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EUROPEAN COMMISSION

COMMUNICATION FROM THE COMMISSION

EU law: Better results through better application

(2017/C 18/02)

1. Introduction

The European Union is founded on the rule of law and relies on law to ensure that its policies and priorities are realised in the Member States ⁽¹⁾. The effective application, implementation and enforcement of the law is a responsibility entrusted to the Commission by Article 17(1) of the Treaty on European Union. It is a high political priority for the Juncker Commission and part of the Commission's strengthened drive for better law-making ⁽²⁾.

Effective enforcement of EU rules — from the fundamental freedoms, food and product safety to air quality to the protection of the single currency — matters to Europeans and affects their daily lives. It serves the general interest. Often, when issues come to the fore — car emission testing, water pollution, illegal landfills, transport safety and security — it is not the lack of EU legislation that is the problem but rather the fact that the EU law is not applied effectively. That is why a robust, efficient and effective enforcement system is needed to ensure that Member States fully apply, implement and enforce EU law and provide adequate redress for citizens.

Members of the public, businesses and civil society contribute significantly to the Commission's monitoring by reporting shortcomings in the application of EU law by the Member States. The Commission acknowledges the crucial role of complaints in detecting infringements of EU law.

The Commission's current enforcement policy involves monitoring how EU law is applied and implemented, solving problems with Member States so as to remedy any possible breaches of the law, and taking infringement action when appropriate. The policy has evolved and been strengthened progressively over the past 15 years. Key Communications in 2002 ⁽³⁾ and 2007 ⁽⁴⁾ provided the framework for enhancing monitoring, strengthening partnerships and problem solving, improving the management of infringement cases and increasing transparency.

Beyond infringement management, the Commission has developed the Rule of Law Framework ⁽⁵⁾ which it has applied where the 'national rule of law safeguards' no longer seem capable of effectively addressing a systemic threat to the rule of law in a Member State, and where such a threat cannot be addressed through infringement proceedings. This reflects the fact that upholding the rule of law is a prerequisite for upholding all rights and obligations deriving from the Treaties.

⁽¹⁾ Article 2 TEU: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

⁽²⁾ Political guidelines for the next European Commission of 15 July 2014 and mission letters of 1 November 2014 from the President to Vice-Presidents and Commissioners.

⁽³⁾ Communication 'Better monitoring of the application of Community law', COM(2002) 725/final/4 of 16.5.2003.

⁽⁴⁾ Communication 'A Europe of Results — Applying Community Law', COM(2007) 502 final of 5.9.2007.

⁽⁵⁾ Communication 'A new EU Framework to strengthen the Rule of Law', COM(2014) 158 of 11.3.2014.

The Juncker Commission has also adopted a more focused approach to policy and law-making. It has a streamlined work programme which is underpinned at all stages of policy preparation by high-quality analysis and public consultation of stakeholders. This new way of working, the core of the Better Regulation agenda, aims to ensure that every measure in the EU's rulebook is fit for purpose, easy to implement and enforced across the EU. In its Communication 'Better Regulation: Delivering better results for a stronger Union', the Commission committed to promoting more effective application, implementation and enforcement ⁽¹⁾.

Under the recently signed Inter-institutional Agreement on Better Law-Making ⁽²⁾, the European Parliament, the Council and the Commission recognise their joint responsibility in delivering high-quality Union legislation. The Joint Declaration on the EU's legislative priorities for 2017 reiterates the commitment to promoting the proper implementation and enforcement of existing legislation ⁽³⁾.

Notwithstanding these efforts, applying and enforcing EU law remains a challenge and calls for a stronger focus on enforcement in order to serve the general interest. Enforcement supports and complements the delivery of policy priorities. In identifying its policy priorities, the Commission will pay attention not only to bringing forward new legislation but also to its enforcement. The work done to ensure the effective enforcement of existing EU law needs to be recognised as being of equivalent importance to the work devoted to developing new legislation. The partnership between the Commission and the Member States, who play a crucial role in implementation, needs to be strengthened to deliver the benefits of EU law to the public. At the same time, citizens, trade and business associations, the social partners, the Economic and Social Committee and Committee of the Regions as well as civil society are encouraged to help the Commission to identify problems in a more structured way.

This Communication sets out how the Commission will step up its efforts on the application, implementation and enforcement of EU law in line with the Juncker Commission's commitment to be 'bigger and more ambitious on big things, and smaller and more modest on small things' ⁽⁴⁾. This means a more strategic approach to enforcement in terms of handling infringements. It also gives an overview of other action the Commission will take to help the Member States and the public ensure that EU law is applied effectively.

2. Working with Member States in enforcing EU law

The Member States have the primary responsibility for transposing, applying and implementing EU law correctly ⁽⁵⁾. They also have to provide sufficient remedies to ensure effective legal protection in the fields covered by EU law. This means that, where citizens' rights under EU law are affected at national level, the public have to be granted access to rapid and effective national redress mechanisms. These must comply with the principle of effective judicial protection set out in the Treaty ⁽⁶⁾. National courts are 'the common courts' for upholding EU law and contribute effectively to enforcing it in individual cases. They have the competence to uphold the actions of individuals seeking protection against national measures that are incompatible with EU law or financial compensation for the damage caused by such measures.

To assist Member States in their efforts to implement EU law, and to ensure that they live up to their responsibilities in correctly applying EU legislation, the Commission deploys a wide array of tools. These range from preventive measures and early problem-solving to pro-active monitoring and targeted enforcement. The following sets out how current support actions will be enhanced.

Dialogue

Infringements of EU law are not routine matters and should be discussed at an appropriately high level and in a timely manner. High-level bilateral meetings between the Commission and Member States to proactively discuss compliance with EU law are encouraged and will be made more systematic across the range of legislative areas. For example, as envisaged in the Single Market Strategy ⁽⁷⁾, the Commission will organise compliance dialogues with Member States. These dialogues may cover infringement cases as well as broader enforcement issues.

⁽¹⁾ Communication 'Better Regulation: Delivering better results for a stronger Union', COM(2016) 615 final of 14.9.2016.

⁽²⁾ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123 of 12.5.2016, p. 1).

⁽³⁾ Joint Declaration on the EU's legislative priorities for 2017 signed by the Presidents of the European Parliament, the Council and the Commission on 13 December.

⁽⁴⁾ Political guidelines for the next European Commission of 15 July 2014 and mission letters of 1 November 2014 from the President to Vice-Presidents and Commissioners.

⁽⁵⁾ Article 4(3) TEU, Articles 288(3) and Article 291(1) TFEU.

⁽⁶⁾ Article 19(1) second subparagraph TEU and Article 47 Charter of Fundamental Rights.

⁽⁷⁾ Communication Upgrading the Single Market: more opportunities for people and business COM(2015) 0550 final of 28.10.2015.

The Commission will continue to take advantage of the various committees and expert groups already in place, as well as the valuable support of European agencies, to foster implementation and assess how this legislation is implemented in practice. Discussions in these fora have proven to be an effective way of ensuring that the Member States commit to the implementation of EU law, and are an expression of the basic principle of sincere cooperation between the Commission and Member States. Furthermore, the dialogue on the enforcement of specific provisions of EU law, which is also a pre-condition for the effective use of European Structural and Investment Funds ⁽¹⁾, helps ensure the full and timely transposition of EU law.

Infringements must be dealt with promptly. The Commission and the Member States need to proceed expeditiously in investigating breaches of the law. The structured problem-solving dialogue between the Commission and Member States, known as EU Pilot, was set up to quickly resolve potential breaches of EU law at an early stage in appropriate cases. It is not intended to add a lengthy step to the infringement process, which in itself is a means to enter into a problem-solving dialogue with a Member State. Therefore, the Commission will launch infringement procedures without relying on the EU Pilot problem-solving mechanism, unless recourse to EU Pilot is seen as useful in a given case ⁽²⁾.

Capacity building in Member States

The Commission will encourage and help Member States to improve their capacity to enforce EU law and provide remedies in order to ensure that the end-users of EU law — whether private individuals or businesses — can fully enjoy their rights ⁽³⁾. Networks and the exchange of best practice are key aspects of this effort. The Commission will continue to work in partnership with national authorities through a number of networks to ensure that EU rules are applied effectively and consistently. For example, in the area of the internal market for electronic communications networks and services, the Body of European Regulators for Electronic Communications assists and advises the Commission and the national regulatory authorities in implementing the EU regulatory framework for electronic communications. Similarly, the European Competition Network contributes to the effective and coherent implementation of competition rules. The European Union Network for the Implementation and Enforcement of Environmental Law plays an important role, in particular by facilitating the exchange of best practice in enforcing the environmental *acquis* and respect for the minimum requirements for inspections. The work of this network will feature in forthcoming initiatives to support Member States in securing compliance with EU environmental law ⁽⁴⁾. The Working Party on the protection of individuals with regard to the processing of personal data (so called 'Article 29 Party') plays an important role in the application of the data protection legislation. With the entry into application of the new EU data protection framework ⁽⁵⁾, it will be replaced by the European Data Protection Board.

Independent administrative authorities or inspectorates required by EU legislation (e.g. in the area of data protection, equality, energy, transport, financial services) play an essential role in implementation and enforcement. The Commission will therefore pay particular attention to their being sufficiently and adequately equipped to perform their tasks. For example, the Commission considers that national competition authorities should be empowered to be better enforcers of the competition rules. One way to do this is to ensure that they act independently and that they are equipped with sufficient tools and resources to enforce competition more strongly in Europe, make markets more competitive and give consumers a better choice of goods and services at lower prices and of better quality. Another focus is the independence of national regulatory authorities in electronic communications services, the energy sector, rail regulatory bodies and national financial supervisory authorities ⁽⁶⁾. In the financial sector, the European Supervisory Authorities can investigate

⁽¹⁾ Article 1 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

⁽²⁾ The working arrangements with the Member States on EU Pilot will now be adjusted accordingly.

⁽³⁾ As announced in the Single Market Strategy Communication (COM(2015) 550 final), the Commission will launch a comprehensive set of actions to further enhance efforts to keep non-compliant products from the EU market by strengthening market surveillance and providing the right incentives to economic operators.

⁽⁴⁾ See Commission Communication COM(2016) 710 final, Commission Work Programme 2017, Delivering a Europe that protects, empowers and defends, Priority 10.

⁽⁵⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

⁽⁶⁾ See Article 3(3a) of the Framework Directive 2002/21/EC for electronic communications and Article 55 of Directive 2012/34/EU establishing a Single European Railway Area and Article 4(4) of Directive 2013/36/EU (CRD IV) and Article 27 ff of Directive 2009/138/EC (Solvency2), Recital 123 of Directive 2014/65/EU (MIFID II).

and take further action concerning the failure of a national competent authority to comply with its obligations under the applicable legislation ⁽¹⁾. The Commission will encourage the modernisation of enforcement authorities through the European Semester, the EU's annual cycle of economic policy coordination, and when necessary through specific legislation. For example, the Commission has presented a proposal to revise the Regulation on consumer protection cooperation ⁽²⁾ which aims to boost Member States' ability to address infringements of consumer law, in particular in the online environment.

The Commission will also continue to help Member States improve the effectiveness of their national justice systems through the European Semester and to support justice reforms and judicial training with EU funds. The EU Justice Scoreboard ⁽³⁾ feeds into this process by providing a comparative overview of the quality, independence and efficiency of national justice systems. This makes it easier to identify shortcomings and best practices and keeps track of progress. The Commission will increase its support for strengthening national judicial systems. Training programmes for national judges and other legal professionals will continue to be promoted. The Commission and national judges successfully cooperate in ensuring compliance with the competition rules ⁽⁴⁾, environmental legislation ⁽⁵⁾ and facilitating judicial cooperation in civil and commercial matters through the European Judicial Network ⁽⁶⁾. This shows that there is potential to improve the sharing of experience. A Commission interpretative communication on environmental access to justice will contribute to the efforts mentioned ⁽⁷⁾.

The Commission will strengthen its cooperation with the European Network of Ombudsmen, which is coordinated by the European Ombudsman and brings together national and regional Ombudsmen to promote good administration in the application of EU law at national level.

Better law-making helps better application and implementation

The political will to improve the quality of law-making, review existing laws and update them where necessary is shared by the Parliament, the Council and the Commission. The Interinstitutional Agreement on Better Law-Making confirms their commitment to ensure the quality of regulation and to make sure it responds to the needs of citizens and businesses. Clear legal drafting and accessible texts contribute to legal certainty and better application. If legislation is clear and accessible, it can be implemented effectively, citizens and economic actors can more easily understand their rights and obligations and the judiciary can enforce them.

That is why it is essential that certain aspects of the implementation and application of EU law are taken into account at the stage of policy development. The Commission's Better Regulation Guidelines ⁽⁸⁾ guide the Commission's services in how to prepare 'implementation plans' to identify possible difficulties the Member States face in implementing EU law and suggest ways to mitigate these risks. The Commission, when preparing proposals for directives, also works with Member States to determine whether explanatory documents setting out the relationship with national transposition measures are needed ⁽⁹⁾.

Transparency is essential to ensure that EU law is correctly transposed, applied and implemented. The Interinstitutional Agreement on Better Law-Making calls on the Member States to inform their respective publics when they transpose EU directives and to make clear in the national transposing act (or an associated document) where elements that are in no way related to that EU legislation are added.

⁽¹⁾ Regulation (EU) No 1093/2010 establishing the European Banking Authority, Regulation (EU) No 1094/2010 establishing the European Insurance and Occupational Pensions Authority and Regulation (EU) No 1095/2010 establishing the European Securities and Markets Authority.

⁽²⁾ Proposal to revise the Regulation on consumer protection cooperation, COM(2016) 283 final of 25.5.2016.

⁽³⁾ Communication 'The 2016 EU Justice Scoreboard', COM(2016) 199 final of 11.4.2016.

⁽⁴⁾ Communication from the Commission — Amendments to the Commission Notice on the cooperation between the Commission and courts of the EU Member States in the application of Articles 81 and 82 EC (OJ C 256, 5.8.2015, p. 5).

⁽⁵⁾ http://ec.europa.eu/environment/legal/law/training_package.htm.

⁽⁶⁾ Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174 of 27.6.2001, p. 25).

⁽⁷⁾ Commission Work Programme 2017, Delivering a Europe that protects, empowers and defends, COM(2016), 710 final, Priority 10.

⁽⁸⁾ Communication 'Better regulation for better results - An EU agenda', COM(2015)215 final, 19.5.2015.

⁽⁹⁾ The policy is contained in a (1) Joint Political Declaration of 28 September 2011 between the Commission and the Member States (OJ C 369, 17.12.2011, p. 14) and (2) a Joint Political Declaration of 27 October 2011 between the European Parliament, the Council and the Commission (OJ C 369, 17.12.2011, p. 15).

3. A more strategic approach to the Commission's enforcement actions

Setting priorities

The Commission promotes the general interest of the Union and ensures the application of the Treaties. As guardian of the Treaties, it has the duty to monitor the Member States' action in implementing EU law and to ensure that their legislation and practice complies with it, under the control of the Court of Justice of the European Union ⁽¹⁾.

In exercising this role, the Commission enjoys discretionary power in deciding whether or not, and when, to start an infringement procedure or to refer a case to the Court of Justice ⁽²⁾. As a consequence, the case-law recognises that individuals will not succeed in actions brought against the Commission where it declines to pursue an infringement procedure ⁽³⁾.

Being 'bigger and more ambitious on big things, and smaller and more modest on small things' should be translated into a more strategic and efficient approach to enforcement in terms of the handling of infringements. In implementing this approach, the Commission will continue to value the essential role played by individual complainants in identifying wider problems with the enforcement of EU law affecting the interests of citizens and businesses.

It is important that the Commission use its discretionary power in a strategic way to focus and prioritise its enforcement efforts on the most important breaches of EU law affecting the interests of its citizens and business. In this context, the Commission will act firmly on infringements which obstruct the implementation of important EU policy objectives ⁽⁴⁾, or which risk undermining the four fundamental freedoms.

As a matter of priority, the Commission will investigate cases where Member States have failed to communicate transposition measures or where those measures have incorrectly transposed directives; where Member States have failed to comply with a judgment of the Court of Justice as referred to in Article 260(2) TFEU; or where they have caused serious damage to EU financial interests or violated EU exclusive powers as referred to in Article 2(1) TFEU read in conjunction with Article 3 TFEU.

The obligation to take the necessary measures to comply with a judgment of the Court of Justice has the widest effect where the action required concerns systemic weaknesses in a Member State's legal system. The Commission will therefore give high priority to infringements that reveal systemic weaknesses which undermine the functioning of the EU's institutional framework. This applies in particular to infringements which affect the capacity of national judicial systems to contribute to the effective enforcement of EU law. The Commission will therefore pursue rigorously all cases of national rules or general practices which impede the procedure for preliminary rulings by the Court of Justice, or where national law prevents the national courts from acknowledging the primacy of EU law. It will also pursue cases in which national law provides no effective redress procedures for a breach of EU law or otherwise prevents national judicial systems from ensuring that EU law is applied effectively in accordance with the requirements of the rule of law and Article 47 of the Charter on Fundamental Rights of the EU.

Beyond these cases, the Commission attaches importance to ensuring that national legislation complies with EU law since incorrect national legislation systematically undermines citizens' ability to assert their rights including their fundamental rights, and to draw fully the benefits from EU legislation. The Commission will also pay particular attention to cases showing a persistent failure by a Member State to apply EU law correctly.

⁽¹⁾ Article 17(1) TEU.

⁽²⁾ See in particular: judgment of 6 December 1989 in Case C-329/88, *Commission v Greece* [1989] ECR 4159; judgment of 1 June 1994 in Case C-317/92, *Commission v Germany* [1994] ECR I 2039; judgment of 6 October 2009 in Case C-562/07, *Commission v Spain* [2009] ECR I-9553; judgment of 14 September 1995 in Case T-571/93; *Lefebvre and others v Commission* [1995] ECR II 2379; judgment of 19 May 2009 in Case C-531/06, *Commission v Italy* [1009] ECR I 4103.

⁽³⁾ See judgment of 14 September 1995 in Case T-571/93; *Lefebvre and others v Commission* [1995] ECR II 2379.

⁽⁴⁾ In particular as presently set out in the Strategic Agenda of the European Council of 27 June 2014 and the Political Guidelines for the next European Commission of 15 July 2014.

In light of the discretionary power the Commission enjoys in deciding which cases to pursue, it will examine the impact of an infringement on the attainment of important EU policy objectives, such as breaches of the fundamental freedoms under the Treaty which create particular problems for citizens or businesses wanting to move or carry out transactions between Member States, or where there may be a systemic impact beyond one Member State. It will distinguish between cases according to the added value which can be achieved by an infringement procedure and will close cases when it considers this to be appropriate from a policy point of view. The Commission will exercise such discretion in particular in cases where preliminary ruling proceedings under Article 267 TFEU are pending on the same issue and Commission action would not significantly accelerate the resolution of the case and those where pursuing the infringement would be in contradiction with the line taken by the College of Commissioners in a legislative proposal.

Certain categories of cases can often be satisfactorily dealt with by other, more appropriate mechanisms at EU and national level. This applies in particular to individual cases of incorrect application not raising issues of wider principle, where there is insufficient evidence of a general practice, of a problem of compliance of national legislation with EU law or of a systematic failure to comply with EU law. In such cases, if there is effective legal protection available, the Commission will, as a general rule, direct complainants in this context to the national level.

Strengthening compliance assessment

This approach necessitates a more structured, systematic and effective assessment of the transposition and conformity of national measures implementing EU law. New techniques will be applied in these assessments. For example, the Commission is developing a data analytics tool to improve the monitoring of Single Market legislation⁽¹⁾. This tool should speed up the assessment of the compliance of national measures with EU law, identify gaps and incorrect transposition, and possibly detect 'gold plating' measures which are not related to the transposition of directives. Complaints may raise Member States' shortcomings in transposing a directive in a general way without raising particular aspects affecting the complainant. Such complaints are normally covered by a compliance assessment and the Commission will normally treat them in the wider context of the compliance assessment rather than pursuing the individual complaint.

Sanctions for non-communication of transposition measures

The Commission attaches high importance to the timely transposition of directives. In this context, the Commission for its part has set itself a target of 12 months to refer infringement cases to the Court of Justice if the failure to transpose a directive persists⁽²⁾. In line with the priority it gives to ensuring timely communication of transposition measures, the Commission intends to fully utilise the possibilities laid down in Article 260(3) TFEU to strengthen its approach to sanctions for such cases.

The Lisbon Treaty introduced important provisions on financial sanctions to motivate Member States to transpose directives adopted under a legislative procedure (Article 260(3) TFEU) into their national legal order in timely fashion. Nevertheless, Member States continue to miss transposition deadlines. At the end of 2015, 518 late transposition infringement cases were still open, a 19% increase on the 421 cases open at the end of 2014⁽³⁾. In certain cases, Member States fail to take action to transpose a directive until very late in the court proceedings brought against them by the Commission, thus obtaining substantial extra time in which to fulfil their obligations.

In its 2011 Communication on the implementation of Article 260(3) of the Treaty⁽⁴⁾, the Commission announced that, in infringement cases concerning failure to transpose a legislative directive, it would usually request the Court to impose only a penalty payment. It also said, however, that it reserved its right in appropriate cases to ask the Court to impose a lump sum fine as well. It also announced that it would review its practice of not generally asking for lump sums, depending on how the Member States responded to its approach of asking only for periodic penalty payments.

In the light of experience, the Commission will now adjust its practice in cases brought to the Court of Justice under Article 260(3) TFEU, just as it has done in cases referred to the Court of Justice under Article 260(2) TFEU⁽⁵⁾, by systematically asking the Court to impose a lump sum as well as a periodic penalty payment. When determining the amount of the lump sum in accordance with its practice⁽⁶⁾, the Commission will take into account the extent of transposition when determining the seriousness of the failure to transpose.

⁽¹⁾ Single Market Strategy Communication (COM(2015) 550 final).

⁽²⁾ Communication from the Commission – A Europe of results – applying Community law, COM(2007) 502 final.

⁽³⁾ See the 33rd Annual Report on monitoring the application of EU law, p. 27.

⁽⁴⁾ OJ C 12 of 15.1.2011, p. 1.

⁽⁵⁾ Re-cast Communication on the application of Article 228 of the EC Treaty, SEC(2005) 1658 of 9.12.2005, points 10 to 12 which refers to case C-304/02 Commission v France, [2005] ECR I-6263, paragraphs 80-86, 89-95, where the Court confirmed that both the penalty payment and the lump sum can apply cumulatively for the same infringement.

⁽⁶⁾ The amount of the lump sum will be calculated using the method set out in points 19 to 24 of the 2005 Re-cast Communication on the application of Article 228 of the EC Treaty, SEC(2005) 1658.

The logical consequence of the approach concerning the lump sum payment is that, in cases where a Member State rectifies the infringement by transposing the directive in the course of the court proceedings, the Commission will no longer withdraw its action for that reason alone. The Court of Justice cannot take a decision to impose a penalty payment because such a decision would no longer serve a useful purpose. However, it can impose a lump sum payment penalising the duration of the infringement up to the time the situation was rectified because this aspect of the case has not lost its purpose. The Commission will endeavour to inform the Court of Justice without delay whenever a Member State terminates an infringement, at whatever stage in the judicial process. It will do the same, when, following a judgment delivered under Article 260(3) TFEU, a Member State rectifies the situation and the obligation to pay a penalty thus comes to an end.

As a transitional rule, the Commission will apply its adjusted practice as set out above to the infringement procedures for which the decision to send the letter of formal notice will be taken after the publication of this Communication.

Finally, it is to be recalled that as already set out in its 2011 Communication, the Commission will take particular care in distinguishing between incorrect transposition and the (partial) lack of transposition.

4. Bringing the benefits of EU law to citizens: advice and redress

Better enforcement benefits citizens and businesses alike. They are looking for simple, practical advice on their rights under EU law and how to make use of them. When their individual rights are breached, it is important that they be guided towards easily finding and making use of the most appropriate redress mechanism available at EU or national level.

The Commission will help citizens by raising their awareness of their rights under EU law and of the different problem-solving tools available to them at national and EU level. The Commission will guide, advise and encourage citizens to use the most appropriate problem-solving mechanism. In this context, it is fundamentally important that citizens understand the nature of the infringement process and set their expectations accordingly. Many submit complaints, expecting that they may obtain financial or other redress for a breach of EU law. They are disappointed to discover that, whilst being designed to promote the general interest of the Union, the infringement process may not be in all circumstances the appropriate vehicle through which to respond to such situations. The primary purpose of the infringement procedure is to ensure that the Member States give effect to EU law in the general interest, not to provide individual redress. National courts are competent to uphold actions by individuals seeking the annulment of national measures or financial compensation for the damage caused by such measures. National authorities also play an important role in securing rights of individuals. This needs to be clearly communicated to complainants who are seeking individual redress.

Given that complaints are an important means of detecting infringements of EU law, the Commission will step up its efforts to improve the handling of complaints. To improve the basis for assessing the merits of a complaint and facilitate better handling and response, complainants should from now on use the standard complaint form. The Commission is committed to informing complainants about the follow-up to their complaints. This requires a revision of the existing administrative procedures for the handling of relations with the complainant on these points ⁽¹⁾ (see Annex).

The Single Digital Gateway ⁽²⁾ will provide a single access point for citizens and businesses to all Single Market-related information, assistance, advice and problem-solving services at EU and/or national level. It will also include national and EU-wide procedures needed to operate in the EU. This Gateway will inform citizens and businesses about what the Commission can and cannot do, the estimated length of procedures and the potential outcomes. It will also point them towards personalised advice and problem-solving services.

This effort will require the Commission and Member States to work together to develop an inventory of the mechanisms of redress available at national level to which citizens may turn to seek remedies in individual cases. This inventory will include existing EU mechanisms, such as SOLVIT (which provides information and assistance to citizens and deals with problems of misapplication of EU law by national authorities in cross-border situations) and the European Consumer Centres Network (which provides advice and assistance to consumers on their rights concerning purchases made in another country or online and on settling relevant disputes with businesses).

⁽¹⁾ Communication 'Updating the handling of relations with the complainant in respect of the application of Union law', COM(2012) 154 of 2.4.2012.

⁽²⁾ As announced in the Digital Single Market Communication (COM(2015) 192 final, p. 17) and the Single Market strategy Communication (COM(2015) 550 final, p. 5 and 17).

The SOLVIT action plan, reinforcing SOLVIT's role in handling complaints concerning EU law, will show the Commission's commitment to further strengthening the role of such mechanisms. The Commission plans to upgrade the SOLVIT network. The Commission is also exploring the possibility of introducing a Single Market Information Tool to collect quantitative and qualitative information directly from selected market players and better target cooperation with Member States to improve enforcement. Such administrative cooperation with Member States ⁽¹⁾ should continue to help solve individual problems and improve the exchange of best practices. It will also be used to encourage national authorities to offer better information through all existing platforms, such as the E-JUSTICE portal ⁽²⁾.

The Commission will ensure the full application of the EU legislation on mediation and alternative dispute resolution. Alternative dispute resolution mechanisms play an important role in enabling consumers and traders to resolve their disputes in an easy, fast and inexpensive way without going to court. The Commission launched an online dispute resolution platform in February 2016 providing EU consumers and traders with a tool to solve their contractual disputes over online purchases through alternative dispute resolution. In the financial sector, the Commission established the Financial Dispute Resolution Network, aiming to facilitate the resolution of cross-border disputes between consumers and financial services providers in financial services. Other EU legislation provides for common standards on complaints handling and redress mechanisms in all Member States (e.g. Passenger Rights Regulations ⁽³⁾, public procurement ⁽⁴⁾, Small Claims Regulation ⁽⁵⁾).

5. Conclusions

The uniform application of EU law throughout all Member States is essential for the success of the EU. The Commission therefore attaches high importance to ensuring the effective application of EU law. The challenge of applying, implementing and enforcing European Union legislation is shared at EU and Member State level. To deliver policy results, a more strategic approach to enforcement is essential, an approach which focuses on problems where enforcement action can make a real difference. In line with the priority the Commission gives to ensuring timely communication of measures transposing a directive, the strategic approach to enforcement is accompanied by a review of its approach on sanctions as laid down in Article 260(3) TFEU. The Commission will help Member States to ensure that citizens and business are able to exercise their rights and receive legal redress at national level. The combined effort of all involved, at the level of the Union and the Member States, will ensure better application of EU law, for the benefit of all.

The approach set out in this Communication will be applied as from the date of its publication in the Official Journal.

⁽¹⁾ Under Art. 197 TFEU.

⁽²⁾ This portal helps individuals to enforce their fundamental rights to identify the competent national non-judicial bodies with human rights remit. It will be extended in 2017 by a European Consumer Law Database providing information on the application of EU consumers' law by courts and authorities.

⁽³⁾ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1); Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14); Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1); Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

⁽⁴⁾ Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33); Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14).

⁽⁵⁾ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1).

ANNEX

Administrative procedures for the handling of relations with the complainant regarding the application of European Union law**1. Definitions and scope**

'Complaint' means a written approach made to the Commission pointing to a measure or the absence of a measure or practice in a Member State contrary to European Union law.

'Complainant' means any person or body who files a complaint with the Commission.

'Infringement procedures' means the pre-litigation phase of the procedures for non-compliance lodged by the Commission on the basis of Article 258 of the Treaty on the functioning of the European Union (TFEU) or Article 106a of the Treaty establishing the European Atomic Energy Community (Euratom Treaty).

The approach described here applies to relations between complainants and the Commission in connection with measures or practices which could fall under the scope of Article 258 TFEU. They do not apply to complaints relating to other Treaty provisions, particularly complaints regarding State aid covered by Articles 107 and 108 TFEU or by Council Regulation (EU) 2015/1589 ⁽¹⁾ and complaints which concern exclusively Articles 101 and 102 TFEU.

2. General principles

Anyone may file a complaint with the Commission free of charge against a Member State about any measure (law, regulation or administrative action) or the absence of a measure or practice in the Member State which they consider incompatible with Union

Complainants do not have to demonstrate a formal interest in bringing proceedings; neither do they have to prove that they are principally and directly concerned by the measure, absence of measure or practice complained of.

Subject to the exceptions listed under point 3, the Commission will register the complaint according to the indications of its author as they appear from the form.

The Commission may decide whether or not further action should be taken on a complaint.

3. Recording of complaints

A complaint about the application of Union law by a Member State must be recorded by the Commission in a special register.

Correspondence should not be investigable as a complaint by the Commission, and should therefore not be recorded in the special register, if:

- it is anonymous, fails to show the address of the sender or shows an incomplete address;
- it fails to refer, explicitly or implicitly, to a Member State to which the measures or practice contrary to Union law may be attributed;
- it denounces the acts or omissions of a private person or body, unless the measure or complaint reveals the involvement of public authorities or alleges their failure to act in response to those acts or omissions. In all cases, the Commission must verify whether the correspondence discloses behaviour that is contrary to the competition rules (Articles 101 and 102 TFEU);
- it fails to set out a grievance;
- it sets out a grievance with regard to which the Commission has adopted a clear, public and consistent position, which must be communicated to the complainant;
- it sets out a grievance which clearly falls outside the scope of Union law.

4. Acknowledgement of receipt

The Commission must issue an acknowledgement of all complaints within 15 working days of receipt. This acknowledgement must state the registration number, which must be quoted in any correspondence.

Where a number of complaints are lodged about the same grievance, individual acknowledgements may be replaced by publication of a notice on the European Union's website, *Europa* ⁽²⁾.

⁽¹⁾ OJ L 248, 24.9.2015, p. 9.

⁽²⁾ http://ec.europa.eu/atwork/applying-eu-law/multiple_complaint_form_en.htm

Where the Commission decides not to register the complaint, it must notify the author to that effect by ordinary letter setting out one or more of the reasons listed in the second paragraph of point 3.

In such a case, the Commission will inform the complainant of any possible alternative forms of redress, such as recourse to national courts, the European Ombudsman, a national ombudsman or any other national or international complaints procedure.

5. Methods of submitting a complaint

Complaints must be submitted by using the standard complaint form. They must be submitted online, or in writing by letter to the Commission Secretariat-General at the address '1049 Brussels, Belgium' or lodged with one of the Commission's offices in the Member States.

They must be written in one of the official languages of the Union.

The complaint form is available from the Commission on request or online from the *Europa* website⁽¹⁾. Where the Commission considers that the complainant does not comply with the requirements of the complaint form, it must inform the complainant thereof and invite him/her to complete the form within a prescribed period which must not normally exceed 1 month. If the complainant fails to respond within the prescribed period, the complaint will be deemed to have been withdrawn. In exceptional circumstances, where the complainant's inability to use the form is apparent, this requirement may be waived.

6. Protection of the complainant and personal data

Disclosure of complainants' identities and information submitted by them to the Member State concerned is subject to their prior agreement and must comply, *inter alia*, with European Parliament and Council Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽²⁾.

7. Communication with complainants

Following registration, a complaint can be examined further in cooperation with the Member State concerned. The Commission will inform the complainant thereof in writing.

If subsequently infringement procedures are launched on the basis of a complaint, the Commission will inform complainants in writing of each procedural step (letter of formal notice, reasoned opinion, referral to the Court or closure of the case). Where a number of complaints are lodged in relation to the same grievance, this written correspondence may be replaced by publication of a notice on *Europa*.

At any point during the procedure complainants may ask to explain or clarify to the Commission, at its premises and at the complainants' own expense, the grounds for their complaint.

8. Time limit for investigating complaints

As a general rule, the Commission will investigate complaints with a view to arriving at a decision to issue a formal notice or to close the case within not more than 1 year from the date of registration of the complaint, provided that all required information has been submitted by the complainant.

Where this time limit is exceeded, the Commission will inform the complainant in writing.

9. Outcome of the investigation of complaints

After investigating the complaint, the Commission may either issue a letter of formal notice opening procedures against the Member State in question, or close the case definitively.

The Commission will decide within its margin of discretion on opening or terminating an infringement procedure.

10. Closure of the case

Unless there are exceptional circumstances requiring urgent measures, where it is envisaged that no further action will be taken on a complaint the Commission will give the complainant prior notice thereof in a letter setting out the grounds on which it is proposing that the case be closed and inviting the complainant to submit any comments within a period of 4 weeks. Where a number of complaints are lodged in relation to the same grievance, this written correspondence may be replaced by the publication of a notice on the *Europa* website.

⁽¹⁾ https://ec.europa.eu/assets/sg/report-a-breach/complaints_en

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

Where the complainant does not reply, or where the complainant cannot be contacted for reasons for which he/she is responsible, or where the complainant's observations do not persuade the Commission to reconsider its position, the case will be closed.

Where the complainant's observations persuade the Commission to reconsider its position, investigation of the complaint will continue.

The complainant will be informed in writing of the closure.

11. Publicising infringement decisions

Information on Commission decisions on infringement cases is published on *Europa* ⁽¹⁾.

12. Access to documents on infringement cases

Access to documents on infringement cases is governed by Regulation (EC) No 1049/2001, as implemented by the provisions set out in the Annex to Commission Decision 2001/937/EC, ECSC, Euratom ⁽²⁾.

13. Complaint to the European Ombudsman

Where a complainant considers that, in handling his/her complaint, the Commission has been guilty of maladministration by failing to follow any of the above measures, he/she may refer the matter to the European Ombudsman under Articles 24 and 228 TFEU.

⁽¹⁾ http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en.

⁽²⁾ OJ L 345, 29.12.2001, p. 94.