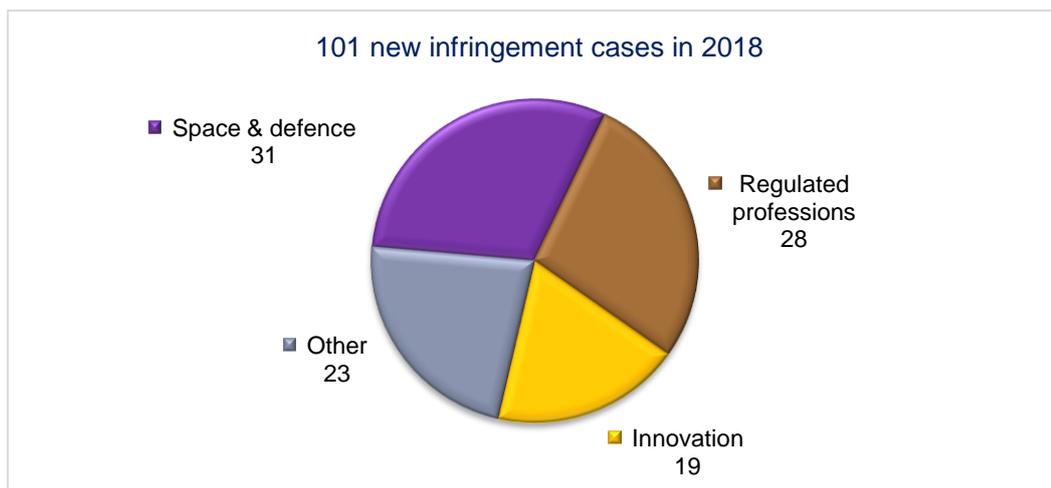


<sup>1</sup> Directive [2005/36/EC](#) as amended by Directive [2013/55/EU](#).

## 2. Infringement cases open on 31 December 2018: main policy sectors



## 3. New infringement cases opened in 2018: main policy sectors



## 4. Key infringement cases and referrals to the Court

- a) The Commission opened 101 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following:
- *Denmark*: unjustified restrictions on foreign self-employed persons providing services in the country;<sup>2</sup>
  - *Austria*: lack of equal access for bidders to tender specifications (public procurement);
  - *Greece*: delays in processing applications for recognition of diplomas from other Member States<sup>3</sup>;
  - *Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, , Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovakia, Slovenia, Finland,*

<sup>2</sup> [MEMO/18/1444](#).

<sup>3</sup> Directive [2005/36/EC](#).

Internal market, industry, entrepreneurship and SMEs

*Sweden and United Kingdom*: non-conformity of national transposition measures with the Directive on the recognition of professional qualifications<sup>4</sup>;

- *Denmark and Netherlands*: unjustified offset requirements demanding compensation from non-national suppliers when purchasing defence equipment from them<sup>5</sup>;
- *Italy, Poland and Portugal*: direct award of a number of defence contracts to national suppliers in breach of the Defence Procurement Directive<sup>6</sup>.

b) The Commission referred five cases to the Court under Article 258 TFEU. They concern

- *Italy*: delays in payments made by the Italian public authorities to their suppliers in breach of the Directive on combating late payment in commercial transactions;<sup>7</sup>
- *Greece*: obstacles to the freedom of establishment for training bodies for professional mediators contrary to the Services Directive<sup>8</sup> and restrictions on recognising the professional qualifications of mediators<sup>9</sup>;
- *Austria*: bad application of the Services Directive<sup>10</sup> by imposing unjustified requirements concerning the registered office, legal form and share capital ownership for companies in a number of professions – architects, engineers, patent attorneys and veterinarians<sup>11</sup>;
- *Belgium*: a provision in the code for accountants prohibiting accountants from carrying out any other economic activity as an insurance broker, real estate agent and all banking and financial services activities, in breach of the Services Directive<sup>12</sup>;
- *Hungary*: amendments to the Hungarian Higher Education Act (CCIV), which violate EU law by restricting the operations of EU and non-EU higher education institutions<sup>13</sup>.

c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

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<sup>4</sup> Directive [2005/36/EC](#). [MEMO/18/4486](#).

<sup>5</sup> [IP/18/357](#).

<sup>6</sup> [IP/18/357](#).

<sup>7</sup> Commission v Italy, [C-122/18](#), Directive [2011/7/EU](#).

<sup>8</sup> Directive [2006/123/EC](#).

<sup>9</sup> Commission / Greece, [C-729/17](#), Directive [2005/36/EC](#).

<sup>10</sup> Directive [2006/123/EC](#).

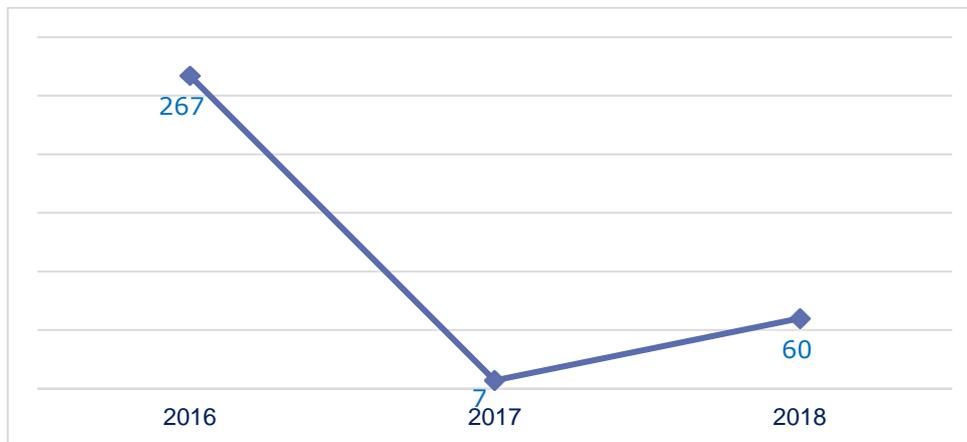
<sup>11</sup> Commission v Austria, [C-209/18](#).

<sup>12</sup> Commission v Belgium, [C-384/18](#).

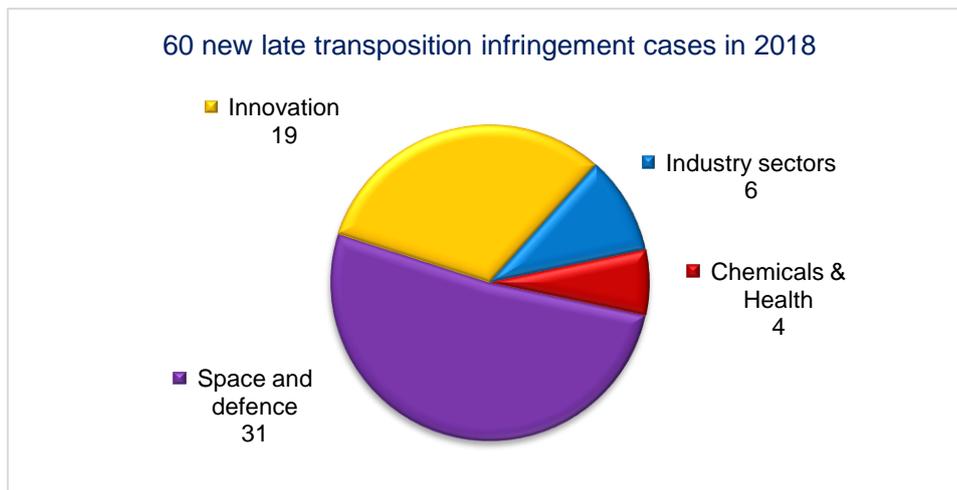
<sup>13</sup> Commission v Hungary, [C-66/18](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2016- 2018)



### 2. New late transposition infringement cases opened in 2018: main policy sectors



### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 60 cases for late transposition in 2018. Among the directives concerned were:
  - a Commission Directive<sup>14</sup> amending a Council Directive as regards the maximum allowable pressure of aerosol dispensers and to adapt its labelling provisions to the Regulation on classification, labelling and packaging of substances and mixtures<sup>15</sup>;
  - the Directive<sup>16</sup> on control of the acquisition and possession of weapons;
  - a Commission Directive<sup>17</sup> amending a Council Directive as regards the list of defence-related products.
- b) The Commission referred nine cases to the Court under Articles 258 and 260(3) TFEU. They concern

<sup>14</sup> Commission Directive [2016/2037/EU](#).

<sup>15</sup> Regulation (EC) No [1272/2008](#).

<sup>16</sup> Directive [2017/853/EU](#).

<sup>17</sup> Directive [2017/2054/EU](#).

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- *Austria*: three cases for non-communication of national measures transposing the Directives on the award of concession contracts<sup>18</sup>, public procurement<sup>19</sup>, and procurement by entities operating in the water, energy, transport and postal services sectors<sup>20</sup>;
- *Spain*: two cases for non-communication of national measures transposing the Directives on the award of concessions contracts<sup>21</sup> and on procurement by entities operating in the water, energy, transport and postal services sectors<sup>22</sup>;
- *Luxembourg*: three cases for non-communication of national measures transposing the Directives on the award of concessions contracts<sup>23</sup>, public procurement<sup>24</sup>, and procurement by entities operating in the water, energy, transport and postal services sectors<sup>25</sup>;
- *Slovenia*: non-communication of national measures transposing the Directive on the award of concession contracts<sup>26</sup>.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned mainly:

- *Romania*: restrictions on veterinary surgeons in Romania;
- *Romania*: obstacles to the marketing of LPG fuel stations;
- *Spain*: discriminatory and excessive requirements for participation in public procurement of ambulance services<sup>27</sup>;
- *Poland, Romania, Slovakia, Germany*: parallel imports of medicines<sup>28</sup>;
- *Slovakia*: registration of right-hand drive vehicles;
- *Portugal*: obligation to notify the export of medicines;
- *France*: import of second-hand cars which were previously registered in another Member State.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

The Court gave the following rulings<sup>29</sup>:

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<sup>18</sup> Commission v Austria, [C-79/18](#). Austria subsequently took the necessary measures and the case has been withdrawn from the Court; Directive [2014/23/EU](#).

<sup>19</sup> Commission v Austria, [C-77/18](#). Austria subsequently took the necessary measures and the case has been withdrawn from the Court. Directive [2014/24/EU](#).

<sup>20</sup> Commission v Austria, [C-76/18](#). Austria subsequently took the necessary measures and the case has been withdrawn from the Court. Directive [2014/25/EU](#).

<sup>21</sup> Commission v Spain, [C-164/18](#). Directive [2014/23/EU](#), Directive [2015/720/EU](#).

<sup>22</sup> Commission v Spain, [C-165/18](#). Directive [2014/25/EU](#).

<sup>23</sup> Commission v Luxembourg, [C-86/18](#). Luxembourg subsequently took the necessary measures and the case has been withdrawn from the Court.

<sup>24</sup> Commission v Luxembourg, [C-87/18](#). Luxembourg subsequently took the necessary measures and the case has been withdrawn from the Court.

<sup>25</sup> Commission v Luxembourg, [C-88/18](#). Directive [2014/24/EU](#). Luxembourg subsequently took the necessary measures and the case has been withdrawn from the Court.

<sup>26</sup> Commission v Slovenia, [C-188/18](#).

<sup>27</sup> Directive [2014/24/EU](#).

<sup>28</sup> [IP/18/3459](#).

<sup>29</sup> These rulings are almost exclusively handed down on infringement procedures.

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- *Czechia* failed to fulfil its obligations under EU law by imposing a condition of nationality for access to the profession of notary in the Czech legal system<sup>30</sup>.
- *Austria* breached its obligations under the EU directives on public procurement by awarding service contracts for the production of identity documents and other official documents without holding an EU-wide call for tenders<sup>31</sup>;
- *Germany* failed to take the necessary measures to re-establish conformity to their approved types of 133 713 vehicles of types 246, 176 and 117 sold by Daimler between 1 January and 26 June 2013. The vehicles were fitted not with the refrigerant R1234yf declared for those approved types but a different refrigerant with a global warming potential of over 150<sup>32</sup>;
- *Hungary* breached its obligations under the Services Directive by adopting legislation creating a monopoly by a State-owned entity on the provision of mobile payments services for public parking and other activities<sup>33</sup>.

## 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Germany*: This case concerns voluntary remedial measures taken in case where an exclusion ground from participating in public procurement applies. The Court has established that it is compatible with EU law to require cooperation with both investigative and contracting authorities, each in their particular roles, to demonstrate reliability of a tenderer despite the existence of a relevant ground for exclusion as long as the cooperation with the latter is limited to what is necessary in the framework of the examination of re-establishing reliability. Furthermore, the Court has ruled that the maximum period for exclusion by reason of a competition infringement which had been penalised by a competent authority is to be calculated from the date of the decision of that authority.<sup>34</sup>
- *Italy*: Any period of full-time or part-time specialist medical training begun in 1982 and continued up to 1990 must be subject to appropriate remuneration<sup>35</sup>. *Italy*: Member States whose legislation creates a requirement to pursue full-time training and a prohibition on being enrolled in two courses at the same time must automatically recognise qualifications issued by another Member State on the completion of partially concurrent training<sup>36</sup>.
- *Italy*: The case concerns the compatibility with the freedom to provide services, the freedom of establishment and the principles of non-discrimination, transparency and proportionality of certain national rules imposing limits as regards the concession granted for the management of the national lottery Lotto. The Court establishes that imposing a sole concessionaire model, a high basic contract value, as well as providing for the withdrawal of the concession in case of certain criminal or fraudulent activities can be justified on public policy grounds if they fulfil the principles of proportionality and transparency<sup>37</sup>.
- *Lithuania*: The ruling concerns the handling of potential collusion within a public procurement procedure. Although contracting authorities observing indications of potential collusion are obliged to verify them sufficiently, the related tenderers

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<sup>30</sup> Commission v Czech Republic, [C-575/16](#).

<sup>31</sup> Commission v Austria, [C-187/16](#).

<sup>32</sup> Commission v Germany, [C-668/16](#).

<sup>33</sup> Commission v Hungary, [C-171/17](#).

<sup>34</sup> Vossloh, [C-124/17](#).

<sup>35</sup> Pantuso, [C-616/16](#).

<sup>36</sup> Preindl, [C-675/17](#).

<sup>37</sup> Stanley International Betting and Stanleybet Malta, [C-375/17](#).

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submitting offers in the same procedure are not obliged to spontaneously disclose details of their links<sup>38</sup>.

- *Lithuania*: Technical specifications in public procurement cannot be tailored to an individual provider. It is up to contracting authorities/entities to assure fair competition, either through a detailed technical description or functional specification, or by defining an outcome, or through a combination of them<sup>39</sup>.
- *Hungary*: The case concerns a national procedural rule which submits the possibility of asserting a claim under civil law, in the event of an infringement of the rules governing public procurement and the award of public contracts, to the condition that the infringement be definitively established by a court decision. The Court ruled that the rule can be considered compatible with EU legislation<sup>40</sup>.
- *Netherlands*: Retail is a service and falls within the scope of the Services Directive<sup>41</sup>. The provisions on the freedom of establishment apply also to situations where only one Member State is concerned; the Directive applies also to Member States which regulate the establishment of retail shops through planning rules. A zoning plan rule, such as to reserve a specific location for the sale of bulky items, does not amount to an economic needs test within the meaning of Article 14(5) of the Directive<sup>42</sup>.
- *Austria*: A recipient of services can be ordered to suspend payments and pay a security to guarantee payment of a possible fine which might be imposed by the host Member State on a provider of services established in another Member State<sup>43</sup>.

## VIII. OUTLOOK

### Important implementation work in 2019 includes:

continuing to monitor the enforcement of Single Market rules with the general objective of ensuring it functions seamlessly, and in particular

- continuing to monitor the implementation of EU rules in the automobile sector;
- checking the compliance of national measures with the Public Procurement Directives.

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<sup>38</sup> Specializuotas transportas, [C-531/16](#).

<sup>39</sup> Roche Lietuva, [C-413/17](#).

<sup>40</sup> Hochtief, [C-300/17](#).

<sup>41</sup> Directive [2006/123/EC](#).

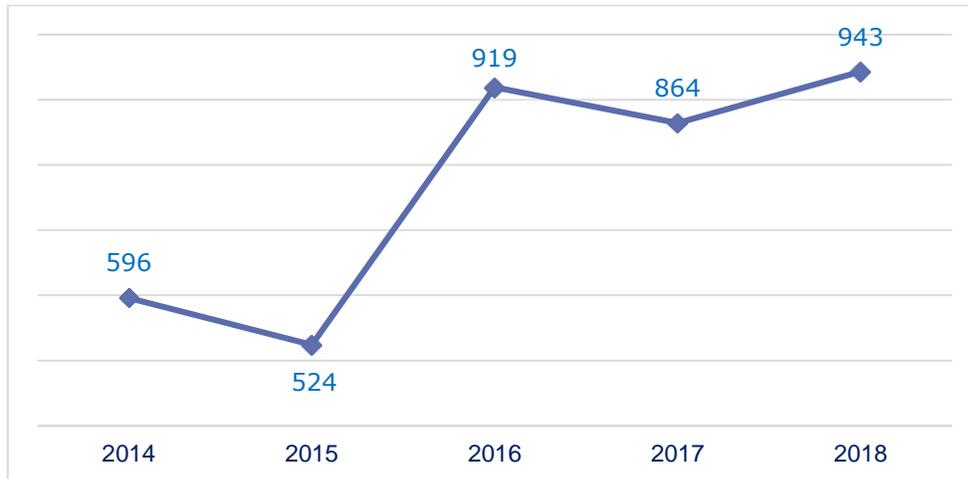
<sup>42</sup> joined cases: X, [C-360/15](#) and Visser Vastgoed Beleggingen, [C-31/16](#).

<sup>43</sup> Čepelnik, [C-33/17](#).

Justice and consumers

I. COMPLAINTS

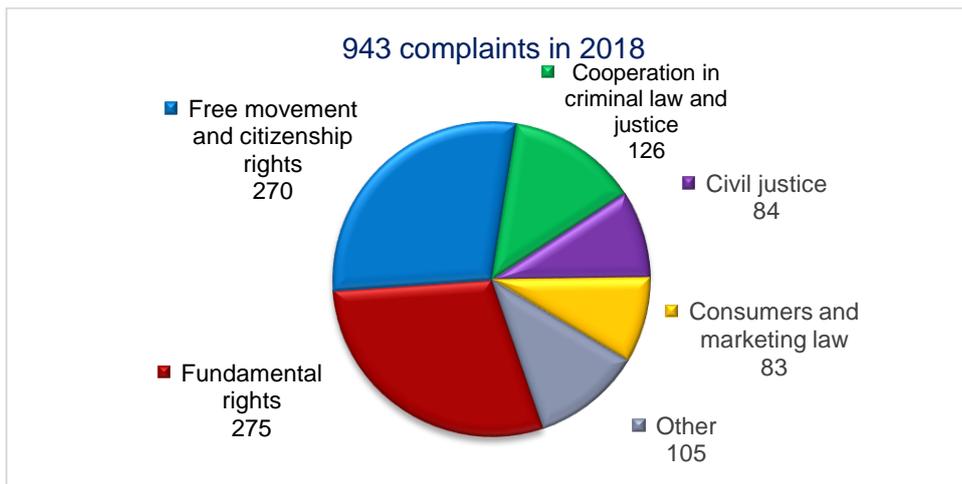
1. New complaints received from members of the public (2014-2018)



2. Public complaints open at year-end

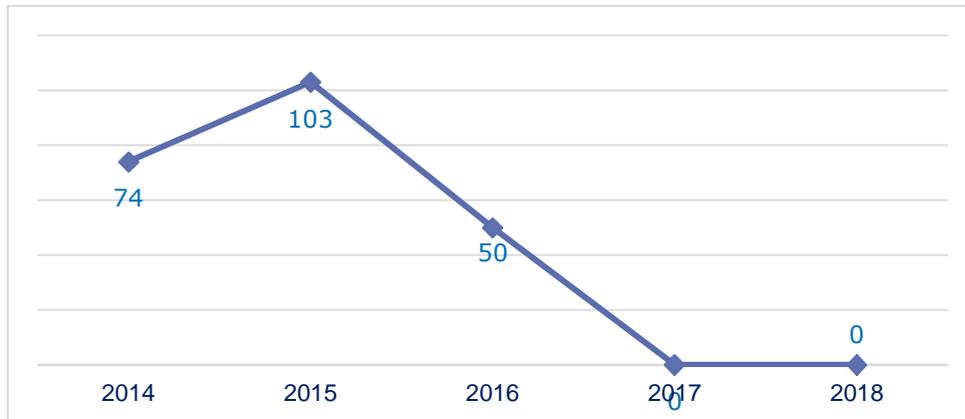
757	>	Complaints open at end-2017
943	>	New complaints registered in 2018
1009	>	Complaints handled in 2018
<b>= 691</b>	>	<b>Complaints open at end-2018</b>

3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

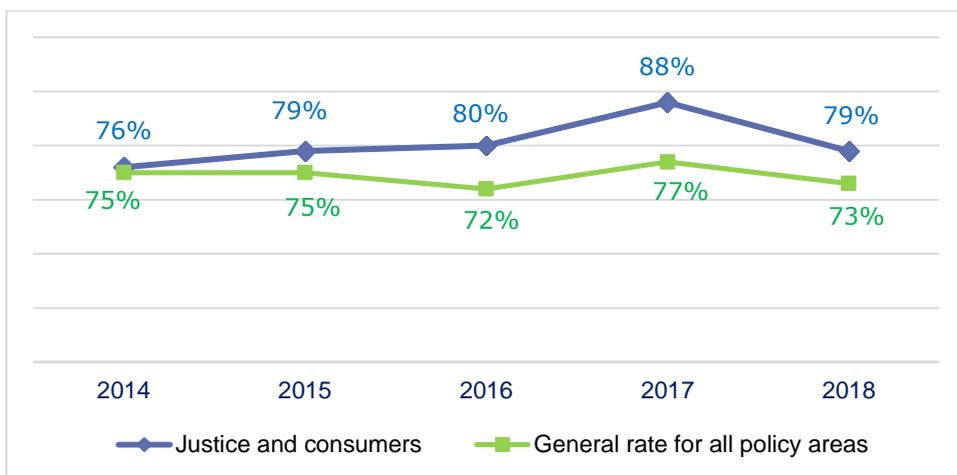
### 1. New EU Pilot files (2014-2018)



### 2. EU Pilot files open at year-end

At the end of 2018, 84 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2014-2018)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2018, the Commission opened own-initiative infringement cases over:

- the Consumer Rights Directive<sup>1</sup>;
- violation of EU fundamental rights in relation to illegal immigration and independence of the judiciary.

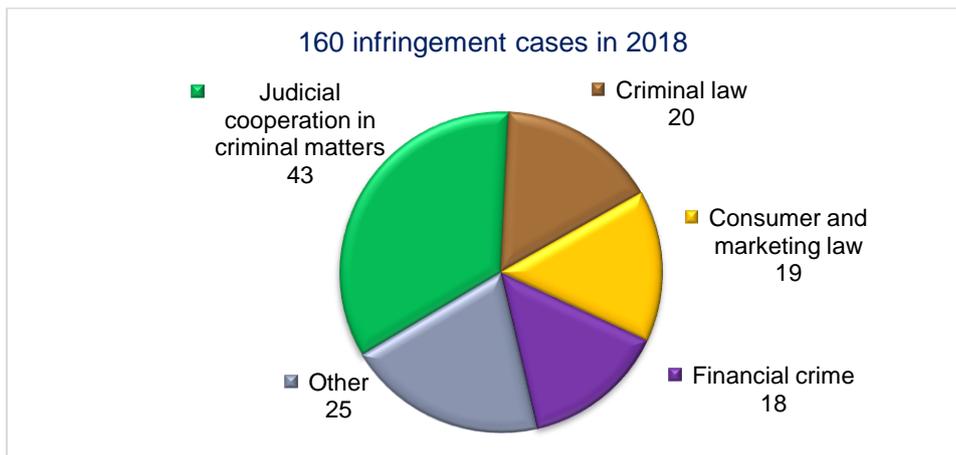
<sup>1</sup> Directive [2011/83/EU](#).

#### IV. INFRINGEMENT CASES

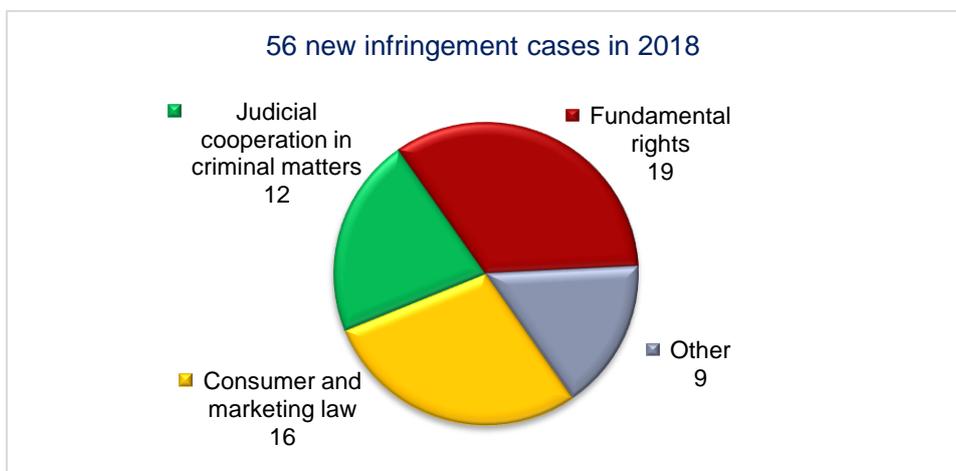
##### 1. Infringement cases open on 31 December (2014-2018)



##### 2. Infringement cases open on 31 December 2018: main policy sectors



##### 3. New infringement cases opened in 2018: main policy sectors

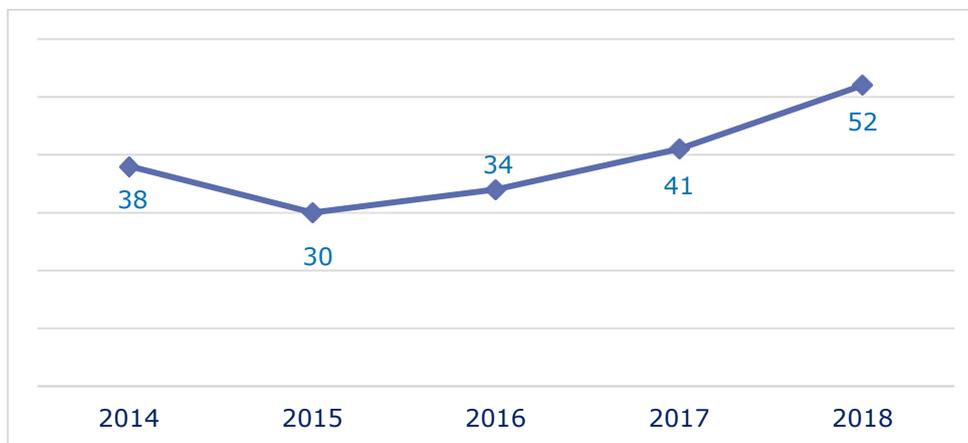


#### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 56 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following:
- *Sweden*: incorrect transposition of the Unfair Commercial Practices Directive<sup>2</sup>;
  - *Poland and Finland*: non-compliance with Consumer Rights Directive<sup>3</sup>;
  - *Lithuania*: breach of the right of EU citizens to become members of a political party or to form one in the Member State of residence;
  - *Hungary*: incompatibility of Hungarian legislation with the EU legislation on asylum and free movement and the EU Charter of Fundamental Rights<sup>4</sup>.
- b) The Commission referred three cases to the Court under Article 258 TFEU. They concern
- *Hungary*: the introduction of conditions on the transparency of organisations supported from abroad, in violation of the free movement of capital and the Charter of Fundamental Rights<sup>5</sup>;
  - *Poland*: the adoption of provisions in the Ordinary Courts Organisation law adversely affecting the independence of the Polish judiciary, and of provisions which are incompatible with the EU legislation on non-discrimination;<sup>6</sup>
  - *Poland*: the national law on the Supreme Court in relation in particular to the retirement regime, in breach of the principle of judicial independence, including the irremovability of judges<sup>7</sup>.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2014-2018)



<sup>2</sup> Directive [2005/29/EC](#).

<sup>3</sup> Directive [2011/83/EU](#).

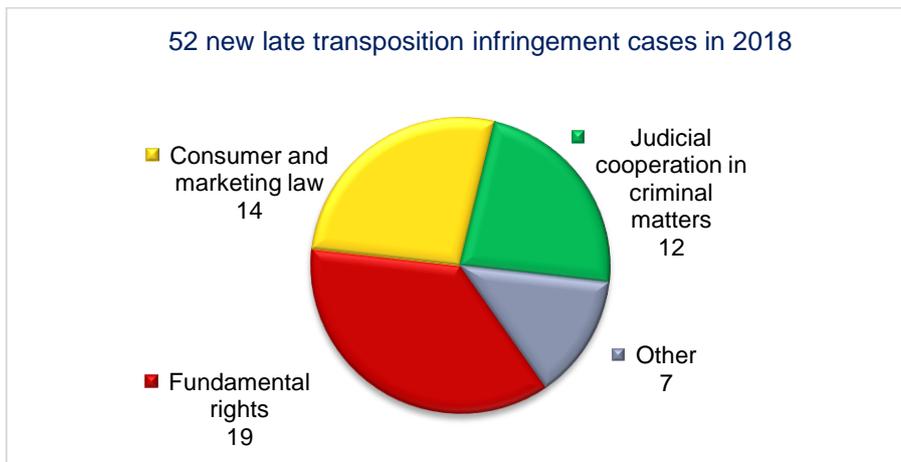
<sup>4</sup> [IP/18/4522](#).

<sup>5</sup> Commission v Hungary, [C-78/18](#).

<sup>6</sup> Commission v Poland, [C-192/18](#).

<sup>7</sup> Commission v Poland, [C-619/18](#).

## 2. New late transposition infringement cases opened in 2018: main policy sectors



## 3. Key infringement cases and referrals to the Court

- a) The Commission opened 52 cases for late transposition in 2018. Among the directives concerned were:
- the Directive on the presumption of innocence<sup>8</sup>;
  - the fourth Anti-Money Laundering Directive<sup>9</sup>;
  - the Council Framework Decision on the exchange of criminal records<sup>10</sup>;
  - the Directive on the consular protection of unrepresented EU citizens in third countries<sup>11</sup>;
  - the Data Protection Law Enforcement Directive<sup>12</sup>.
- b) The Commission referred two cases to the Court under Articles 258 and 260(3) TFEU. They concern:
- *Romania*<sup>13</sup> and *Ireland*<sup>14</sup>: incomplete transposition of the Fourth Anti-Money Laundering Directive.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned:

- *Lithuania and Luxembourg*: transposition of Procedural Rights Directives (right to interpretation and right to information)<sup>15</sup>;
- *Hungary*: incorrect transposition of the Environmental Crime Directive<sup>16</sup>;
- *Sweden*: incorrect transposition of the Free Movement Directive<sup>17</sup>.

<sup>8</sup> Directive [2016/343/EU](#).  
<sup>9</sup> Directive [2015/849/EU](#).  
<sup>10</sup> Council framework Decision [2009/315/JHA](#).  
<sup>11</sup> Directive [2015/637/EU](#).  
<sup>12</sup> Directive [2016/680/EU](#).  
<sup>13</sup> Commission v Romania, [C-549/18](#).  
<sup>14</sup> Commission v Ireland, [C-550/18](#).  
<sup>15</sup> Directives [2010/64/EU](#) and [2012/13/EU](#).  
<sup>16</sup> Directive [2008/99/EC](#).  
<sup>17</sup> Directive [2004/38/EC](#).

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2018 in this area.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Belgium* Member States have to deliver and notify residence cards to non-EU family members of EU citizens within the deadline of 6 months stipulated in Article 10 of the Free Movement Directive<sup>18</sup>. The judicial annulment of the decision does not reopen a new period of 6 months as referred to in that Article<sup>19</sup>.
- *Belgium*: Restrictions on the freedom of movement and residence of an EU citizen, or a family member of an EU citizen, who is suspected of having, in the past, participated in war crimes must also be assessed on a case-by-case basis, as required by the Free Movement Directive<sup>20</sup>. That assessment requires the threat that the individual concerned represents to the fundamental interests of the host society to be weighed against the protection of the rights of EU citizens and their family members<sup>21</sup>.
- *Denmark*: EU citizens have the right to be accompanied or joined by their non-EU national family members when returning to their home Member State after having exercised free movement rights in another Member State. EU citizens must have exercised free movement rights genuinely and effectively in another Member State, and must have created or strengthened family life there, before they can invoke similar rights of entry and residence for their family members<sup>22</sup>.
- *Germany*: An administrator of a fan page must be regarded as a controller jointly responsible, within the EU, with Facebook Ireland for the processing of personal data through that kind of page<sup>23</sup>.
- *Ireland*: The Court found that the notification by a Member State of its intention to leave the EU (Article 50 TEU) does not have as a consequence that another Member State must refuse to execute a European Arrest Warrant issued by the leaving Member State, neither must it postpone its execution pending clarification of the law that will be applicable after withdrawal<sup>24</sup>.
- *Spain*: EU directives apply to a female security agent who does shift work, including night shifts which entail a risk for the agent to breastfeed her baby<sup>25</sup>.
- *Netherlands*: A decision rejecting refugee status on the grounds that there are serious reasons to believe that the applicant committed a war crime or a crime against humanity may fall within the scope of the concept of public policy or public security. However, a case-by-case assessment is necessary before a measure based on grounds of public policy or public security is adopted<sup>26</sup>.
- *Romania*: The term 'spouse' in the Free Movement Directive also applies to a person of the same sex as the EU citizen to whom he or she is married. The Court found that the obligation for a Member State to recognise a same-sex marriage concluded in another Member State, for the sole purpose of granting a right of residence to a non-EU national, does not undermine the institution of marriage in the first Member State<sup>27</sup>.

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<sup>18</sup> Directive [2004/38/EC](#).

<sup>19</sup> Diallo, [C-246/17](#).

<sup>20</sup> Directive [2004/38/EC](#).

<sup>21</sup> Joined cases: K., [C-331/16](#) and H., [C-366/16](#).

<sup>22</sup> Deha Altiner et Ravn, [C-230/17](#).

<sup>23</sup> Wirtschaftsakademie Schleswig-Holstein, [C-2010/16](#).

<sup>24</sup> PPU - R O, [C-327/18](#).

<sup>25</sup> Gonzalez Castro, [C-41/17](#).

<sup>26</sup> Joint cases: K, [C 331/16](#) and H., [C-366/16](#).

<sup>27</sup> Coman and Others, [C-673/16](#).

- *Finland*: Data protection legislation covers a set of personal data collected in the course of door-to-door preaching. A religious community is a controller, jointly with its members who engage in preaching, of the processing of personal data carried out by the latter through door-to-door preaching<sup>28</sup>.
- *Finland*: The case concerned a situation where an extradition request has been made by a third country for an EU citizen who has exercised his/her right to free movement. The Court ruled that the requested Member State is required to ensure that that EU citizen, provided that he resides permanently in its territory, receives the same treatment as that accorded to its own nationals in relation to extradition<sup>29</sup>. *United Kingdom*: Extended family members of EU citizens who return to the Member State of nationality from another Member State can, like other family members, such as spouses, also avail themselves of the protection of EU law on free movement of EU citizens and can apply to have their entry and residence facilitated in accordance with national law<sup>30</sup>.

## VIII. OUTLOOK

### Important implementation work in 2018 includes:

- closely monitoring application of the:
  - Maintenance Regulation<sup>31</sup>;
  - General Data Protection Regulation<sup>32</sup>;
- closely monitoring the timely transposition of the Directives on:
  - the fight against fraud to the Union's financial interests by means of criminal law<sup>33</sup>;
  - procedural safeguards for children who are suspects or accused persons in criminal proceedings<sup>34</sup>;
  - legal aid<sup>35</sup>;
  - the encouragement of long-term shareholder engagement;<sup>36</sup>
- assessing and ensuring correct transposition of the:
  - Directive on right of access to a lawyer in criminal proceedings<sup>37</sup>, Framework Decision on the European Arrest Warrant, Victims' Rights Directive<sup>38</sup>, and European Investigation Order Directive<sup>39</sup>;
  - Market Abuse Directive<sup>40</sup> and Directive on the protection of the euro and other currencies against counterfeiting by criminal law<sup>41</sup>;
  - Data Protection Law Enforcement Directive<sup>42</sup>;

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<sup>28</sup> Jehovan todistajat, [C-25/17](#).

<sup>29</sup> Raugevicius, [C-247/17](#).

<sup>30</sup> Banger, [C-89/17](#).

<sup>31</sup> Regulation (EC) No [4/2009](#).

<sup>32</sup> Regulation (EU) No [679/2016](#).

<sup>33</sup> Directive [2017/1371/EU](#).

<sup>34</sup> Directive [2016/800/EU](#).

<sup>35</sup> Directive [2016/1919/EU](#).

<sup>36</sup> Directive [2017/828/EU](#).

<sup>37</sup> Directive [2013/48/EU](#).

<sup>38</sup> Directive [2012/29/EU](#).

<sup>39</sup> Directive [2014/41/EU](#).

<sup>40</sup> Directive [2014/57/EU](#).

<sup>41</sup> Directive [2014/62/EU](#).

- Directive on package travel and linked travel arrangements<sup>43</sup>, ensuring appropriate follow-up to the Court's preliminary rulings of 2018 or expected for 2019

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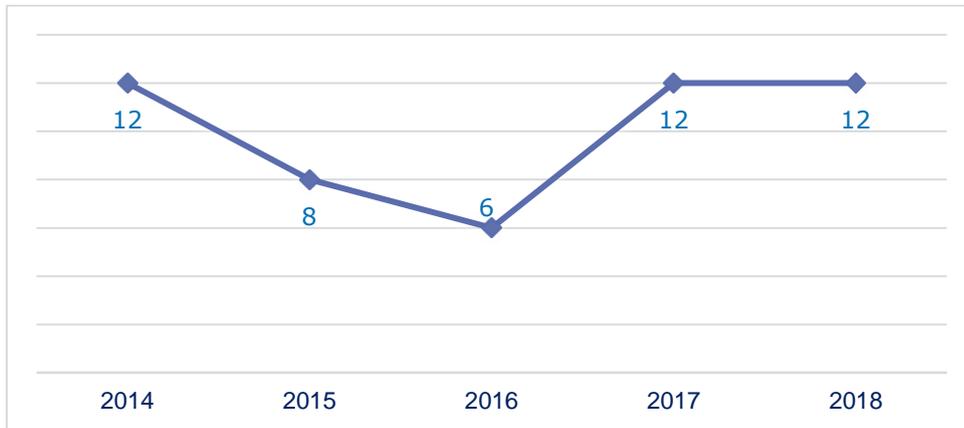
<sup>42</sup> Directive [2016/680/EU](#).

<sup>43</sup> Directive [2015/2302/EU](#).

Maritime affairs and fisheries

I. COMPLAINTS

1. New complaints received from members of the public (2014-2018)



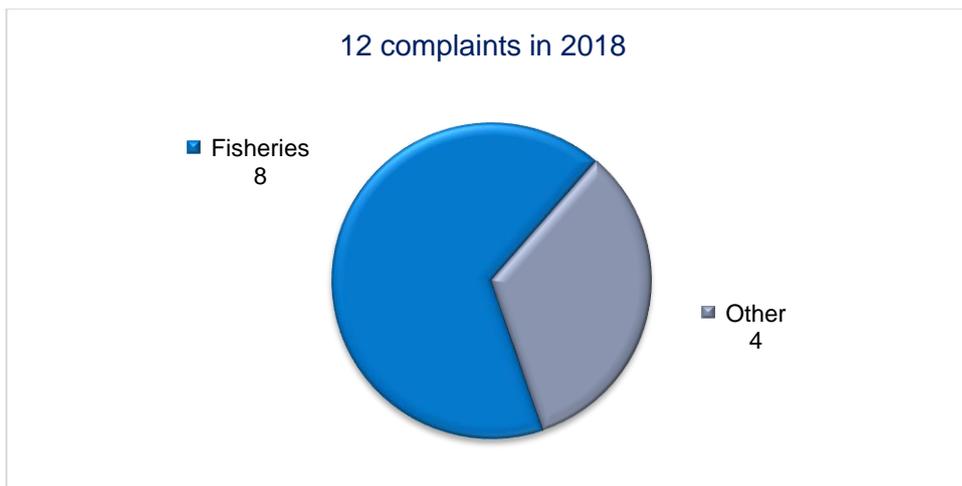
2. Public complaints open at year-end

- 24 > Complaints open at end-2017
- 12 > New complaints registered in 2018
- 13 > Complaints handled in 2018

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- = 23** > Complaints open at end-2018

3. New complaints registered in 2018: main policy sectors

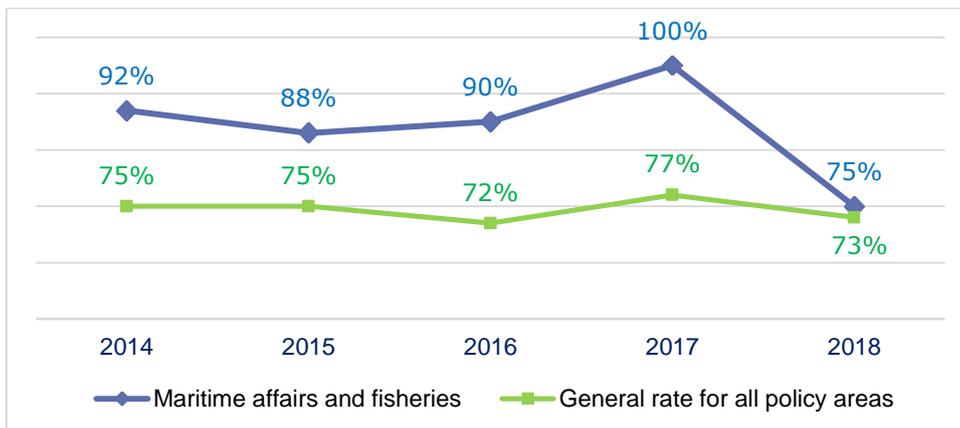


## II. EU PILOT

### 1. EU Pilot files open at year-end

There was one EU Pilot file registered in 2018, and five EU Pilot files remained open at end-2018.

### 2. EU Pilot files: policies' combined resolution rate in 2014-2018



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2018, the Commission opened own-initiative infringement cases over:

- non-compliance with the fisheries control obligations;
- non-compliance with the provisions on the common organisation of the markets in fishery and aquaculture products.

## IV. INFRINGEMENT CASES

### Key infringement cases and referrals to the Court

- a) The Commission opened two new infringement cases in 2018. These, and other major ongoing infringement cases, concern:
  - *Ireland*: Failure to implement a point system for fisheries as required under the EU Control Regulation<sup>1</sup>. A point system is required to deal with serious infringements of the common fisheries policy committed by masters and licence holders of vessels<sup>2</sup>.
  - *Portugal*: Non-respect of the EU's exclusive competence for the conservation of marine biological resources. Portugal undertook direct démarches towards the North East Atlantic Fisheries Commission (NEAFC) and the International Council for the Exploration of the Sea as part of an ongoing process at NEAFC aiming to prevent significant impacts from bottom-fishing activities on vulnerable marine ecosystems<sup>3</sup>.
  - *United Kingdom*: Failure to carry out appropriate checks and ensure compliance with the conditions for recognising fishery producer organisations under the Regulation on the common organisation of the markets in fishery and aquaculture products<sup>4</sup>.

<sup>1</sup> Regulation (EC) No [1224/2009](#).

<sup>2</sup> [MEMO/18/3446](#).

<sup>3</sup> [MEMO/18/349](#).

<sup>4</sup> Regulation (EU) No [1379/2013](#), [MEMO/18/3446](#), [MEMO/18/6247](#).

- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.
- d) The Commission referred two cases to the Court under Article 258 and 260(3) TFEU. They concern
  - *Bulgaria and Greece*: failure to communicate national measures transposing the Maritime Spatial Planning Directive<sup>5</sup>.

## V. EARLY RESOLUTION OF INFRINGEMENT CASES

There were no major cases closed without a Court judgment in 2018 in this area.

## VI. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2018 in this area.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Germany*: The EU has exclusive competence for fisheries measures taken to implement specific environmental directives (the Habitats Directive and the Environmental Liability Directive)<sup>6</sup>.
- *Lithuania*: Member States can decide to base the allocation of fishing quotas under the Common Fisheries Policy Regulation<sup>7</sup> in connection with the Charter of Fundamental Rights of the EU, on historic catches, but not exclusively on that criterion. Such an allocation method is permitted if it pursues one or more general interests recognised by the EU and respects the principle of proportionality<sup>8</sup>.
- *United Kingdom*: The fisheries agreement concluded between the EU and Morocco is valid in so far as it is not applicable to Western Sahara and its adjacent waters<sup>9</sup>.

## VII. OUTLOOK

Important implementation work in 2019 includes:

- pursuing cases of non-compliance by the Member States with the EU's exclusive competence;
- giving appropriate follow-up to the recommendations formulated in the assessment of Member States' sanctioning systems for contraventions of the common fisheries policy rules, with particular focus on how to improve the effectiveness of those systems and how to prioritise investigations of the deficiencies found;
- addressing, through action plans provided for by the Control Regulation, certain systemic irregularities in Member States' fisheries control systems, where appropriate; monitoring the implementation of the existing action plans;

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<sup>5</sup> Directive [2014/89/EU](#), Commission v Bulgaria ; [C-61/18](#) ; and Commission v Greece, [C-36/18](#). These Member States subsequently took the necessary steps to ensure compliance with EU law and the Commission has therefore withdrawn these cases from the Court.

<sup>6</sup> Directives [92/43/EEC](#) and [2004/35/EC](#); Deutscher Naturschutzring, [C-683/16](#).

<sup>7</sup> Regulation (EU) No [1380/2013](#).

<sup>8</sup> Spika and Others, [C-540/16](#).

<sup>9</sup> Western Sahara Campaign UK, [C-266/16](#) and [Court press release No 21/18](#).

- following up on the implementation of the constituent components of the common fisheries policy, and more specifically on the application of the landing obligation set out in the Common Fisheries Policy Regulation<sup>10</sup>;
- taking follow-up actions to ensure the correct transposition by the Member States of the Maritime Spatial Planning Directive<sup>11</sup>.

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<sup>10</sup> Regulation (EU) No [1380/2013](#).

<sup>11</sup> Directive [2014/89/EU](#).

Migration and home affairs

I. COMPLAINTS

1. New complaints received from members of the public (2014-2018)



2. Public complaints open at year-end

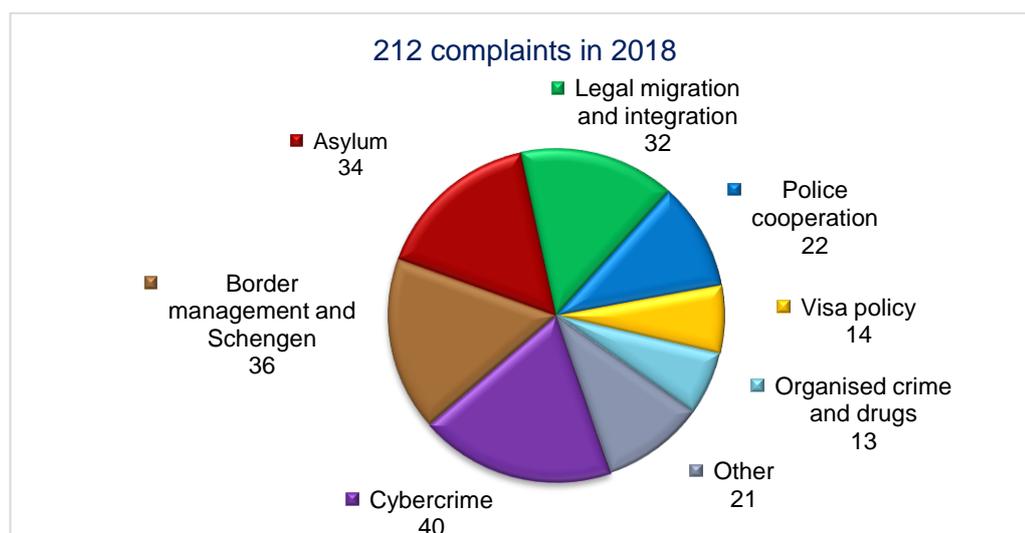
117 > Complaints open at end-2017

212 > New complaints registered in 2018

173 > Complaints handled in 2018

**= 156** > Complaints open at end-2018

3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

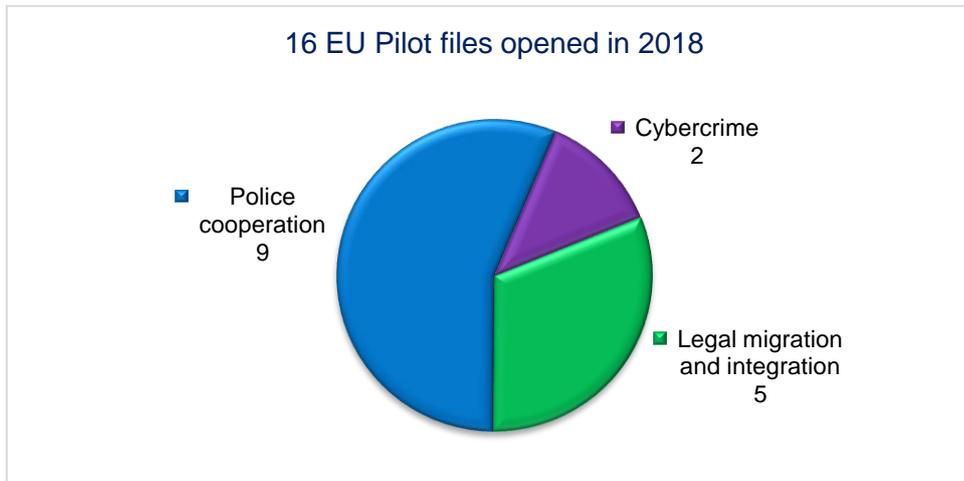
### 1. New EU Pilot files (2014-2018)



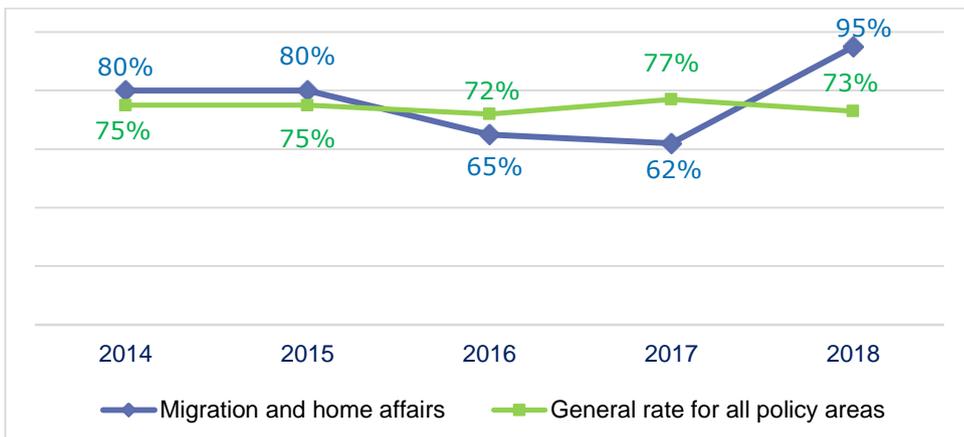
### 2. EU Pilot files open at year-end

At the end of 2018, 46 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2018: main policy sectors



### 4. EU Pilot files: resolution rate for policies (2014-2018)



### III. OWN-INITIATIVE CASES

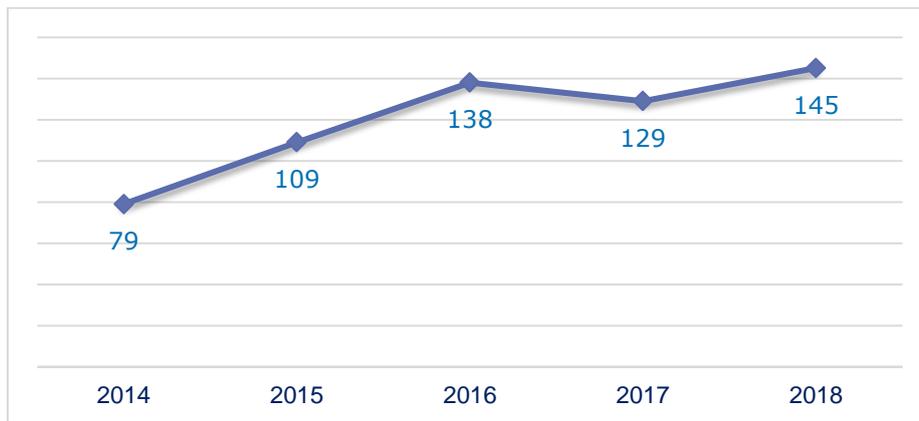
#### New own-initiative infringement cases

In 2018, the Commission opened own-initiative infringement cases over:

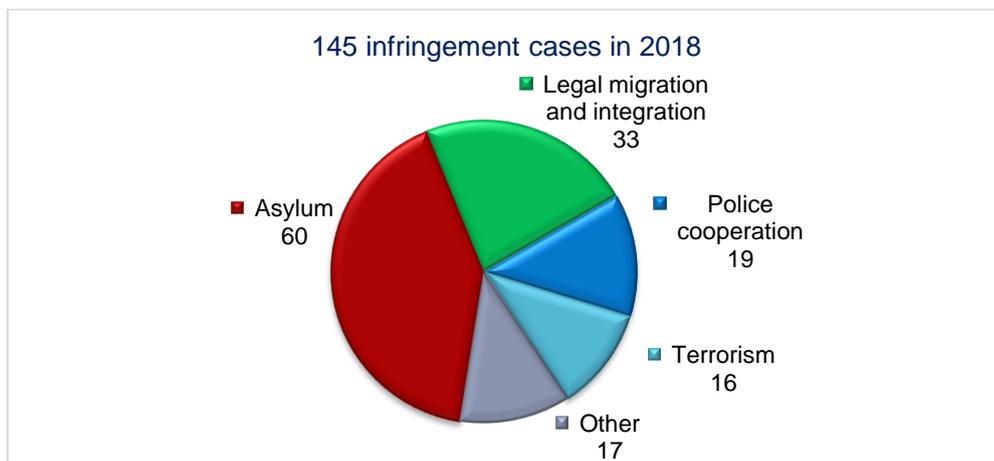
- the Reception Conditions Directive<sup>1</sup>;
- the Asylum Procedures Directive<sup>2</sup>.

### IV. INFRINGEMENT CASES

#### 1. Infringement cases open on 31 December (2014-2018)



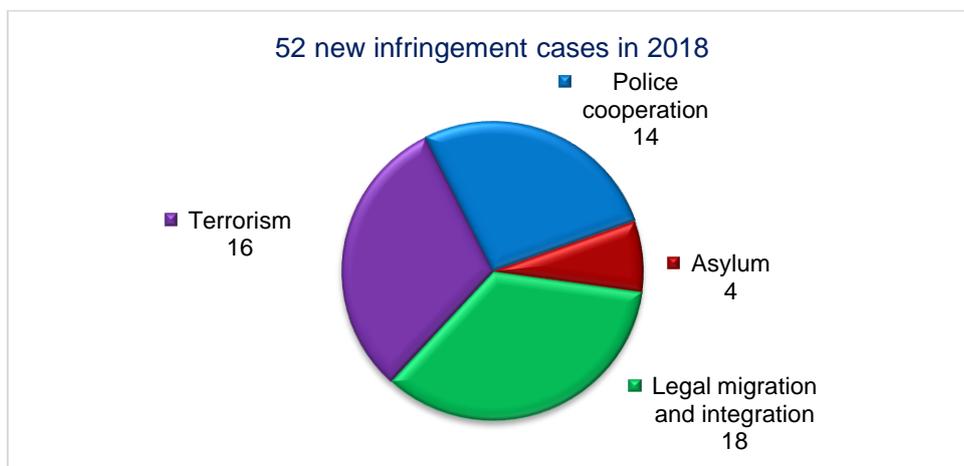
#### 2. Infringement cases open on 31 December 2018: main policy sectors



<sup>1</sup> Directive [2013/33/EU](#).

<sup>2</sup> Directive [2013/32/EU](#).

### 3. New infringement cases opened in 2018: main policy sectors



### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 52 new infringement cases in 2018. These, and other major ongoing infringement cases, concern:
- *Bulgaria*: deficiencies in Bulgaria's asylum system in relation to the Reception Conditions Directive<sup>3</sup>, the Asylum Procedures Directive<sup>4</sup> and the EU Charter of Fundamental Rights<sup>5</sup>;
  - *Bulgaria and Romania*: non-communication of national measures transposing the Directive on the freezing and confiscation of instrumentalities and proceeds of crime in the EU<sup>6</sup>;
  - *Hungary*: failure to fulfil obligations under the Long-Term Residents Directive since Hungarian law precludes third country nationals who are long-term residents from access to employment or self-employed activities in the veterinary sector<sup>7</sup>;
  - *Netherlands*: excessive fees for issuing residence permits<sup>8</sup>.
- b) The Commission referred two cases to the Court under Article 258 TFEU. They concern
- *Slovakia*: lack of proper judicial remedies against refusals, annulments or revocation of visas<sup>9</sup>;
  - *Hungary*: non-compliance of its asylum and return legislation with EU law<sup>10</sup>.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

<sup>3</sup> Directive [2013/33/EU](#).

<sup>4</sup> Directive [2013/32/EU](#).

<sup>5</sup> [MEMO/18/6247](#).

<sup>6</sup> Directive [2014/42/EU](#).

<sup>7</sup> Directive [2003/109/EC](#); [MEMO/18/4486](#).

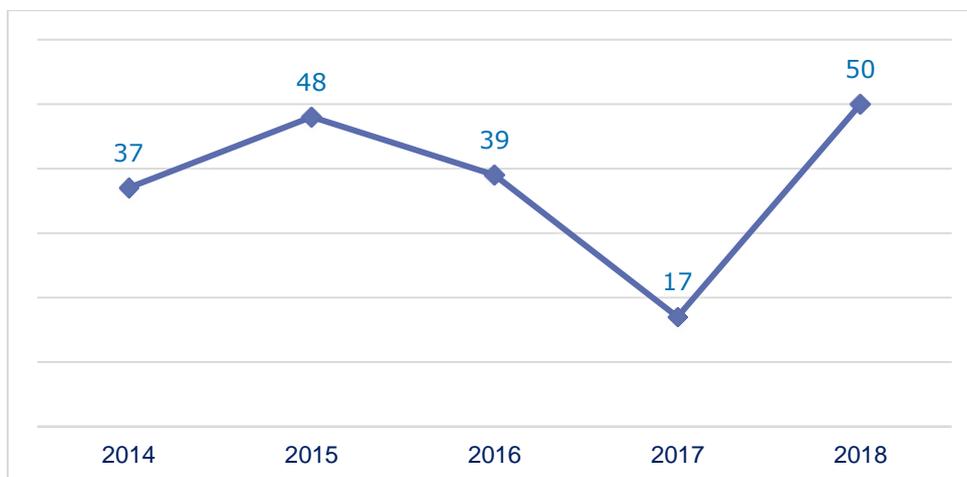
<sup>8</sup> [MEMO/18/3446](#).

<sup>9</sup> Commission v Slovakia, [C-614/18](#).

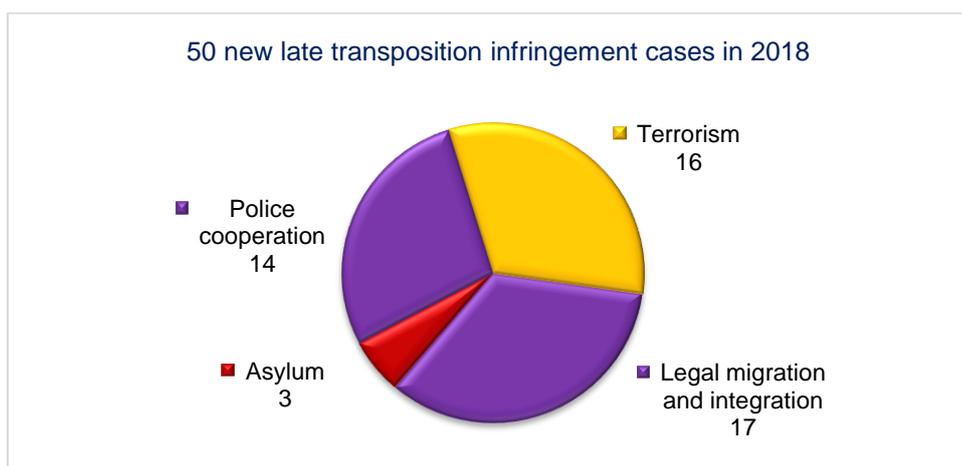
<sup>10</sup> Commission v Hungary, [C-808/18](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2014-2018)



### 2. New late transposition infringement cases opened in 2018: policy sectors



### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 50 cases for late transposition in 2018. Among the directives concerned are:
- the Students and Researchers Directive<sup>11</sup>;
  - the Asylum Procedures Directive<sup>12</sup>;
  - the Passenger Name Records Directive<sup>13</sup>;
  - the Directive on combating terrorism<sup>14</sup>.
- b) The Commission referred one case to the Court under Articles 258 and 260(3) TFEU. It concerns

<sup>11</sup> Directive [2016/801/EU](#).

<sup>12</sup> Directive [2013/32/EU](#).

<sup>13</sup> Directive [2016/681/EU](#).

<sup>14</sup> Directive [2017/541/EU](#).

- *Belgium*: failure to transpose the Directive on the conditions of entry and stay of third country nationals for the purpose of employment as seasonal workers<sup>15</sup>.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned:

- *Cyprus, Lithuania, Austria, Finland and Sweden*: non-communication of national measures transposing the Directive on seasonal workers<sup>16</sup>;
- *Czechia, Germany, Greece, Croatia, Lithuania, Austria, Poland, Portugal, Slovenia, Finland and Sweden*: non-communication of national measures transposing the Directive on intra-corporate transfer<sup>17</sup>;
- *Spain and Romania*: non-compliance with the Regulation on the marketing and use of explosives precursors<sup>18</sup>;
- *Czechia, Germany, Estonia, Ireland, Croatia, Lithuania, Hungary, Sweden, Slovenia and Slovakia*: non-communication of national measures transposing the Directive on the freezing and confiscation of instrumentalities and proceeds of crime<sup>19</sup>;
- *Luxembourg*: non-communication of national measures implementing the ‘Swedish initiative’ on the exchange of information and intelligence between Member States’ law enforcement authorities<sup>20</sup>;
- *Bulgaria*: lack of implementation of certain obligations under document security legislation<sup>21</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2018 in this area.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Bulgaria*: An application for international protection cannot be granted on the ground that one of the applicant’s family members has a well-founded fear of being persecuted or faces a real risk of suffering serious harm. Account must be taken of such threats in respect of one of the applicant’s family members for the purpose of determining whether the applicant is, because of his family tie to the person at risk, himself exposed to the threat of persecution or serious harm<sup>22</sup>.
- *Hungary*: Recourse to a psychologist’s expert report for the purpose of assessing the veracity of a claim made by an asylum seeker as to his sexual orientation constitutes

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<sup>15</sup> Commission v Belgium, [C-676/18](#), Directive [2014/36/EU](#).

<sup>16</sup> Directive [2014/36/EU](#).

<sup>17</sup> Directive [2014/66/EU](#).

<sup>18</sup> Regulation (EU) No [98/2013](#).

<sup>19</sup> [Directive 2014/42/EU](#).

<sup>20</sup> [Framework decision 2006/960/JHA](#).

<sup>21</sup> Commission decisions [C \(2013\) 6181](#); and [C \(2013\) 6178](#).

<sup>22</sup> *Ahmedbekova*, [C-652/16](#).

an interference with that person's right to respect for his private life and is not consistent with EU law<sup>23</sup>.

- *Hungary*: Any decision to exclude a person from refugee status or subsidiary protection must be preceded by a full investigation into all the circumstances of his individual case and cannot be taken automatically. The penalty provided for a specific crime under the law of the particular Member State may not constitute the sole criterion to determine whether the person claiming subsidiary protection may be excluded from it<sup>24</sup>.
- *Germany*: The case concerns a situation where a third country national who, having lodged a first asylum application in one Member State (Member State 'A'), was transferred back to Member State 'A' following which he immediately returned illegally to the second Member State 'B'. The Court ruled that in such a situation a return procedure may be undertaken in respect of that person, but it is not possible to transfer them again to Member State 'A' without following this procedure<sup>25</sup>.
- *Germany*: The imposition of a requirement on coach transport companies providing a regular cross-border service within the Schengen area to check the passports and residence permits of passengers before they cross an internal border in order to prevent the transport of third-country nationals not in possession of those travel documents to the national territory has an effect equivalent to border checks and is therefore prohibited<sup>26</sup>.
- *France*: An applicant for international protection who moves to another Member State after lodging their application cannot be returned to the first Member State before the second Member State has agreed to the request to take that person back, explicitly or implicitly<sup>27</sup>.
- *Netherlands*: The Member State in which a new application for international protection has been lodged is responsible for examining that application when no take back request has been made within the periods laid down in the Dublin Regulation<sup>28</sup>.
- *Netherlands*: For the purpose of family reunification of refugees, what counts is that the third country national is below 18 at the time of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State<sup>29</sup>.
- *Netherlands*: An application for an autonomous residence permit, lodged by a third country national who has resided for over 5 years in a Member State by virtue of family reunification, may be rejected on the grounds that he has not shown that he has passed a civic integration test on the language and society<sup>30</sup>.
- *Netherlands*: An application for family reunification lodged on behalf of a member of a refugee's family may be rejected on the grounds that the application was lodged more than 3 months after the sponsor was granted refugee status, whilst affording the possibility of lodging a fresh application under a different set of rules provided that certain conditions are met<sup>31</sup>.
- *Austria*: national legislation which provides that refugees with a temporary right of residence in a Member State are to be granted social security benefits which are less

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<sup>23</sup> F, [C-473/16](#).

<sup>24</sup> Ahmed [C-369/17](#).

<sup>25</sup> Hasan, [C-360/16](#).

<sup>26</sup> Joint cases: Touring Tours und Travel, [C-412/17](#) and [Sociedad de Transportes C-474/17](#).

<sup>27</sup> Hassan, [C-647/16](#).

<sup>28</sup> X, [C-213/17](#), Regulation (EU) No [604/2013](#).

<sup>29</sup> A and S, [C-550/16](#).

<sup>30</sup> C and A, [C-257/17](#) and K, [C-484/17](#).

<sup>31</sup> K and B, [C-380/17](#).

than those received by nationals of that Member State and refugees who have a permanent right of residence in that Member State is contrary to EU legislation<sup>32</sup>.

- *Sweden*: An application for international protection must not be regarded as manifestly unfounded when, firstly, it is apparent from the information on the applicant's country of origin that acceptable protection can be ensured for him in that country and, secondly, the applicant has provided insufficient information to justify the grant of international protection<sup>33</sup>.
- *Finland*: A return decision accompanied by an entry ban may be enforced, against a person holding a residence permit from another Member State, even though the consultation procedure with the latter Member State is ongoing, if the third country national is regarded by the Member State issuing the alert as a threat to public order or national security, without prejudice to that person's entitlement to rely on the rights he derives from that residence permit after a reasonable time from the initiation of the consultation procedure and in the absence of a response from the Member State consulted, the Member State issuing the alert for the purposes of refusing entry must withdraw it and, if necessary, put the third-country national on its national list of alerts<sup>34</sup>.
- *Spain*: Access by the police to data for the purpose of identifying the owners of SIM cards activated with a stolen mobile telephone cannot be defined as 'serious' interference with fundamental rights. Such data do not allow precise conclusions to be drawn about their private lives and such interference may be justified by the objective of preventing, investigating, detecting and prosecuting 'criminal offences'<sup>35</sup>.
- *United Kingdom*: A third country national who in the past has been tortured by the authorities of his country of origin and no longer faces a risk of being tortured if returned to that country, but whose physical and psychological health could, if so returned, seriously deteriorate, leading to a serious risk of him committing suicide on account of trauma resulting from the torture he was subjected to, is eligible for subsidiary protection. This is conditional on a real risk of him being intentionally deprived, in his country of origin, of appropriate care for the physical and mental after-effects of that torture, that being a matter for the national court to determine<sup>36</sup>.

## VIII. OUTLOOK

Important implementation work in 2019 includes:

- Monitoring of the transposition and implementation of important directives such as those:
  - on seasonal workers and on intra-corporate transfer<sup>37</sup>;
  - on asylum procedures and on reception conditions<sup>38</sup>;
  - against trafficking in human beings<sup>39</sup>;
  - on the freezing of proceeds of crime and confiscation of assets<sup>40</sup>;
  - against sexual exploitation of children<sup>41</sup>;

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<sup>32</sup> Ayubi, [C-713/17](#).

<sup>33</sup> A v Migrationsverket, [C-404/17](#).

<sup>34</sup> E, [Case C-240/17](#).

<sup>35</sup> Ministerio Fiscal, [C-207/16](#).

<sup>36</sup> MP v Secretary of State for the Home Department [C-353/16](#).

<sup>37</sup> Directives [2014/36/EU](#) and [2014/66/EU](#).

<sup>38</sup> Directives [2013/32/EU](#) and [2013/33/EU](#).

<sup>39</sup> Directive [2011/36/EU](#).

<sup>40</sup> Directive [2014/42/EU](#).

<sup>41</sup> Directive [2011/93/EU](#).

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- on attacks against information systems<sup>42</sup>;
- on the conditions of entry and residence of third country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing<sup>43</sup>;
- on the use of passenger name record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime<sup>44</sup>;
- on combating terrorism<sup>45</sup>;
- on new psychoactive substances<sup>46</sup>.
- ensuring appropriate follow-up to the Court's preliminary rulings on data retention<sup>47</sup>.

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<sup>42</sup> Directive [2013/40/EU](#).

<sup>43</sup> Directive [2016/801/EU](#).

<sup>44</sup> Directive [2016/681/EU](#).

<sup>45</sup> Directive [2017/541/EU](#).

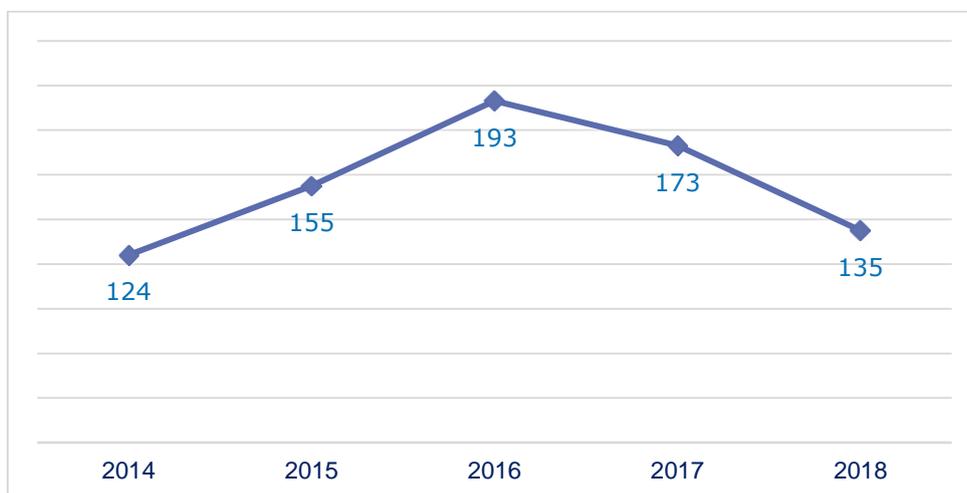
<sup>46</sup> Directive [2017/2103/EU](#).

<sup>47</sup> Tele2 Sverige, [C-203/15](#) and [C-698/15](#).

Mobility and transport

I. COMPLAINTS

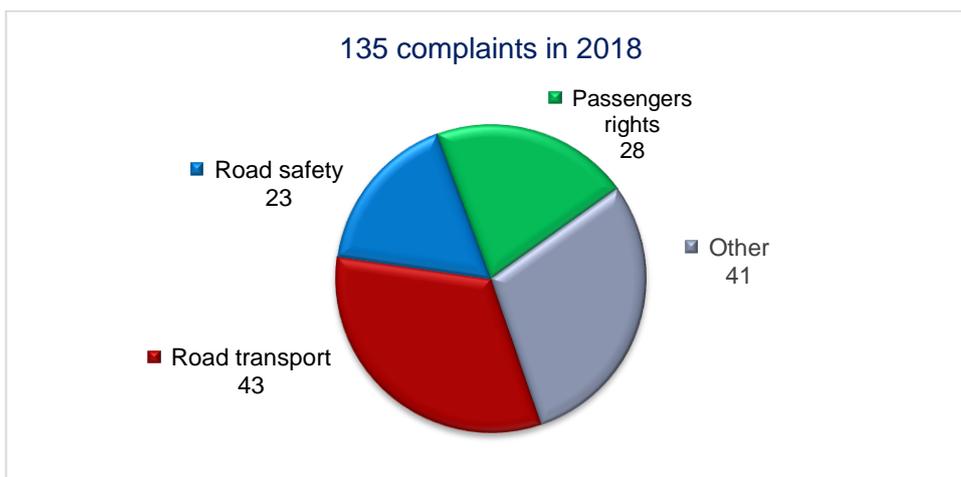
1. New complaints received from members of the public (2014-2018)



2. Public complaints open at year-end

81	>	Complaints open at end-2017
135	>	New complaints registered in 2018
125	>	Complaints handled in 2018
<b>= 91</b>	>	<b>Complaints open at end-2018</b>

3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

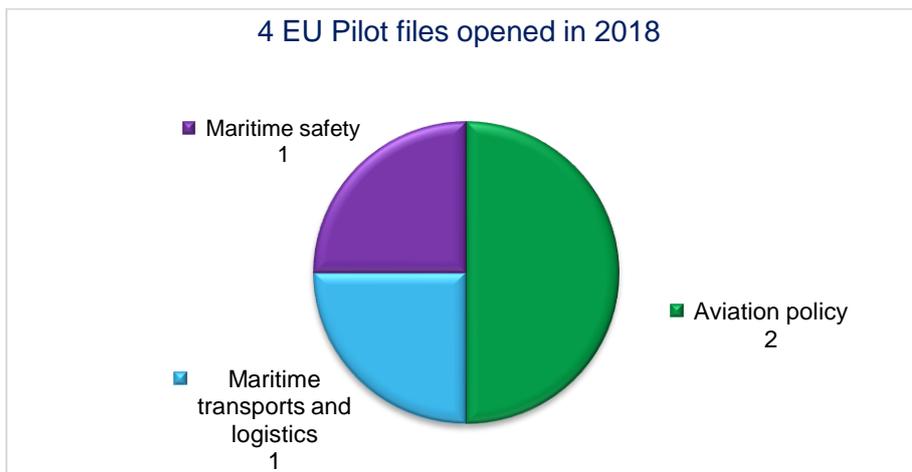
### 1. New EU Pilot files (2014-2018)



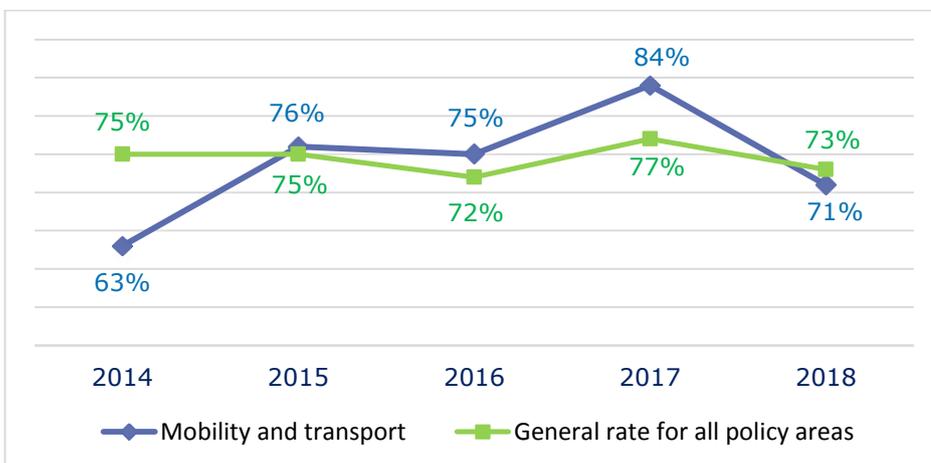
### 2. EU Pilot files open at year-end

At the end of 2018, 17 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2018: main policy sectors



### 4. EU Pilot files: resolution rate for policies (2014-2018)



### III. OWN-INITIATIVE CASES

#### New own-initiative infringement cases

In 2018, the Commission opened own-initiative infringement cases over:

- *Sustainable transport:*
  - Implementation of legislation on intelligent transport systems<sup>1</sup>.
- *Road transport:*
  - Interconnection of the national electronic registers of driver cards to the TACHOnet messaging system<sup>2</sup>;
  - Restrictions on freedom to provide transport services by limiting truck parking by non-resident hauliers on state-owned areas to a maximum of 25 hours.
- *Maritime safety:*
  - Training of seafarers<sup>3</sup>;
  - Flag State requirements (quality management system certificate)<sup>4</sup>.
- *Road safety:*
  - Incorrect implementation of the Directive on driving licences<sup>5</sup>;
  - Incorrect implementation of the Directive on technical roadside inspection of commercial vehicles<sup>6</sup>.
- *Rail sector:*
  - Non-compliance with the Directive establishing a single European railway area<sup>7</sup>.
- *Aviation safety:*
  - Incorrect implementation of rules on technical requirements and administrative procedures related to air operations<sup>8</sup>.
- *Aviation security:*
  - Incorrect implementation of aviation security standards<sup>9</sup>.

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<sup>1</sup> Directive [2010/40/EU](#), Decision [585/2014/EU](#), Commission Delegated Regulation (EU) No [885/2013](#), Commission Delegated Regulation (EU) No [886/2013](#), Commission Delegated Regulation (EU) No [962/2015](#).

<sup>2</sup> Commission Implementing Regulation (EU) No [68/2016](#).

<sup>3</sup> Directive [2008/106/EC](#).

<sup>4</sup> Directive [2009/21/EC](#).

<sup>5</sup> Directive [2015/653/EU](#) amending Directive [2006/126/EC](#).

<sup>6</sup> Directive [2000/30/EC](#).

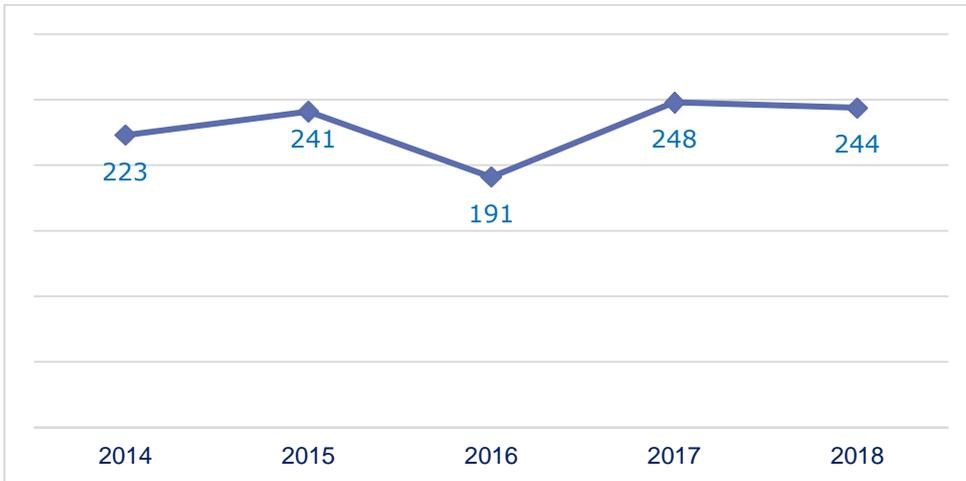
<sup>7</sup> Directive [2012/34/EU](#).

<sup>8</sup> Commission Regulation (EU) No [965/2012](#).

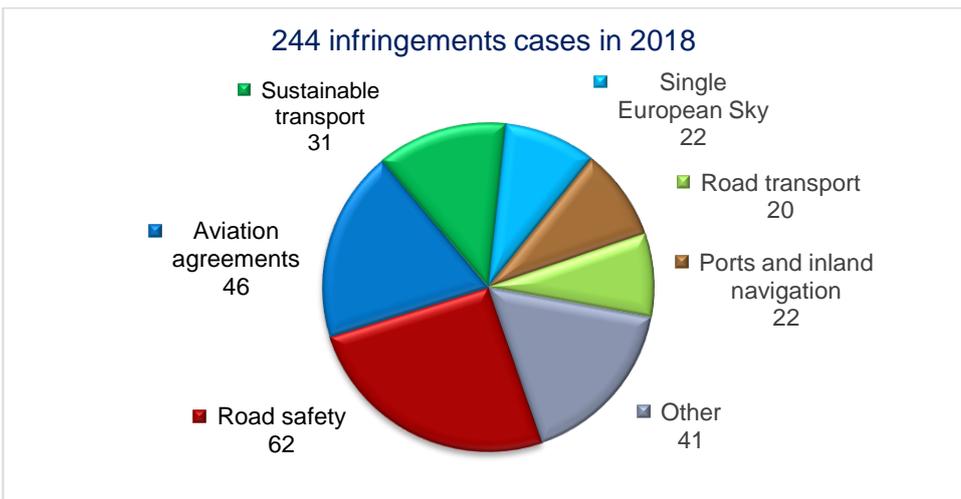
<sup>9</sup> Regulation (EC) No [300/2008](#).

#### IV. INFRINGEMENT CASES

##### 1. Infringement cases open on 31 December (2014-2018)



##### 2. Infringement cases open on 31 December 2018: main policy sectors



##### 3. New infringement cases opened in 2018: main policy sectors



#### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 97 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following:
- *Belgium*: incorrect implementation of EU rules on chartering and pricing in inland waterways transport<sup>10</sup>;
  - *Greece*: insufficient monitoring of the entities responsible for the implementation of aviation security standards<sup>11</sup>;
  - *Italy, Latvia and Spain*: failure to comply with EU rules on the minimum level of training of seafarers<sup>12</sup>;
  - *Germany*: failure to ensure that its regional transport networks are subject to the safety requirements set by EU rules on railway safety<sup>13</sup>;
  - *Bulgaria*: failure to comply with EU law on railway safety as regards the independence of the investigating body<sup>14</sup>;
  - *Ireland*: incorrect application of the Directive on the investigation of accidents in the maritime transport sector<sup>15</sup>;
  - *Denmark*: discrimination against foreign hauliers and violation of the principle of freedom to provide transport services<sup>16</sup>;
  - *Hungary*: failure to verify compliance with air safety requirements<sup>17</sup>;
  - *Hungary, Croatia, Cyprus, Czechia and United Kingdom*: failure to comply with EU legislation on Flag State requirements<sup>18</sup>;
  - *Bulgaria*: incorrect implementation of the transparency, consultation and non-discrimination requirements of EU rules on airport charges<sup>19</sup>.
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases the Court under Article 260(2) TFEU.

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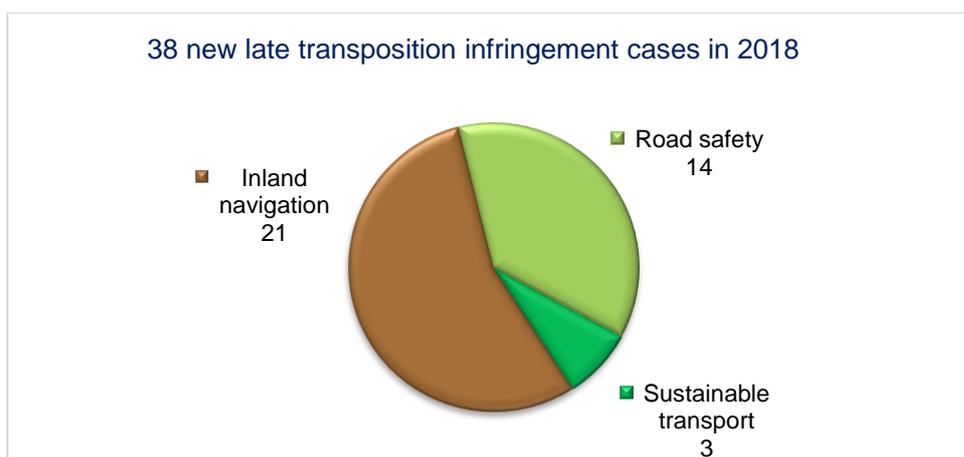
<sup>10</sup> Directive [1996/75/EC](#); [MEMO/18/349](#).  
<sup>11</sup> Regulation (EC) No [300/2008](#); [MEMO/18/1444](#).  
<sup>12</sup> Directive [2008/106/EC](#); [MEMO/18/3446](#).  
<sup>13</sup> Directive [2004/49/EC](#); [MEMO/18/3446](#).  
<sup>14</sup> Directive [2004/49/EC](#); [IP/18/6252](#).  
<sup>15</sup> Directive [2009/18/EC](#); [IP/18/4492](#).  
<sup>16</sup> Regulation (EC) No [1072/2009](#); [MEMO/18/4486](#).  
<sup>17</sup> Regulation (EU) No [965/2012](#); [MEMO/18/4486](#).  
<sup>18</sup> Directive [2009/21/EC](#); [MEMO/18/4486](#).  
<sup>19</sup> Directive [2009/12/EC](#); [MEMO/18/6247](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2014-2018)



### 2. New late transposition infringement cases opened in 2018: main policy sectors



### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 38 cases for late transposition in 2018. Among the areas covered are:
- technical requirements for inland waterway vessels<sup>20</sup>;
  - road safety<sup>21</sup>;
  - the deployment of alternative fuels infrastructure<sup>22</sup>.
- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

<sup>20</sup> Directive [2016/1629/EU](#), Directive [2018/970/EU](#) amending Annexes II, III, V to Directive [2016/1629/EU](#).

<sup>21</sup> Directive [2015/653/EU](#), Directive [2016/1106/EU](#), Directive [2018/217/EU](#).

<sup>22</sup> Directive [2014/94/EU](#).

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These included the following:

- *Bulgaria*: unlawful use of aircraft in breach of noise restrictions set in EU legislation<sup>23</sup>;
- *Cyprus and Portugal*: operation of the Port State Control system<sup>24</sup>;
- *Denmark*: discrimination against foreign hauliers and violation of the principle of freedom to provide transport services<sup>25</sup>;
- *Germany*: incorrect transposition of the Directive on railway safety<sup>26</sup>;
- *Finland*: incorrect application of the Airport Charges Directive<sup>27</sup>;
- *Croatia*: incorrect implementation of EU rules on civil aviation security<sup>28</sup>;
- *Ireland*: incorrect application of EU rules on the mutual recognition of seafarers' certificates issued by the Member States<sup>29</sup>;
- *Malta and Romania*: failure to notify the national policy framework required by EU legislation on the deployment of alternative fuels infrastructure<sup>30</sup>;
- *Lithuania*: incorrect application of EU rules on the investigation of maritime accidents relating to the independent investigation body<sup>31</sup>;
- *Lithuania*: non-respect of the EU rules on freedom to provide port services<sup>32</sup>;
- *Portugal*: restricted access to the groundhandling market at Porto, Lisbon and Faro airports<sup>33</sup>;
- *Portugal*: lack of a quality management system for the maritime administration's Flag States-related activities<sup>34</sup>;

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<sup>23</sup> Directive [2006/93/EC](#).

<sup>24</sup> Directive [2009/16/EC](#).

<sup>25</sup> Regulation (EC) No [1072/2009](#).

<sup>26</sup> Directive [2004/49/EC](#).

<sup>27</sup> Directive [2009/12/EC](#).

<sup>28</sup> Regulation (EC) No [300/2008](#), [IP/18/1450](#), [MEMO/18/1444](#).

<sup>29</sup> Directive [2005/45/EC](#).

<sup>30</sup> Directive [2014/94/EU](#), [IP/18/358](#), [IP/18/358](#)

<sup>31</sup> Directive [2009/18/EC](#).

<sup>32</sup> Regulation (EEC) No [4055/1986](#).

<sup>33</sup> Directive [1996/67/EC](#).

<sup>34</sup> Directive [2009/21/EC](#).

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

The Court gave the following rulings<sup>35</sup>.

- *Czechia*: incorrectly implemented the definitions of categories of motor vehicles set out in the Directive on driving licences<sup>36</sup>.
- *Spain*: discriminated against small hauliers, excluding them from the road transport market, by requiring hauliers to own a minimum number of vehicles in order to obtain a public transport authorisation<sup>37</sup>.
- *Denmark*: The European Commission failed to establish that Denmark had failed to comply with EU rules on access to the international road haulage market<sup>38</sup>.
- *Poland*: failed to ensure that the investigating body is independent of railway undertakings and rail infrastructure managers controlled by the Minister of Transport<sup>39</sup>.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *France*: Member States may prohibit and punish as a matter of criminal law the illegal exercise of transport activities by the UberPop service, without notifying the Commission in advance of the draft legislation laying down criminal penalties for the exercise of such activities<sup>40</sup>.
- *Finland*: Complaints against an air carrier under Article 31 of the Montreal Convention must be made in writing<sup>41</sup>.
- *Germany*: An airline which operated only the first leg of a connecting flight in one Member State can be sued before the courts of the final destination in another Member State for compensation for delays<sup>42</sup>.
- *Germany*: A 'wildcat' strike by flight staff after the surprise announcement by an operating air carrier of a restructuring is not an 'extraordinary circumstance' as restructuring is part of normal business management measures and the risks arising from the social consequences of such measures must be regarded as inherent in the normal exercise of

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<sup>35</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>36</sup> Directive [2006/126/EC](#) *nc* [2006/126/EC](#), *Commission v Czech Republic*, [C-314/16](#).

<sup>37</sup> Regulation (EC) No [1071/2009](#), *Commission v Kingdom of Spain*, [C-181/17](#).

<sup>38</sup> Regulation (EC) No [1072/2009](#), *Commission v Kingdom of Denmark*, [C-541/16](#).

<sup>39</sup> Directive [2004/49/EC](#) *Commission v Republic of Poland*, [C-530/16](#).

<sup>40</sup> Directive [98/34/EC](#) and Directive [2006/123/EC](#), *Criminal proceedings against Uber France*, [C-320/16](#) and Court press release [No 39/18](#).

<sup>41</sup> Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999 and approved on behalf of the European Community by Council Decision [2001/539/EC](#), *Finnair Oyj v Keskinäinen Vakuutusyhtiö Fennia*, [C-258/16](#).

<sup>42</sup> Regulation (EC) No [261/2004](#), *flightright GmbH v Air Nostrum, Líneas Aéreas del Mediterráneo SA, Roland Becker v Hainan Airlines Co. Ltd and Mohamed Barkan and Others v Air Nostrum, Líneas Aéreas del Mediterráneo SA*, joined cases [C-274/16](#), [C-447/16](#) and [C-448/16](#), and Court press release [No 28/18](#).

the activity of the airline. Further, in such circumstances, a spontaneous strike by flight staff cannot be regarded as beyond the carrier's actual control<sup>43</sup>.

- *Germany*: The common rules on compensation and assistance to passengers apply to passenger transport, from a Member State to a third State, effected under a single booking and comprising a scheduled stopover outside the EU with a change of aircraft<sup>44</sup>.
- *Germany*: Compensation rights apply in the event of a flight cancellation less than 7 days before the scheduled time of departure where the passenger is subject to a loss of time of less than 3 hours but more than 2 hours as a result of re-routing. This is the case if the actual arrival time is between 2 and 3 hours later than the scheduled arrival<sup>45</sup>.
- *Germany*: In the case of a long delay, the air company which must pay the compensation owed to passengers is the one to perform the flight (and not the company which leased the aircraft and its crew)<sup>46</sup>.
- *Germany*: When a flight is cancelled, the air carrier must reimburse commissions paid to intermediaries provided that the carrier had prior knowledge of those commissions<sup>47</sup>.
- *Germany*: Airfares for flights within the EU are to be indicated by carriers in euros or in a local currency objectively linked to the service offered<sup>48</sup>.
- *Austria*: The obligation to provide prior information laid down in the Regulation on public passenger transport services by rail and by road also applies to contracts for public transport services by bus. However, an infringement of that obligation does not always entail the annulment of the call for tenders concerned<sup>49</sup>.
- *Hungary*: The requirement of proportionality concerning the system of penalties set out in the Directive on the charging of heavy goods vehicles for the use of certain infrastructures does not have direct effect<sup>50</sup>.

## VIII. OUTLOOK

Important implementation work in 2019 includes:

- Monitoring and assessing national measures transposing the Directives on:
  - railway safety<sup>51</sup>;

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<sup>43</sup> Regulation (EC) No [261/2004](#), Helga Krüsemann and Others v TUIfly GmbH, joined cases, [C-195/17](#), C-197/17 to C-203/17, C-226/17, C-228/17, C-254/17, C-274/17, C-275/17, C-278/17 to C-286/17 and C-290/17 to C-292/17, and Court press release [No 49/18](#).

<sup>44</sup> Regulation (EC) No [261/2004](#), Claudia Wegener v Royal Air Maroc SA, [C-537/17](#), and Court press release [No 77/18](#).

<sup>45</sup> Regulation (EC) No [261/2004](#), flightright, [C-130/18](#).

<sup>46</sup> Regulation (EC) No [261/2004](#), Wirth and Others, [C-532/17](#) and Court press release [No 100/18](#).

<sup>47</sup> Regulation (EC) No [261/2004](#), Harms, [C-601/17](#), and Court press release [No 128/18](#).

<sup>48</sup> Regulation (EC) No [1008/2008](#), Verbraucherzentrale Baden-Württemberg, [C-330/17](#), and Court press release [No 176/18](#).

<sup>49</sup> Regulation (EC) No [1370/2007](#), Directive [2014/24/EU](#) and Directive [2014/25/EU](#), Stefan Rudigier, [C-518/17](#).

<sup>50</sup> Directive [1999/62/EC](#), Doel Uvoz-Izvoz Skopje Link LogisticLogistik N&N v Budapest Rendőrfőkapitánya, [C-384/17](#).

<sup>51</sup> Directive [2016/798](#).

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Mobility and transport

- the interoperability of the rail system within the EU<sup>52</sup>;
  - the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure<sup>53</sup>;
  - the establishment of a single European railway area (recast)<sup>54</sup>,
  - roadworthiness of road vehicles<sup>55</sup>
- 
- Closely monitoring restrictions on market access, as well as safety and security in all modes of transport, in particular in the areas of digitalisation in road transport (tachographs) and the training of seafarers.

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<sup>52</sup> Directive [2016/797](#).

<sup>53</sup> Directive [2016/2370](#).

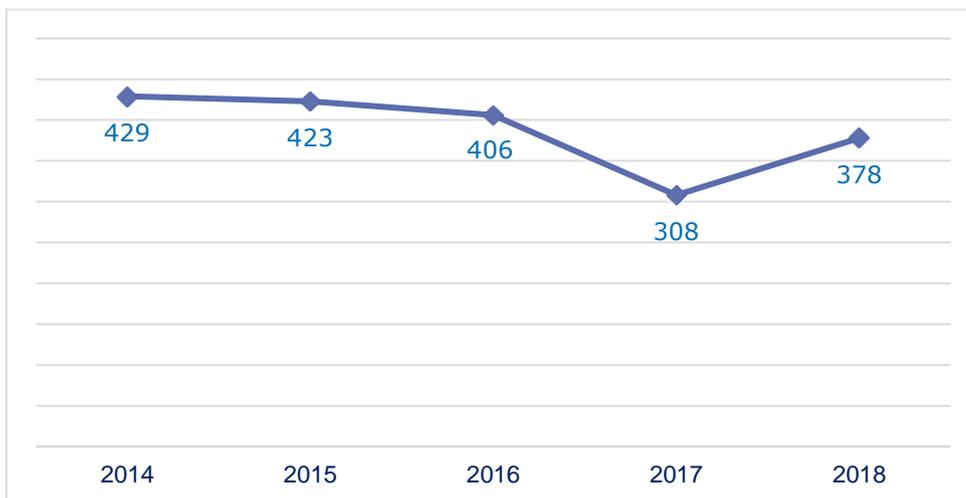
<sup>54</sup> Directives [2012/34/EC](#) and [2016/2370/EU](#).

<sup>55</sup> Directives [2014/45/EU](#), [2014/46/EU](#) and [2014/47/EU](#).

Taxation and customs union

I. COMPLAINTS

1. New complaints received from members of the public (2014-2018)



2. Public complaints open at year-end

352 > Complaints open at end-2017

378 > New complaints registered in 2018

399 > Complaints handled in 2018

**= 331** > Complaints open at end-2018

3. New complaints registered in 2018: main policy sectors



## II. EU PILOT

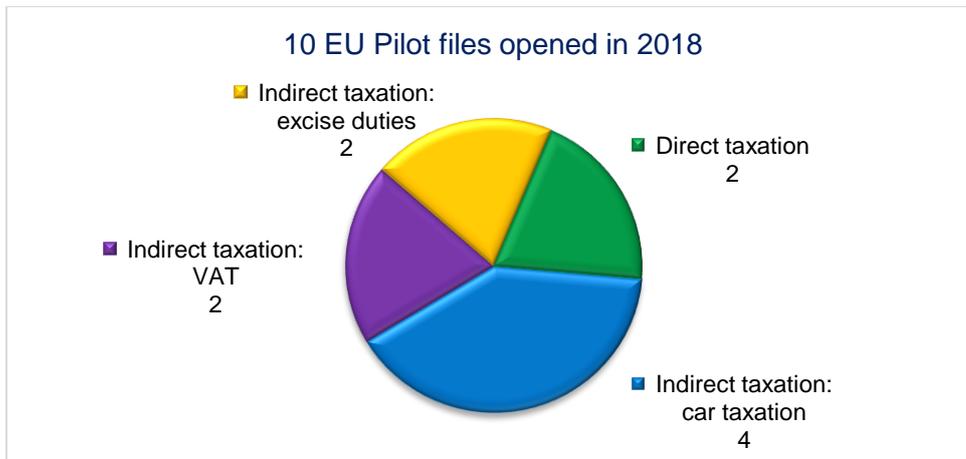
### 1. New EU Pilot files (2014-2018)



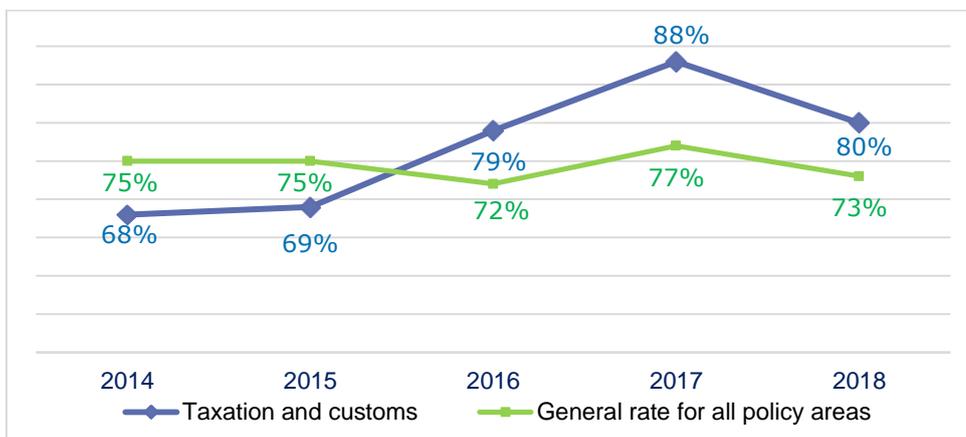
### 2. EU Pilot files open at year-end

At the end of 2018, 37 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2018: main policy sectors



### 4. EU Pilot files: resolution rate for policies (2014-2018)



### III. OWN-INITIATIVE CASES

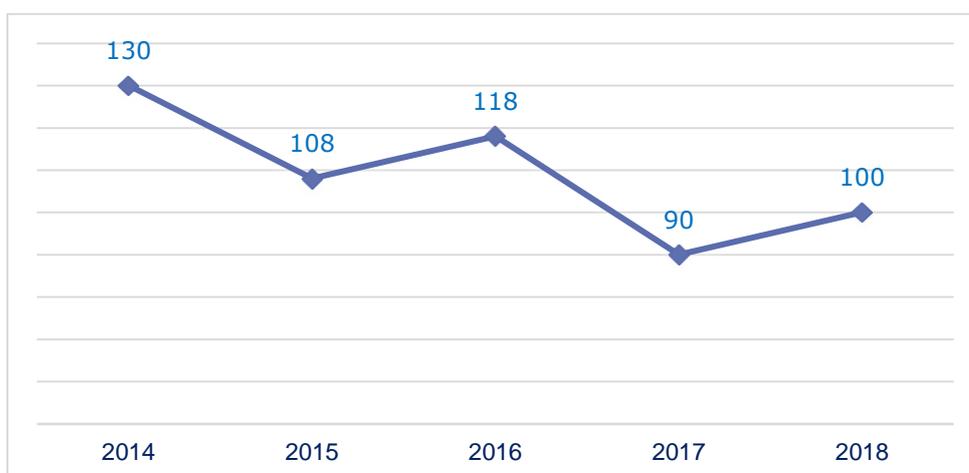
#### New own-initiative infringement cases

In 2018, the Commission opened own-initiative infringement cases over:

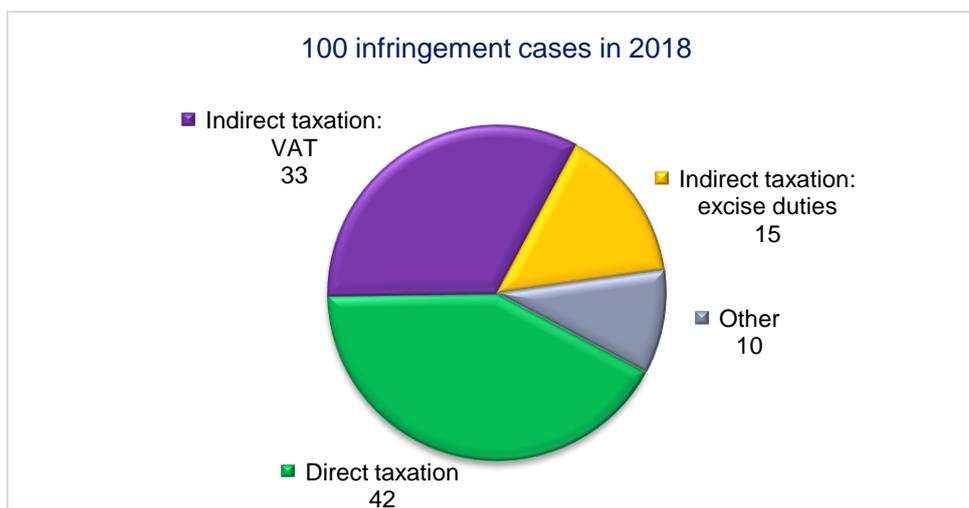
- incorrect application of EU VAT rules<sup>1</sup>;
- incorrect implementation in national legislation of the Directives on automatic exchange of financial account information and administrative cooperation in the field of taxation<sup>2</sup>.

### IV. INFRINGEMENT CASES

#### 1. Infringement cases open on 31 December (2014-2018)



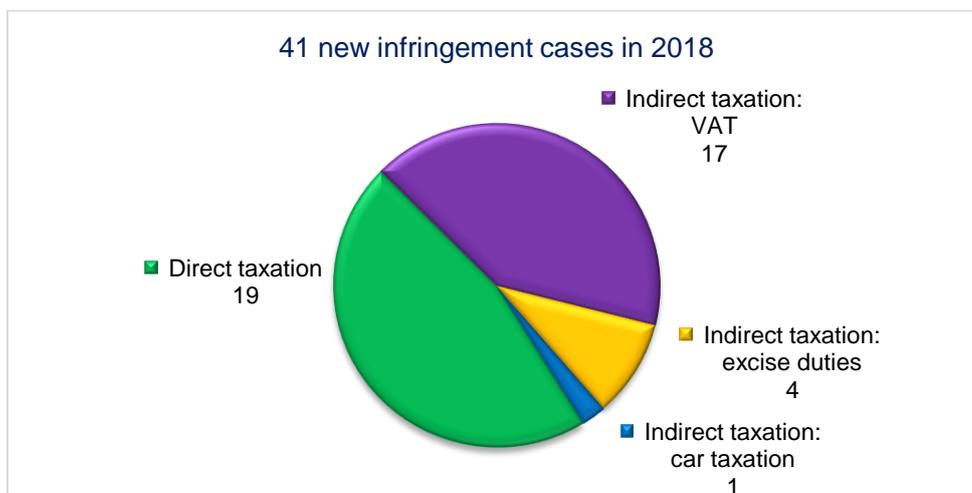
#### 2. Infringement cases open on 31 December 2018: main policy sectors



<sup>1</sup> Directive [2006/112/EC](#).

<sup>2</sup> Directives [2014/107/EU](#) and [2011/16/EU](#).

### 3. New infringement cases opened in 2018: main policy sectors



### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 41 new infringement cases in 2018. These, and other major ongoing infringement cases, include the following:
- *Belgium*: failure to comply with the Court of Justice judgment on the evaluation of rental income from immovable property<sup>3</sup>;
  - *Italy*: incorrect application of the VAT rules on the lease of yachts<sup>4</sup>;
  - *Italy*: illegal excise duty exemption for fuel used by private pleasure craft<sup>5</sup>;
  - *Italy*: use of 'fast corridors' to move goods long distances without presentation to customs authorities upon arrival and assigning the goods to a customs procedure at the customs office of entry;
  - *Greece*: incorrect application of the VAT rules for the lease of yachts<sup>6</sup>;
  - *Malta, Cyprus*: incorrect application of the VAT rules for the lease of yachts and incorrect taxation of purchases of yachts<sup>7</sup>;
  - *Romania*: application of a split-payment mechanism for VAT in breach of EU rules<sup>8</sup>;
  - *Germany*: application of a flat-rate scheme for farmers in breach of EU rules<sup>9</sup>;
  - *Latvia*: application of a VAT reverse-charge mechanism in breach of EU rules<sup>10</sup>;
  - *United Kingdom*: abusive VAT practices in the Isle of Man in the supply and leasing of aircraft<sup>11</sup>.
- b) The Commission referred one case to the Court under Article 258 TFEU. It concerns
- *Greece*: wrong imposition of a reduced rate of 50% of the standard rate of excise duty on the spirit drinks Tsipouro and Tsikoudia, in breach of EU law.<sup>12</sup>

<sup>3</sup> [MEMO/18/6247](#); Commission v Belgium, [C-110/17](#).

<sup>4</sup> [IP/18/6265](#).

<sup>5</sup> [IP/18/6265](#).

<sup>6</sup> [IP/18/1451](#).

<sup>7</sup> [IP/18/1451](#).

<sup>8</sup> [MEMO/18/6247](#).

<sup>9</sup> [MEMO/18/1444](#).

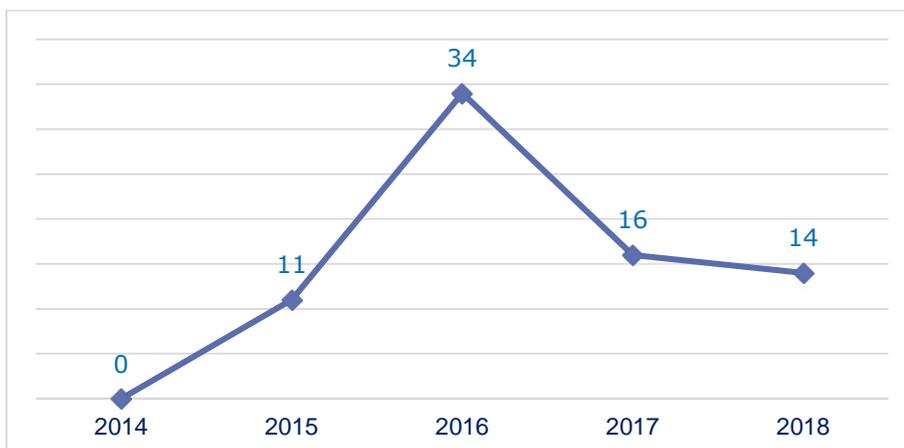
<sup>10</sup> [MEMO/18/3986](#).

<sup>11</sup> [IP/18/6265](#).

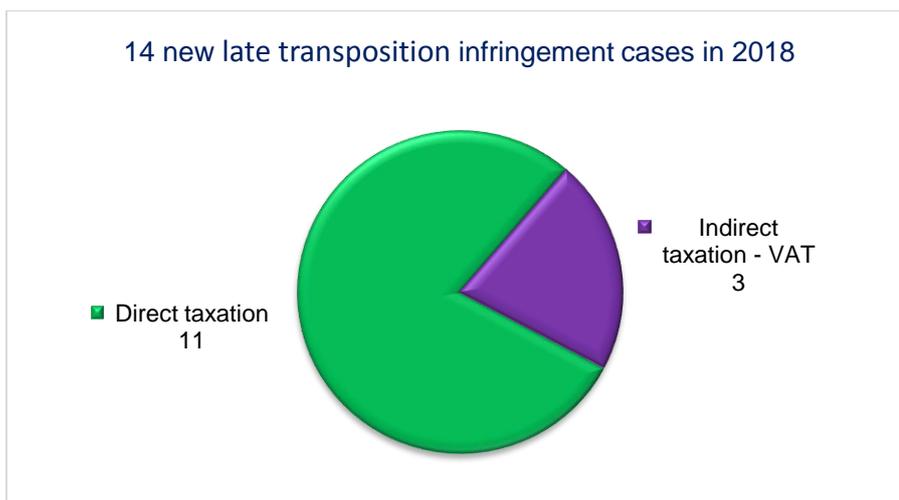
c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2014-2018)



### 2. New late transposition infringement cases opened in 2018: main policy sectors



### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 14 cases for late transposition in 2018. These concerned the directive on:
  - the access to anti-money laundering (AML) information<sup>13</sup>.
- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

<sup>12</sup> Commission v Greece, [C-91/18, IP/17/242](#).

<sup>13</sup> Directive [2016/2258/EU](#).

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2018

These concerned the following:

- *France*: incorrect application of VAT rules on aesthetic medicine and surgery procedures;
- *Italy*: unjustified restrictions on VAT reimbursement;
- *Malta*: exemption from excise duty for fuel used by private pleasure craft destined to leave EU waters, in breach of EU law;
- *Belgium*: imposition of higher yearly tax rate on foreign professional investment funds, in breach of EU law;
- *Denmark*: a nut tax with equivalent effect to a customs duty.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

The Court gave the following rulings<sup>14</sup>.

- *Belgium* has failed to fulfil its obligations under EU law in the way it calculates rental income. It calculates the rental income of Belgian taxpayers from immovable property located abroad on the basis of the actual value, while rental income on property located in Belgium is based on the cadastral value, i.e. calculated by reference to the property description and valuation<sup>15</sup>.
- *Germany* excludes sales of travel services to taxable undertakings from the special scheme for travel agents. Moreover, when applying the special scheme, Germany allows an overall taxable amount to be calculated either for groups of services or for all services provided within a tax period. The Court decided that both measures are incompatible with the VAT Directive<sup>16</sup>.
- *Greece*: The Greek rules allowing the sale of tax-exempt fuel by filling stations located in certain border posts at frontiers with third countries are contrary to the EU provisions on general arrangements for excise duty<sup>17</sup>.
- *Ireland* does not properly apply the EU rules on fiscal marking of fuels. The Court found that Ireland has failed to ensure that the minimum levels of taxation applicable to motor fuels are applied and that fuel is marked only when it is subject to an exemption from or reduction in excise duty<sup>18</sup>.
- *France* has failed to fulfil its obligations under EU law over the way it applied the mechanism for the avoidance of economic double taxation of distributed foreign dividends<sup>19</sup>.

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<sup>14</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>15</sup> Commission v Belgium, [C-110/17](#).

<sup>16</sup> Commission v Germany, [C-380/16](#).

<sup>17</sup> Commission v Greece, [C-590/16](#).

<sup>18</sup> Commission v Ireland, [C-504/17](#).

<sup>19</sup> Commission v France (Précompte mobilier), [C-416/17](#).

- *Austria* levies VAT on the royalties paid to the author of an original artistic work upon its resale, within the framework of the resale right. However, the royalty depends entirely on the price paid in the resale, the amount of which cannot be influenced by the author. The author (or his heirs) is entitled to the royalty without having to, or even being able to, undertake any service, either by action or by inaction. The Court decided that the resale right is not subject to VAT<sup>20</sup>.
- *United Kingdom* has not properly applied the EU rules on fiscal marking of fuels. The Court found that the UK has failed to ensure that fuel is marked only when it is subject to an exemption from or reduction in excise duty<sup>21</sup>.

## 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Denmark*: A resident company which has not opted for an international joint taxation scheme may deduct from its taxable profits losses incurred by a permanent establishment in another Member State. This is subject to two conditions: i) the company has exhausted the possibilities for deducting those losses available under the law of the Member State in which the establishment is situated; and ii) it has ceased to receive any income from that establishment, so that there is no longer any possibility of the losses being taken into account in that Member State<sup>22</sup>.
- *Ireland*: When a company intends to acquire the shares of another company in order to provide management services subject to VAT to that other company, input VAT paid on consultancy services received in the context of the takeover bid can be deducted, even if ultimately that economic activity was not carried out<sup>23</sup>.
- *Italy*: The *ne bis in idem* principle may be limited for the purpose of protecting the financial interests of the EU. The objective of ensuring the collection of all the VAT due in the territories of Member States can justify a duplication of proceedings and penalties of a criminal nature. However, such a limitation on the principle must not exceed what is strictly necessary to achieve those objectives<sup>24</sup>.
- *Germany*: Certain cross-border transactions need to be carried out at 'arm's length', whereas identical domestic transactions are considered to be without any tax effect (i.e. they could also be made not at arm's length). In fact, the tax authorities responsible for enforcing the legislation at stake afford the resident taxpayer the opportunity to prove that the terms were agreed on for commercial reasons which could result from its status as a shareholder in the non-resident company<sup>25</sup>.
- *Germany*: The German anti-abuse measures concerning dividend payments to foreign companies without genuine activity were incompatible, as of 2012, with both the Parent-Subsidiary Directive and the freedom of establishment<sup>26</sup>.
- *Austria*: In the case of two successive supplies giving rise to only one intra-Community transport, only one of the two supplies can give rise to the intra-Community transport and be exempted from VAT<sup>27</sup>.

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<sup>20</sup> Commission v Austria, [C-51/18](#).

<sup>21</sup> Commission v United Kingdom, [C-503/17](#).

<sup>22</sup> Bevola, [C-650/16](#).

<sup>23</sup> Ryanair, [C-249/17](#).

<sup>24</sup> Menci, [C-524/15](#).

<sup>25</sup> Hornbach, [C-382/16](#).

<sup>26</sup> GS, [C-440/17](#).

<sup>27</sup> Kreuzmayr, [C-628/16](#).

- *Hungary*: When businesses fulfil the conditions of the special exemption scheme for small enterprises, for the scheme to apply the taxable person must opt for its application. In the absence of doing so, the normal VAT obligations apply by default<sup>28</sup>.
- *France*: Only part of the French public electricity service tax (CSPE) may be considered as another indirect tax for specific purposes, namely its environmental objective (and in the proportion in which revenue raised from the tax was allocated to this objective). The taxable persons concerned are entitled to a reimbursement of the other part of the tax, provided that they did not directly pass on that tax to their own consumers<sup>29</sup>.
- *France*: French withholding tax on dividends received by loss-making non-resident companies is incompatible with free movement of capital. The Court ruled that different ways to collect taxes between resident and non-resident taxpayers are allowed only if they do not result in heavier taxation of the latter<sup>30</sup>.
- *Poland*: In Poland, to determine the basis for assessing flavoured beers according to the Plato scale, the dry extract of the finished product including aromatic substances and sugar syrup added after the completion of the fermentation process is taken into consideration. However, the Court decided that in such cases the dry extract of the original wort must be taken into consideration but not the aromatic substances or sugar syrup added after the completion of fermentation<sup>31</sup>.
- *Spain*: A fine for not declaring cash upon entering or leaving the EU which may be up to double the undeclared amount is contrary to EU law, including the Cash Control Regulation<sup>32</sup>.
- *Slovakia*: A Member State regulation imposing a pecuniary charge on electricity exported to another Member State or to a third country only when electricity has been produced in the national territory is in breach of EU law<sup>33</sup>.

## VIII. OUTLOOK

Important implementation work in 2019 includes:

- *Indirect taxation*:
  - focusing on infringements with a strong impact on the functioning of the internal market and the economy, and implementation of Court judgments;
  - monitoring cases affecting the economic situation of businesses (VAT refunds, including by following up on the VAT Refund Directive Study) and cases aiming to remove distortions of competition in the internal market and ensure fair taxation.
- *Direct taxation*:
  - assessing the conformity of national measures with the EU rules on exchange of information on taxation. This will concern in particular the Directives on:
    - the automatic exchange within the EU of information relative to financial income, including dividends and capital gains, and account balances<sup>34</sup>;

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<sup>28</sup> Vámos, [C-566/16](#).

<sup>29</sup> Messer, [C-103/17](#).

<sup>30</sup> SOFINA, [C-575/17](#).

<sup>31</sup> Kompania Piwowarska, [C-30/17](#).

<sup>32</sup> Zheng, [C-190/17](#).

<sup>33</sup> FENS, [C-305/17](#).

<sup>34</sup> Directive [2014/107/EU](#).

Taxation and customs union

- the mandatory automatic exchange of information in the field of taxation<sup>35</sup>;
- country-by-country reporting of information by multinationals to tax authorities<sup>36</sup>;
- access to anti-money laundering information<sup>37</sup>.
- assessing the conformity of national rules against tax avoidance and practices that directly affect the functioning of the internal market, namely<sup>38</sup>:
  - an Interest Limitation Rule by limiting the deductibility of interest payments;
  - a General Anti-abuse Rule tackling abusive practices where arrangements are put in place to obtain a tax advantage;
  - a Controlled Foreign Company Rule affecting the income re-attribution of the low-taxed controlled subsidiary to the parent company.
- *Customs*:
  - carrying out a series of monitoring activities in cooperation with the Member States to help them implement the Union Customs Code, which has now been applicable for more than 2 years;
  - focusing on cases where there is a significant financial impact and it is considered that the Commission's exclusive competence in the area of customs needs to be defended.

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<sup>35</sup> Directive [2015/2376/EU](#).

<sup>36</sup> Directive [2016/881/EU](#).

<sup>37</sup> Directive [2016/2258/EU](#).

<sup>38</sup> Directive [2016/1164/EU](#).

Methodology and explanations

I. ANNEX I — POLICY AREAS

1. Complaints

**First chart: New complaints received from members of the public (2014-2018)**

This shows the number of public complaints the Commission registered in the given policy field in 2014-2018.

**Second chart: Public complaints open at year-end**

This starts with the number of open complaints carried over from 2017 (first column). The second column shows the number of new complaints registered in 2018. The third column shows the number of complaints on which the Commission took a decision in 2018. The fourth column shows the number of complaints open at the end of 2018 (calculated by taking the first figure, adding the second and subtracting the third).

**Third chart: New complaints registered in 2018: main policy sectors**

The number of registered complaints for the current reporting year is broken down by policy sector. In general, this breakdown shows the three policy sectors in which the most complaints were received in 2018. Four (or more) policy sectors are mentioned if two (or more) policy sectors attracted the third highest number of complaints. The number of sectors covered varies according to the breadth of each policy area.

2. EU PILOT

**First chart: New EU Pilot files (2014-2018)**

This shows the number of EU Pilot files the Commission opened in the given policy area in 2014-2018.

**Second chart: New EU Pilot files opened in 2018: main policy sectors**

The number of new EU Pilot files opened in the current reporting year is broken down by policy sector. This breakdown shows the three policy sectors in which the most EU Pilot files were opened in 2018. Four (or more) policy sectors are included if two (or more) policy sectors tied for the third highest number of new EU Pilot files.

**Third chart: EU Pilot files: resolution rate for policies in 2014-2018**

The resolution rate in the given policy field is the percentage of EU Pilot files handled in that field for which the Commission accepted the Member States' responses. The chart shows the resolution rate for the last 5 years.

### 3. OWN-INITIATIVE CASES

#### New own-initiative cases

This section contains a list of the most important infringement cases the Commission launched in the given policy area in 2018. The list is not exhaustive.

### 4. INFRINGEMENT CASES

#### First chart: Infringement cases open on 31 December (2014-2018)

These figures include all procedures the Commission initiated in the policy area by sending a letter of formal notice under Article 258 TFEU. It covers letters sent in 2018 or before, irrespective of the stages the cases have reached. Only cases which have not yet been closed by a formal decision are shown.

Accordingly, this number includes all cases that, on 31 December of the years 2014 to 2018:

- 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 and 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; and
- 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 in the policy area. It also does not include EU Pilot files for which the Commission had already rejected a Member State's response but had not yet sent a letter of formal notice under Article 258 TFEU.

#### Second chart: Infringement cases open on 31 December 2018: main policy sectors

This shows, for the given policy area, the sectors in which the most infringement cases were still open on 31 December 2018. The number of sectors shown varies according to the breadth of each policy area.

#### Third chart: New infringement cases opened in 2018: main policy sectors

This shows, for the given policy area, the sectors in which the most infringement cases were launched in 2018.

#### Key infringement cases and referrals to the Court

This section has three parts.

Part a) shows the number of new infringement cases launched in the policy area in 2018 and lists the most important new cases under Article 258 TFEU.

Part b) lists the cases which the Commission referred to the Court *solely* under Article 258 TFEU by 31 December 2018. The cases submitted to the Court under Article 258 *and* 260(3) TFEU are discussed in the 'transposition of directives' section (see below).

Part c) contains the cases which the Commission referred to the Court under Article 260(2) TFEU by 31 December 2018.

## 5. TRANSPOSITION OF DIRECTIVES

### **First chart: New late transposition infringement cases (2014-2018)**

This shows the number of letters of formal notice sent to Member States under Article 258 TFEU for missing or partial notification of national measures transposing directives in the given policy area. This figure is already included in the total number of new infringement cases initiated in the policy area in 2018, 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 2018. For example, if the Commission opened a late transposition infringement procedure in March 2018 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 2018 as a result of the Member State notifying complete transposition.

### **Second chart: New late transposition infringement cases opened in 2018: main policy sectors**

This shows the policy sectors in which the most late transposition procedures were launched in 2018.

### **Key infringement cases and referrals to the Court**

This section has two parts:

Part a) lists, for the given policy area, the most important directive(s) over which the Commission had to launch infringement procedures against a relatively high number of Member States.

Part b) lists the cases which the Commission referred to the Court under Article 258 TFEU and Article 260(3) by 31 December 2018.

## 6. EARLY RESOLUTION OF INFRINGEMENT CASES

### **Major cases closed without a Court judgment in 2018**

This section contains a list of the most important infringement cases the Commission closed in the given policy area in 2018 without a Court judgment. The list is not exhaustive.

## 7. IMPORTANT JUDGMENTS

This section contains two lists, neither of which are necessarily exhaustive.

The first list contains the Court's most important judgments in the given policy area in 2018. These judgments are almost exclusively handed down under Article 258 or Articles 260(2) TFEU.

The second list contains the most important preliminary rulings that the Court issued to the Member State's judiciary in the given policy area.