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REPORT FROM THE COMMISSION

**Monitoring the application of Union law
2014 Annual Report**

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Monitoring the application of Union law

2014 Annual Report

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I. INTRODUCTION

Effective application of EU law is essential if the European Union is to meet its objectives as set in the treaties and enhance the credibility of the EU institutions in the eyes of the citizens and the public at large. While Member States are responsible for transposing directives on time and accurately, and for correctly applying and implementing EU law as a whole,¹ the Commission monitors the application of EU law and ensures that their legislation complies with EU law.²

To this end, the Commission regularly checks the texts of national transposition measures it receives from Member States and launches own-initiative investigations. It also assesses and responds to complaints it receives from members of the public, businesses, NGOs and other stakeholders and to petitions from the European Parliament that reveal potential breaches of the law.

If the Commission detects a possible infringement, it begins bilateral dialogue with the Member State, which is invited to solve the problem quickly and efficiently in compliance with EU law. If these problem-solving efforts are not successful, the Commission may start a formal infringement procedure (under Article 258 of the Treaty on the Functioning of the EU (TFEU)).³ Should a Member State fail to comply with the Commission's opinion, the Commission may bring the case to the Court of Justice under Article 258 TFEU if the conditions of Article 260(2) or (3) are met, even request financial penalties.

This 2014 Annual Report reviews the Member States' performance on key aspects of the application of EU law and highlights the main enforcement policy developments of 2014. The report has the same structure as in previous years. The staff working documents accompanying the report examine performance and challenges in the application of EU law by Member State and by policy area.

¹ Article 291(1) TFEU.

² Article 17 TEU '[the Commission] shall ensure the application of the Treaties and of the measures adopted by the institutions pursuant to them. It shall oversee the application of Union law [...]'.
³ Infringement procedures can also be started under other provisions of EU law, for example Article 106 TFEU in combination with Articles 101 or 102 TFEU. This Report also takes these procedures into account.

II. POLICY ON MONITORING THE APPLICATION OF UNION LAW

Efficient monitoring of the application of EU law is part of the Commission's Better Regulation Agenda. The results of such monitoring feed into evaluations of the law, into impact assessments for new initiatives and, more generally, into the legislative life cycle. The objective is both to improve the implementation and enforcement of existing legislation and to enhance the quality of new legislation.

The Commission has a unique and essential role in overseeing the application of EU law. At the same time, EU law forms an integral part of the national legal order in the Member States, which bear primary responsibility for applying it correctly. Their public administrations and judiciary have to ensure that the laws and obligations are properly applied and enforced. Before starting formal infringement procedures, the Commission works in partnership with the Member States to solve problems efficiently and in accordance with Union law, through a process of structured dialogue with clear deadlines that was introduced for this purpose.⁴ This process is referred to as 'EU Pilot'.

If no solution is found, the Commission pursues the bilateral discussion and may launch formal infringement proceedings under Article 258 TFEU. Financial penalties are imposed if Member States do not comply with Court rulings (Article 260(2) TFEU) or fail to transpose EU legislative directives on time (Article 260(3) TFEU). These provisions are essential to the overall objective of the Commission's enforcement policy, which is to ensure that EU law is implemented and applied correctly and on time, for the benefit of people and businesses.

Members of the public, businesses, NGOs and other organisations contribute significantly to the Commission's monitoring by reporting shortcomings in the transposition and/or application of EU law by Member State authorities. The Commission fully acknowledges their important role and has committed to giving administrative guarantees when handling complaints, such as informing the complainant of any steps the Commission takes in further processing the complaint, and notifying the complainant before closing the complaint.

⁴ See the communication 'A Europe of Results — Applying Community Law', COM(2007) 502.

III. STAGES IN INFRINGEMENT PROCEDURES

Infringements may be detected through the Commission's own investigations. They can also be started following complaints or petitions from members of the public, businesses, NGOs or other organisations.

If the informal bilateral dialogue with a Member State is unsuccessful, the Commission may decide to launch a formal infringement procedure under Article 258 TFEU. The infringement procedure is divided into a *pre-litigation phase* and a *litigation phase*.

There are three main types of infringements of EU law:

- failure to notify: a Member State has not notified the Commission on time of its measures to transpose a directive;
- non-conformity/non-compliance: the Commission considers a Member State's legislation is not in line with the requirements of EU legislation;
- incorrect/bad application: Union law is not applied correctly or not applied at all by national authorities.

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

Should the Member State not comply with the reasoned opinion, the Commission opens the *litigation procedure* by bringing the case to the Court of Justice.

When it brings a case before the Court under Article 258 TFEU because a Member State has failed to fulfil its obligations to notify measures transposing a legislative directive, the Commission may propose financial penalties under Article 260(3) TFEU.

If the Member State does not take the necessary steps to comply with the Court judgment which detects a violation of Union law obligations, the Commission may continue the infringement procedure under Article 260(2) TFEU and refer the Member State to the Court again after having sent a letter of formal notice under article 260 (2) TFEU. In that case, the Commission can propose and the Court can impose financial sanctions (a lump sum and/or daily penalties).

IV. BEFORE AN INFRINGEMENT PROCEDURE IS STARTED

1. Detecting problems

1.1 Own-initiative cases

The Commission examines the implementation of EU law primarily on its own initiative. As with complaints, the Commission in general first opens bilateral discussions with the Member State concerned via EU Pilot with a view to finding a solution complying with EU law (details in point 2 below). 777 EU Pilot investigations were launched in 2014 (in 2013, 1023 were started).

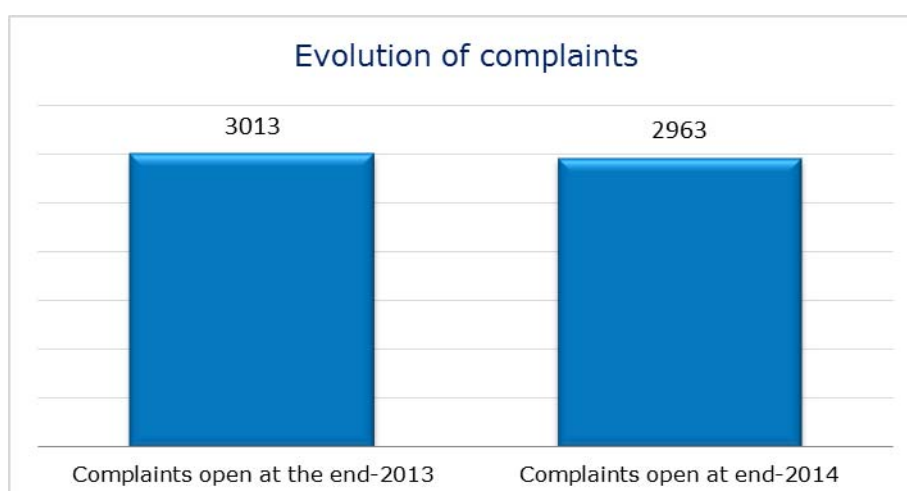
From these, environment, energy, and mobility/transport were the three policy areas with the most potential infringements (with 151, 115 and 115 new EU Pilot files respectively). The Member States primarily concerned were Italy, Spain and Germany (59, 47 and 42 new EU Pilot files respectively).

1.2 Complaints and petitions

In 2014, members of the public, businesses, NGOs and other organisations remained very active in reporting potential breaches of EU law. The following chart shows the number has been rising since 2012. As a result, the total number of open complaints increased by approximately 5.7% in 2014.



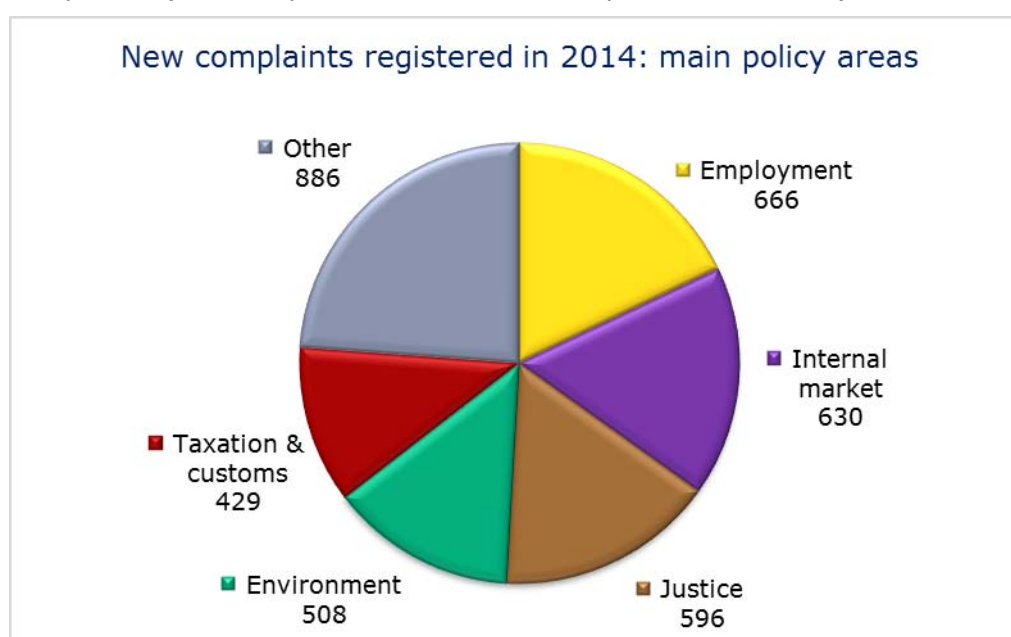
The chart below shows further key data on complaints from members of the public:⁵



3715 new complaints were registered in 2014. The three Member States against which the most complaints were filed were:

- Spain: 553 complaints, most of them related to employment (222 complaints); environment (111 complaints); and justice (76 complaints);
- Italy: 475 complaints, especially in connection with employment (110 complaints); environment (92 complaints); and internal market and services (65 complaints); and
- Germany: 276 complaints, mainly related to internal market and services (55 complaints); environment (54 complaints); and justice (50 complaints).

The following chart shows the five policy areas with the highest number of complaints (which represent 76% of all complaints submitted).



⁵ The number of complaints open at the end of 2013 given in the 2013 annual report is different from the current figure. This is because some cases were reopened in 2014 for administrative reasons.

3744 complaints were processed in 2014. When they had been assessed, the Commission opened bilateral discussions with Member States on 447 complaints to clarify whether EU rules had been breached.⁶ 223 of these complaints led to infringement procedures, after the Commission rejected the responses provided by the Member States in EU Pilot.

The Commission has the power under Article 258 TFEU to send a letter of formal notice to the Member State without prior bilateral discussion and may do so in urgent and exceptional cases. Complaints that led to discussions in EU Pilot most frequently related to the internal market and services; taxation and customs union; and environment (80, 60 and 59 files opened under EU Pilot respectively). They mainly concerned the following Member States:

- Italy: 66 files, most of them related to complaints about environment (16 new EU Pilot files); taxation and customs union (10); and employment (10);
- Spain: 37 files, especially in connection with complaints about environmental issues (6 new EU Pilot files); enterprise (5); justice (4), employment (4); and taxation and customs union (4);
- France: 33 files, mainly related to taxation and customs union (7 new EU Pilot files); justice (5); and environment (4); and
- Germany: 33 files, most of them related to complaints on the internal market and services (15 new EU Pilot files); taxation and customs union (3); enterprise (3); and mobility and transport (3).

By way of petitions and questions, in 2014 the European Parliament alerted the Commission to shortcomings in the way Member States implement and apply EU law.

These include:

- *Environment:* Three letters of formal notice were sent about the authorisation of various development projects in France.

In another 13 cases, concerning waste management, water protection and impact assessments, the Commission began bilateral dialogues with the Member States. Most of these files concerned Italy, France, Luxembourg and Spain.
- *Transport:* The Commission began bilateral dialogues with Ireland, Italy and Spain in four cases concerning discriminatory local transport fares, driving licences for disabled drivers, requirements for the establishment of road passenger transport activities and transport for schoolchildren.
- *Health & consumers:* The Commission assessed alleged infringements of EU rules on animal welfare and food safety.
- *Taxation:* A written question in Parliament led the Commission to raise concerns about legislation in Denmark excluding the transfer of losses incurred in the national territory by a non-resident branch of a company

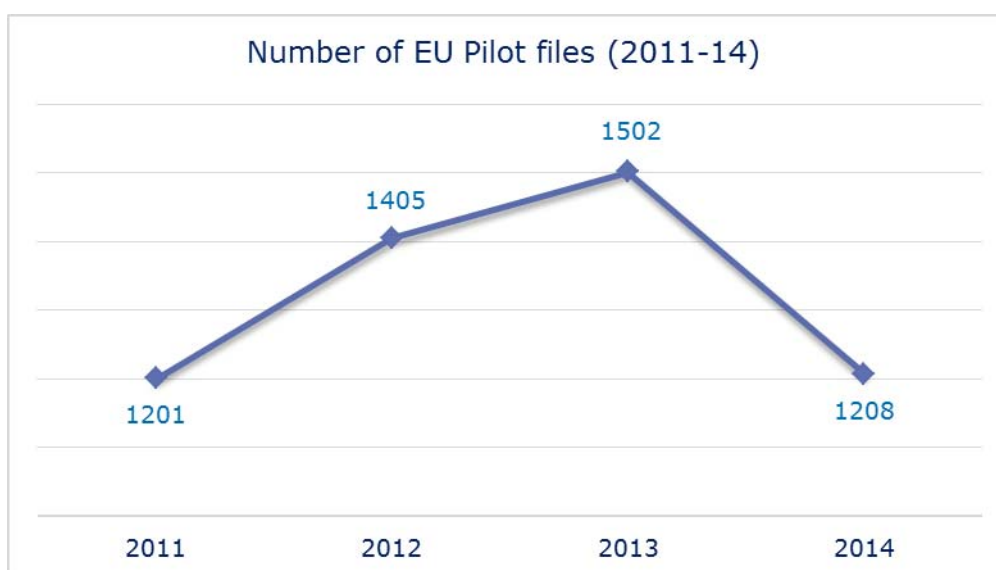
⁶ Not all complaints led to bilateral discussions with the Member States, because EU laws were not breached (2459), because the Commission had no power to act (147) or because the correspondence did not qualify as a complaint (468). Therefore, these 3074 complaints have been closed.

established in another Member State to a company of the same group established in the national territory.

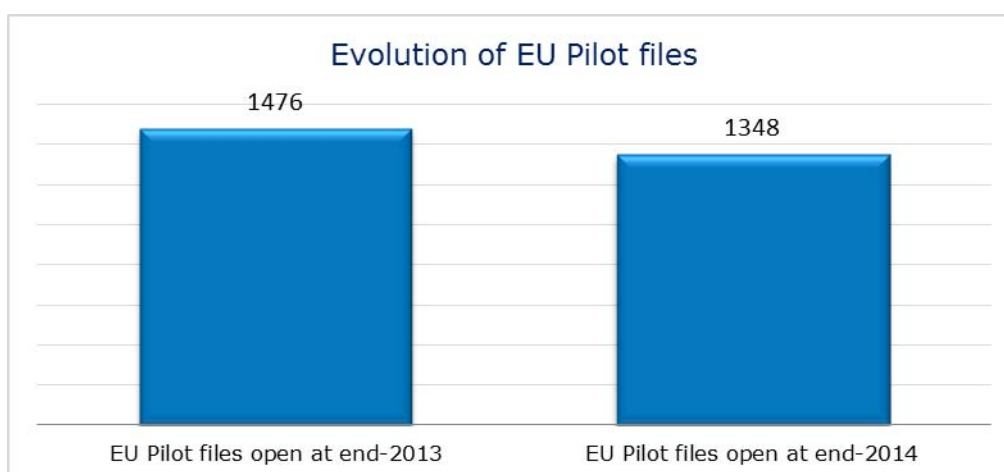
2. Solving problems

EU Pilot is a Commission initiative aimed at asking Member States to answer questions and to find solutions to problems related to the application of EU law. It is supported by an online database and communication tool. Through the dialogue in EU Pilot, the Commission and Member States solve problems more quickly, benefiting the public and businesses by achieving compliance with EU law obligations.

The number of new EU Pilot files increased gradually between 2011 and 2013 (see the chart below). However, in 2014, the number fell back to its 2011 level: 1208 new files were opened (a fall of approximately 20%).



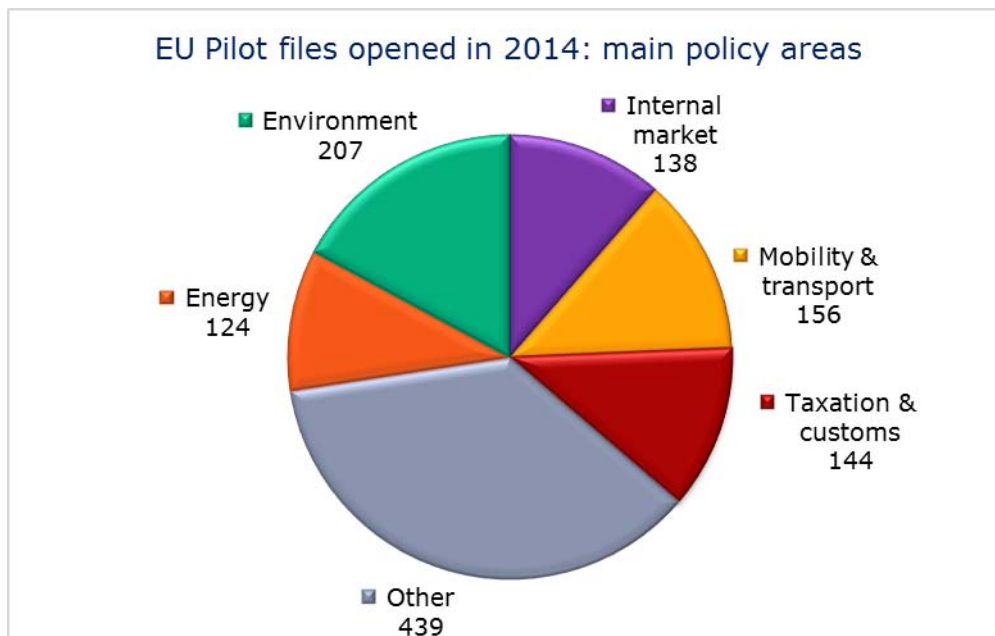
The following chart shows the main EU Pilot figures for 2014:⁷



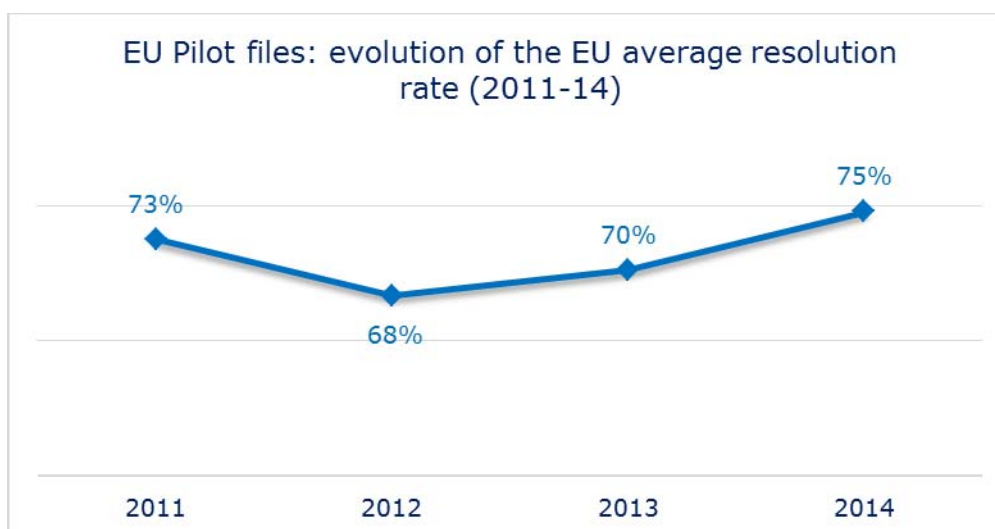
⁷ From the sum of EU Pilot files open at end-2013 and new EU Pilot files opened in 2014 (1476+1208=2684), the number of files processed is subtracted (2684-1336=1348). The number of files open at the end of 2013 given in the 2013 Annual Report is different from the current figure. This is because some files were registered late and others have been closed.

1 208 new EU Pilot files were opened in 2014. This figure is composed of 423 files triggered by complaints, 8 triggered by inquiries and 777 new own-initiative files.

The following pie chart shows the policy areas in which most new EU Pilot files were opened in 2014:

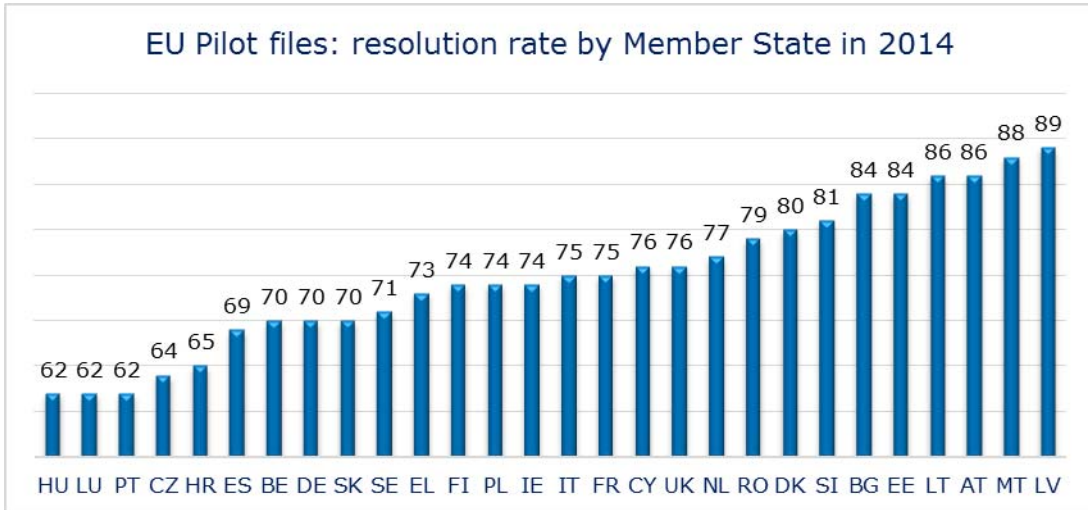


1 336 EU Pilot files were processed in 2014. Of the 1336 processed EU Pilot files in 2014, the Commission closed 996 because the Member State's answer was satisfactory. This is a 75% resolution rate for the Member States, up from 70% in 2013. One file was rejected by the Member State at this stage, and the Commission accepted its rejection. Altogether, 339 EU Pilot files were closed after the Commission rejected the responses provided by the Member States. Out of those, 325 were followed by formal infringement procedures (there were 396 such files in 2013). These included 91 mobility and transport cases; 43 environment cases; 39 taxation and customs union cases; and 37 employment and social affairs cases. Italy, Spain, Germany and France had the highest number of such files in EU Pilot followed by infringement proceedings (at 31, 28 and 22 files each respectively).

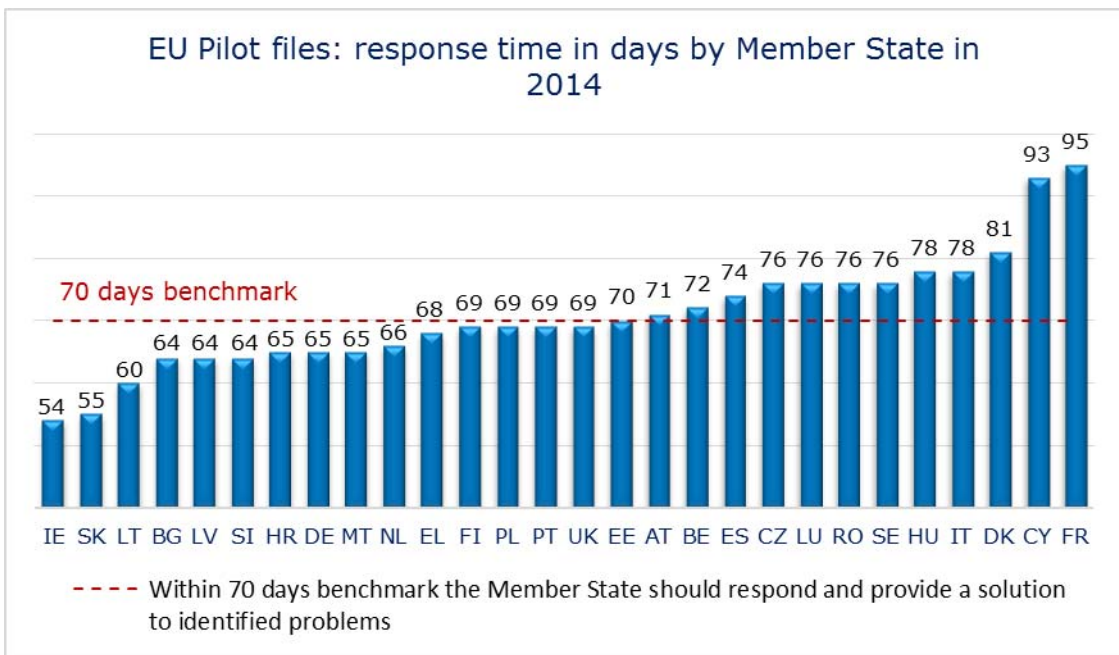


1348 EU Pilot files were open at the end of 2014. At the end of 2014, the most EU Pilot files still open concerned Italy (139), Spain (91), Greece and Poland (73 each). The environment remained the main policy area concerned, with 390 open files, followed by justice (157) and mobility and transport (157).

The following chart displays the resolution rate for EU Pilot files for all the Member States in 2014 (as a percentage).



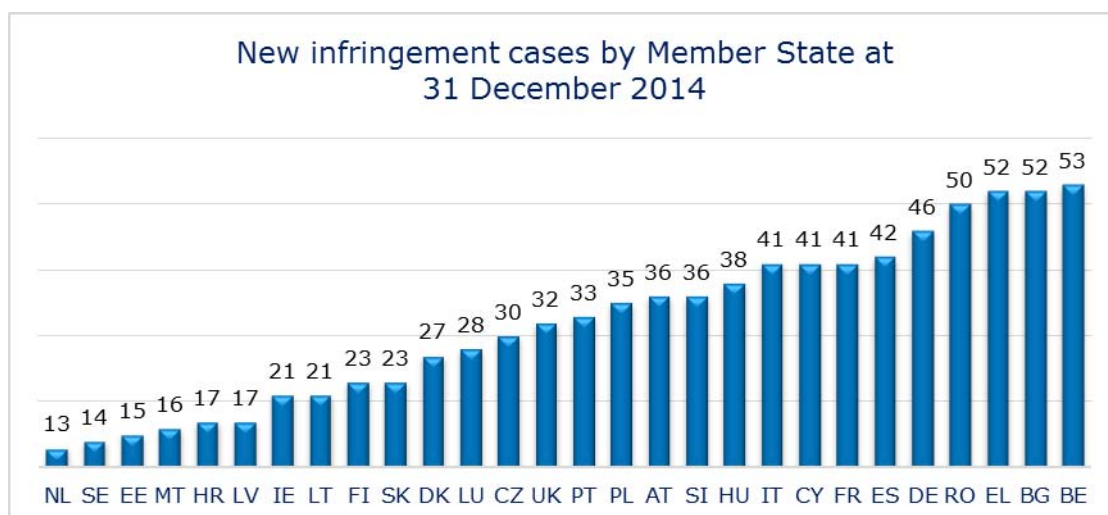
Member States should reply to questions in EU Pilot within 10 weeks (70 days). The next chart displays the average response time (in days) by Member State in 2014.



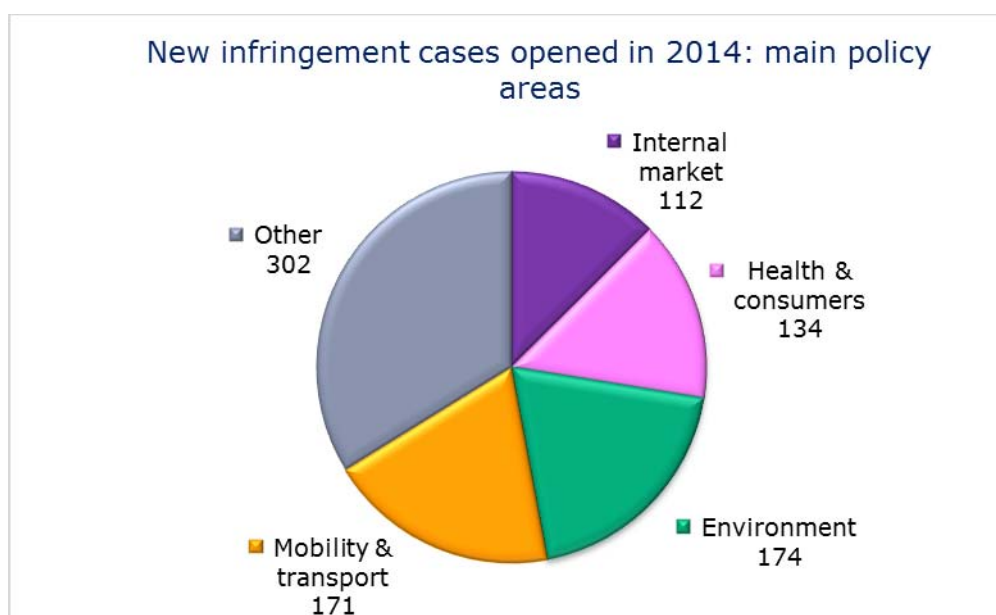
V. INFRINGEMENT PROCEDURE

1. Pre-litigation phase

If a Member State does not resolve the alleged breach of EU law, the Commission may launch infringement procedures under Article 258 TFEU⁸ and may ultimately bring the case before the Court. In 2014, the Commission launched **893** new procedures by sending a letter of formal notice. The following chart shows the distribution by Member State.



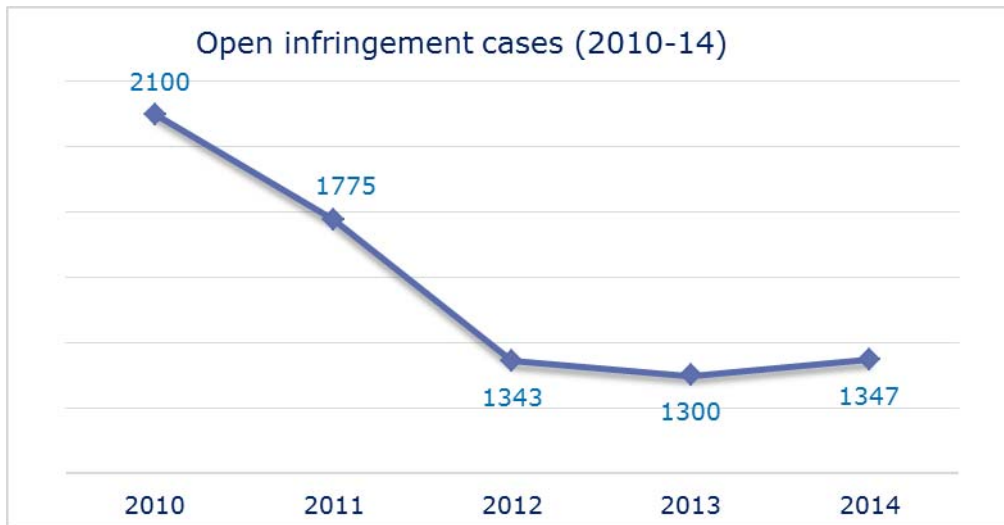
The following chart shows the main policy areas to which new procedures related.



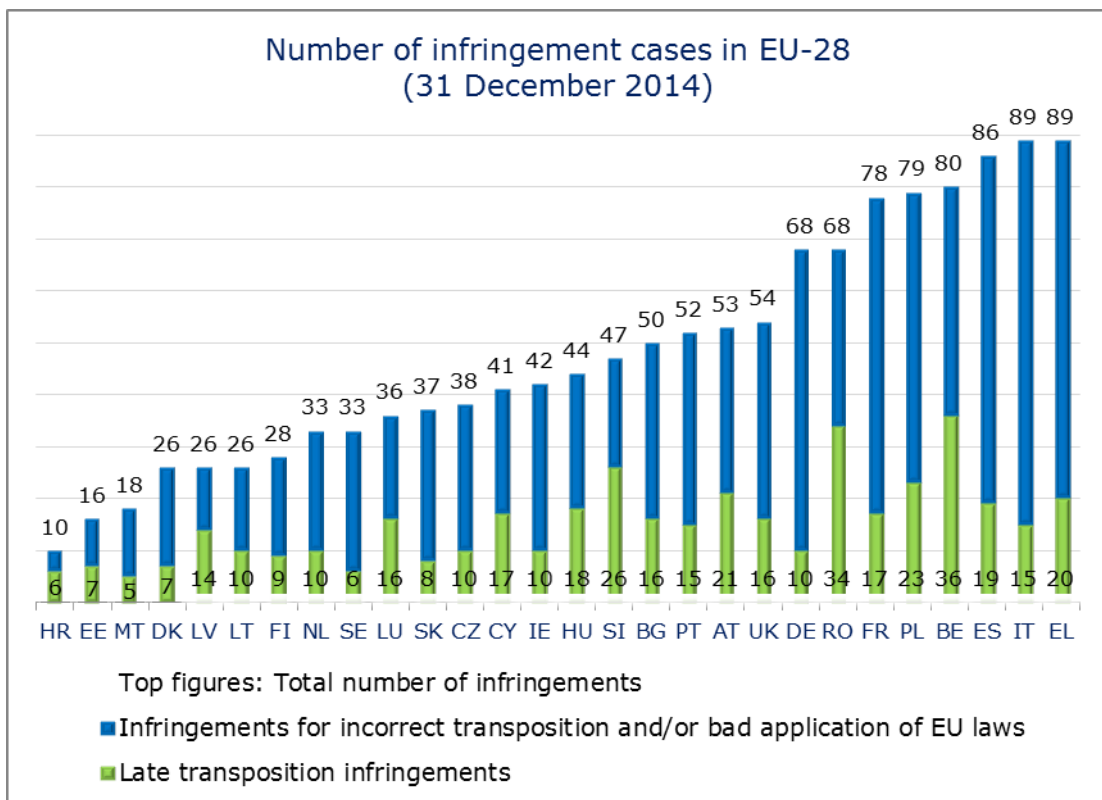
The Commission also sent 256 reasoned opinions to Member States during 2014. Italy (20), Romania (17), Spain, Slovenia, Greece and Poland (14 each) received the most reasoned opinions. The policy areas in which the Commission sent the most reasoned opinions to Member States were: environment; mobility and transport; and the internal market and services (60, 44 and 35, respectively).

⁸ Or under other relevant provisions of the TFEU; see footnote 3.

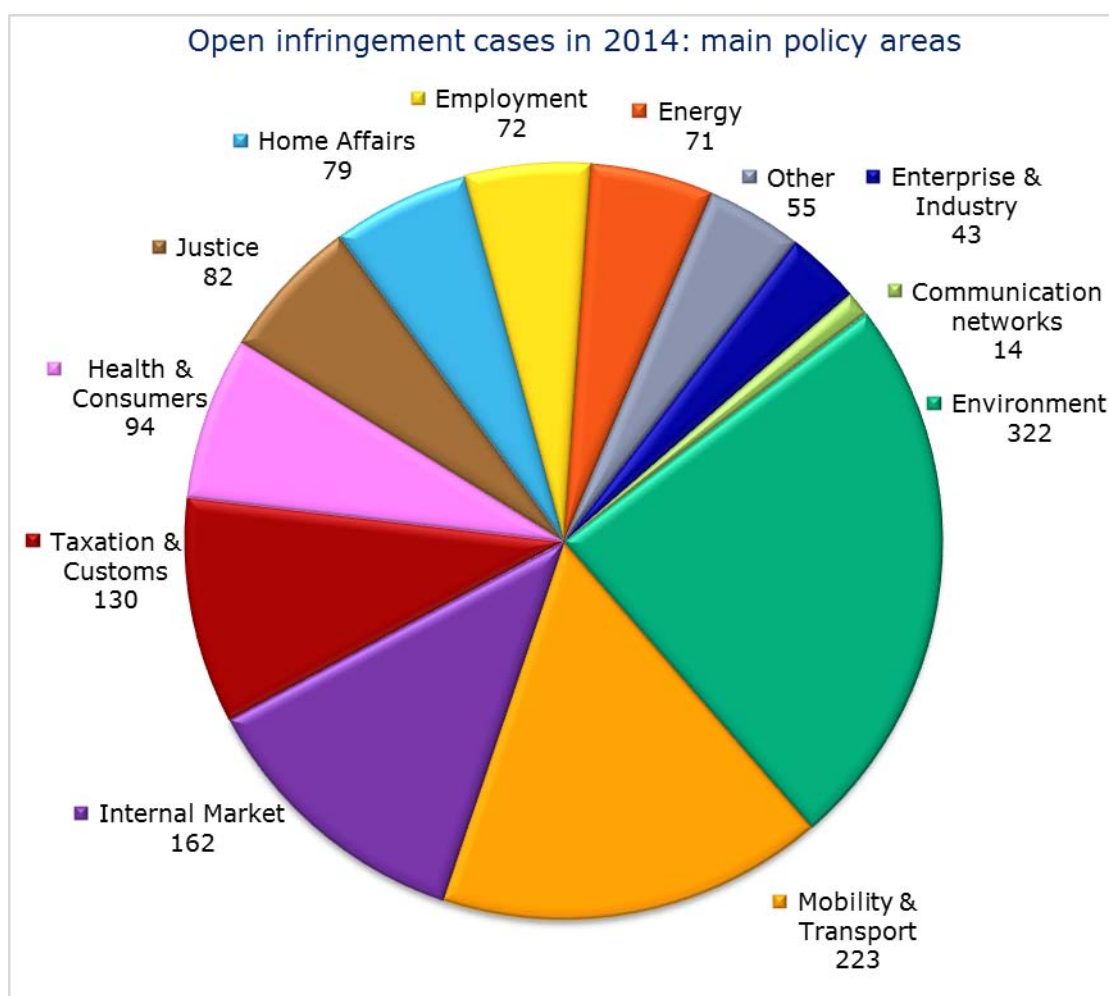
At the end of 2014, **1347** infringement cases remained open. While in 2014 the number of open infringement cases increased slightly, overall the figure has fallen since 2010, as shown in the following chart.



The following chart shows the total number of open infringement cases by Member State at the end of 2014:



The following pie chart shows the policy areas in which most infringement cases were open in 2014:



The dialogue between the Member State and the Commission continues during the formal procedure, in order to seek compliance. Statistics confirm that Member States make serious efforts to settle their infringements before the Court hands down its ruling.⁹

In 2014, the Commission closed:

- 580 infringements after sending a letter of formal notice;
- 190 cases after sending reasoned opinions to the Member State; and
- 11 cases after deciding to refer the case before the Court but before submitting the application. In addition, the Commission has withdrawn 16 cases from the Court before it handed down its ruling.

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

The Court delivered 38 judgments under Article 258 TFEU in 2014, of which 35 (92%) were in favour of the Commission. The Court delivered the most

⁹ The figures that follow were calculated for all infringement cases irrespective of origin (i.e. complaint, at the Commission's initiative or late transposition of directives by Member States).

judgments against Spain (5, all in favour of the Commission), Belgium (4, all in favour of the Commission), Germany (4, of which one was in Germany's favour), Italy (4, all in favour of the Commission), Poland (4, all in favour of the Commission) and the United Kingdom (4, all in favour of the Commission). Environment (10), taxation (8) and enterprise and industry (5) were the subject of the most judgments delivered by the Court during 2014.

Member States frequently take the necessary measures to comply with the judgment of the Court promptly. However, at the end of 2014, 61 infringement procedures were still open after a Court ruling because the Commission considered that the Member States concerned had not yet complied with the judgments under Article 258 TFEU. Most of these cases concerned Spain (8), Poland (7) and Greece (6) and were related to environment (19), taxation & customs union (14), transport (6) and health and consumer protection (6).

Of these 61 cases, 3 had already been referred to the Court for the second time. Under Article 260(2) TFEU the Commission can propose and the Court can impose a lump sum and/or a daily penalty on the defaulting Member State, which must immediately pay the lump sum and pay the periodic penalty until it complies fully with the first and second Court judgments. In 2014, 5 Court judgments were delivered under Article 260(2) TFEU. The Court imposed penalty payments on Italy (1),¹⁰ Greece,¹¹ Portugal,¹² Spain,¹³ and Sweden.¹⁴ At the end of 2014, 7 infringement procedures were still open after a Court ruling under Article 260(2) TFEU.

The overall decrease of the number of infringement procedures can be put in relation to the important increase of preliminary rulings under Article 267 TFEU since 2010.¹⁵ The Court of Justice has addressed conformity issues of national laws in regard of EU legislation in about half of its judgments under Article 267 TFEU since 2010 and identified non conformities in numerous cases. Whilst preliminary rulings are distinct from infringement judgments, this gives the Commission an additional opportunity to ensure in a more systematic manner that violations of Union law deriving from national legislation or its application are remedied.

¹⁰ Commission v Italy, [C-196/13](#), (lump sum payment of €40 000 000; penalty: €42 800 000 for each six-month period of non-compliance with the judgment under Article 258 TFEU).

¹¹ Commission v Greece, [C-378/13](#), (lump sum payment of €10 000 000; penalty: €14 520 000 for each six-month period of non-compliance with the judgment under Article 258 TFEU).

¹² Commission v Portugal, [C-76/13](#), (lump sum payment: €3 000 000; €10 000 for each day of non-compliance with the judgment under Article 258 TFEU).

¹³ Commission v Spain, [C-184/11](#), (lump sum payment: €30 000 000; no daily penalty).

¹⁴ Commission v Sweden, [C-243/13](#), (lump sum payment: €2 000 000; €4 000 for each day of non-compliance with the judgment under Article 258 TFEU).

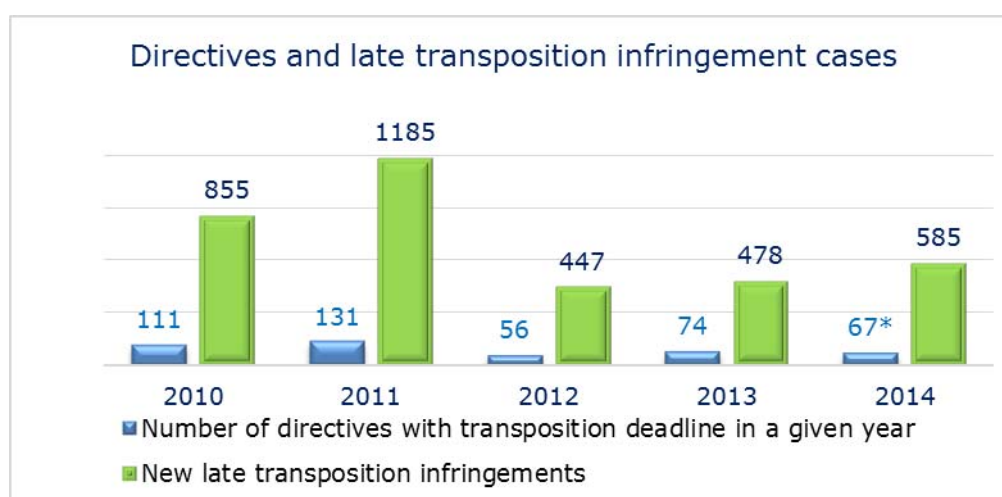
¹⁵ See Court of Justice of the EU [2014 Annual Report](#) – p. 94-99

VI. TRANSPOSITION OF DIRECTIVES

1. Late transposition

Late transposition of directives by Member States remains a persistent problem which prevents people and businesses from receiving the tangible benefits of Union law within the agreed time spans set by the legislator for legislative Directives and which negatively affects overall legal security and the level playing field in the Single Market. By definition, when a legislative Directive is not transposed within the set time limits, the transposition deadline is prolonged unduly in a significant way beyond the deadline that is applicable to all Member States. Combating late transposition is therefore a long-established priority for the Commission.¹⁶ This objective has also been reflected by the novelty introduced in the Lisbon Treaty in Article 260 (3) TFEU, namely the possibility for the Commission to propose financial sanctions when referring a Member State to the Court of Justice under Article 258 for not having communicated to the Commission their transposition measures for directives adopted under a legislative procedure within the time limit set by the legislator in the directive (details in subsection VI.2).

The Commission proposes fines for Member States under the special penalty provisions of Article 260(3) TFEU if they do not transpose directives on time (details in subsection VI.2).



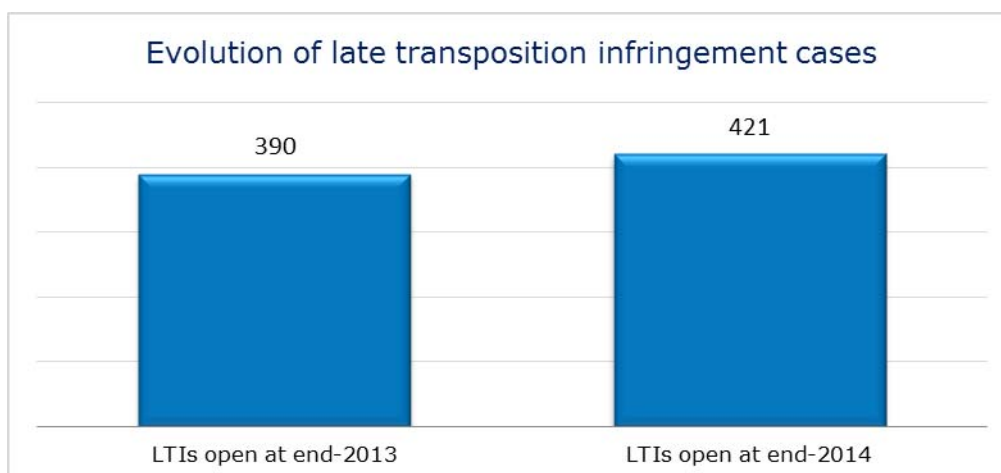
There were fewer directives to transpose in 2014 than in the previous year i.e. 67¹⁷ compared with 74 in 2013) but more than in 2012 (56). However, there was a significant increase in new late transposition infringements in 2014 compared with the previous year: 585 new late transposition infringements were launched in 2014 compared with 478 in 2013 (there were 447 in 2012, 1185 in 2011 and 855 in 2010).

421 late transposition cases were still open at the end of 2014, which represents a 7.4% increase on the 390 cases at the end of 2013.

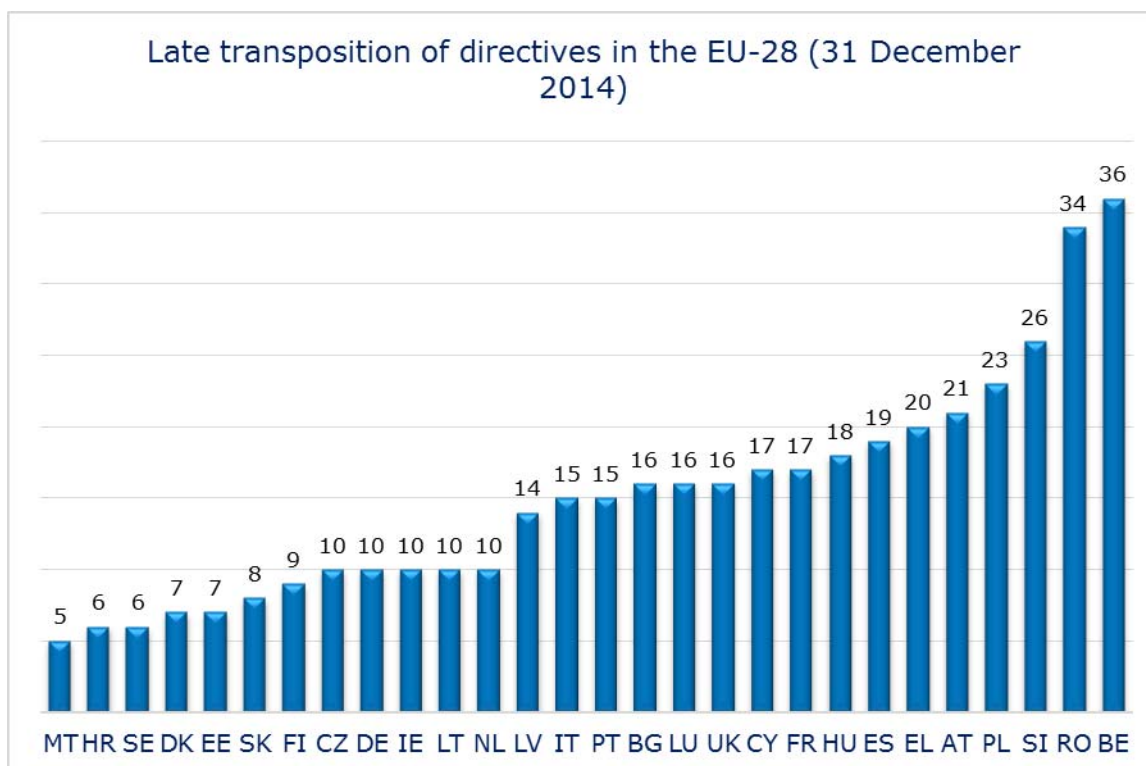
¹⁶ Commission communication *A Europe of results — Applying Community law*, [COM\(2007\) 502 final](#), p. 9.

¹⁷ Of these 67 directives, 7 environmental directives were repealed on 1 September 2013, and some Member States were given transitional periods.

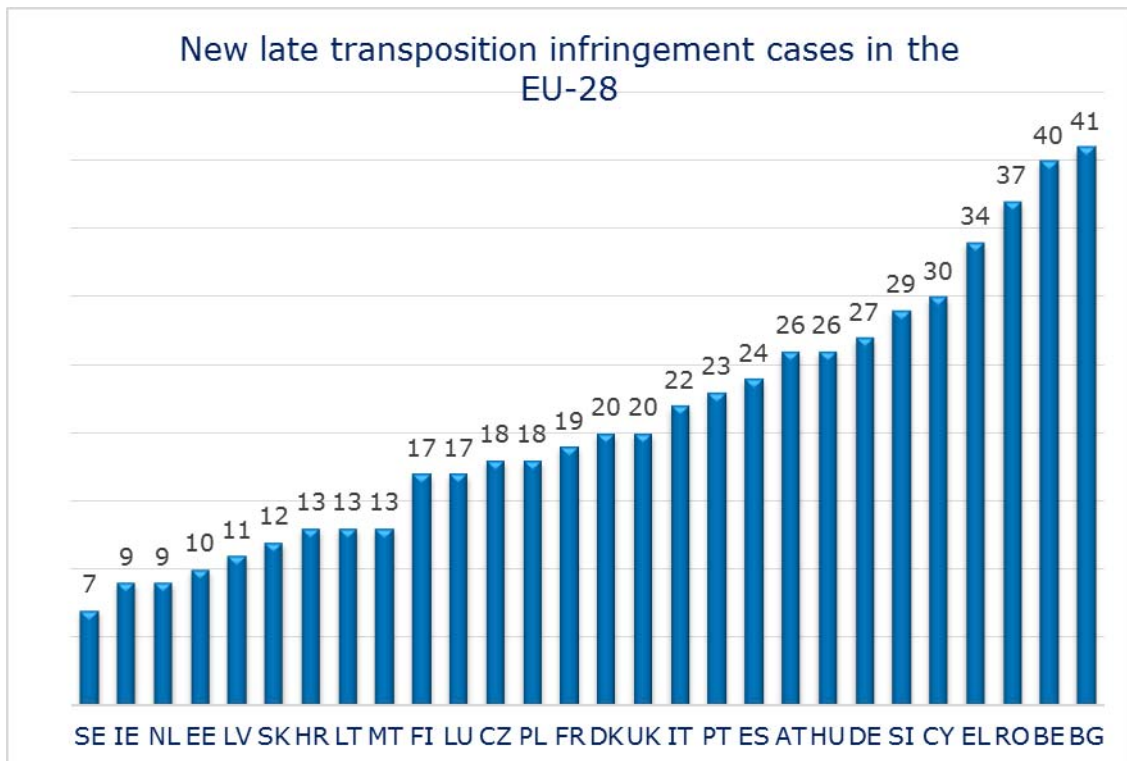
The following chart shows the key figures on late transposition infringement cases (LTIs) launched by the Commission in 2014:



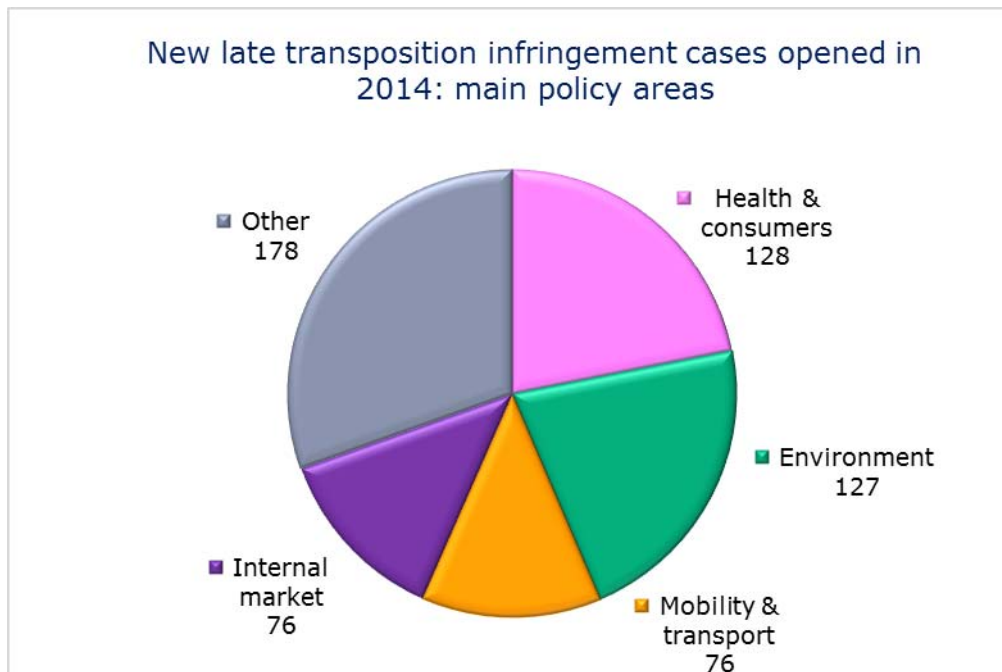
The following chart shows the number of LTIs open on 31 December 2014 by Member State, irrespective of the year when the case was opened.



The next chart shows new cases (585 in total) opened in 2014, by Member State.



The four policy areas where the most new cases were launched in 2014 are shown in the following pie chart:



New cases were launched against 27 Member States because of the late transposition of the directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.¹⁸ In addition, 24 Member States were involved in cases for late transposition of the directive on

¹⁸ Directive [2013/36/EU](#).

energy efficiency.¹⁹ 17 procedures were launched concerning the directive on requirements for budgetary frameworks of the Member States²⁰, on the directive on consumer rights²¹ and on the directive on waste from electrical and electronic equipment²². 16 Member States failed to transpose and/or notify, within the set deadline, their national transposition measures under the directive on the application of patients' rights in cross-border healthcare²³ and under the directive facilitating the cross-border exchange of information on road-safety-related traffic offences.²⁴

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

Under Article 260(3) TFEU, when referring a case for absence of complete transposition to the Court of Justice according to Article 258 TFEU, the Commission may propose financial penalties already at this stage without having to wait for a first judgment. The purpose of this innovation in the Treaty of Lisbon is to give Member States a greater incentive to transpose directives within the deadlines laid down in Union law. The Commission decides on the level of financial penalties to propose in line with the policy laid down in its communication on the implementation of Article 260(3) TFEU.²⁵

In 2014, the Commission continued to bring a number of late transposition infringement cases to the Court of Justice with a request for daily penalties under Article 260(3) TFEU. Three Member States were referred to Court in 2014: Belgium,²⁶ Finland²⁷ and Ireland (two cases).²⁸ The Commission withdrew its application from the Court in one case concerning Ireland's late transposition of the Renewable Energy Directive.²⁹ All referrals to Court for late transposition with proposals for daily penalties related to energy policy directives. Decisions for referral were also taken in other sectors, apart from energy, but in these cases the Member States adopted the necessary transposition measures before the applications were sent to Court and thus avoided the Court procedures. The Commission has so far not yet made proposals to the Court to apply lump sum payments. Indeed at the time the Commission adopted its policy on the implementation of Article 260 (3) TFEU, it hoped that the penalty payment would prove sufficient to achieve the innovation's objective to give Member States a stronger incentive to transpose Directives in good time. Although all cases brought to the Court of Justice under Articles 258 and 260 (3) TFEU since 2011 have in the meantime been withdrawn from the Court due to complete transposition, it is to be noted that these complete transpositions are achieved at a very late stage in the judicial procedure, some Member States benefiting from an undue prolongation of the transposition deadline set by the legislator equally for all Member States.

¹⁹ Directive [2012/27/EU](#).

²⁰ Council Directive [2011/85/EU](#).

²¹ Directive [2011/83/EU](#).

²² Directive [2012/19/EU](#)

²³ Directive [2011/24/EU](#).

²⁴ Directive [2011/82/EU](#).

²⁵ Communication from the Commission — [Implementation of Article 260\(3\) of the Treaty](#), OJ C 12, 15.1.2011, p. 1.

²⁶ The Commission referred Belgium to the Court for failure to fully implement the Energy Performance of Buildings Directive and proposed a daily penalty of €42 178.50.

²⁷ The Commission referred Finland to the Court for failure to fully implement the Energy Performance of Buildings Directive and proposed a daily penalty of €19 178.25.

²⁸ The Commission referred Ireland to the Court for partial transposition of the Electricity Directive and proposed a daily penalty of €20 358. In a separate case, the Commission referred Ireland to the Court for failure to fully transpose the Renewable Energy Directive and proposed a daily penalty of €25 447.50.

²⁹ Directive [2009/28/EC](#).

In 2014, Member States increased their efforts to complete transposition before the Court of Justice delivered its judgments. However, taken together with the other cases based on Article 258 and 260(3) TFEU that were launched in previous years, there remained 8 open cases with a proposal for daily penalties: 2 cases each against Austria and Poland, and one case each against Belgium, Finland, the Netherlands and Ireland.

VII. POLICY DEVELOPMENTS

1. Bringing Union law closer to the people of Europe

In 2014, the Commission continued its efforts to inform people better about their rights under EU law and to ensure that they find suitable mechanisms of redress, if they consider these rights have been breached. These efforts focused on providing better access to information on the application of EU law, on problem-solving instruments for EU citizens and businesses in Member States and on improving the handling of complaints from EU citizens and businesses about breaches of EU law.

1.1 Better access to information on the application of Union law

On 9 December 2014, the European Commission launched a new web section 'Applying Union law', a database of decisions taken by the Commission on infringement procedures and an online complaint form for members of the public and businesses.

1.1.1 New web section on application of Union law

With more than 30 000 visitors a month, 'Applying Union law'³⁰ is the second most visited web section on the Europa portal. The content and structure of this web section have been completely revamped and simplified. The section enables people to find the information they need more quickly, in all official EU languages.

1.1.2 Database of the Commission's infringement decisions

The Commission also launched a new online database of its decisions on infringements.³¹ An improved, user-friendly search tool makes it easier to find infringement decisions by Member State, case number, policy field, etc.

1.1.3 Online complaint form

In an effort to make it easier for members of the public to complain about breaches of EU law, in December 2014 the Commission introduced a simple online complaint form.³² This is now accessible via the Europa portal *Your rights*, which links to different problem-solving and complaint-handling services at EU and national level.

1.2 Better access to problem-solving tools for the public and business in Member States

While complainants remain an important source of information about breaches of EU law in the Member States, many cases brought to the attention of the Commission via complaints turn out not to be infringements of EU law. And often, the quickest and most effective way for people and businesses to solve problems arising from incorrect application of EU law by Member States is to take the matter up with the national authorities concerned.

To make it easier for businesses and the public to find out about the formalities and procedures to be complied with in different countries, and who to contact, the Commission's portal *Your Europe* provides practical information and tips for living in and moving around in the EU. *Your Europe* directs members of the public and

³⁰ [Applying Union law.](#)

³¹ [Commission's decisions on infringements.](#)

³² [Your EU rights: problem solving and complaints.](#)

businesses to the most appropriate service to help to find a solution³³ and serves as a gateway to assistance and channels for complaints where needed.

1.3 Swifter handling of complaints from the public and business

To further streamline complaint-handling and provide a better service to members of the public and businesses, in 2014 the Commission connected up the problem-solving service SOLVIT with the internal tool for registering complaints, CHAP.³⁴

CHAP ensures proper and timely assignment of complaints to the competent Commission departments together with systematic feedback to complainants in line with the 2012 Commission communication *Updating the handling of relations with the complainant in respect of the application of Union law*.³⁵

SOLVIT, an informal problem-solving tool provided by the national administrations, was set up in 2002 by the Commission and Member States to help people obtain rapid solutions to problems with a cross-border dimension where national authorities were failing to comply with EU law.

The link between CHAP and SOLVIT ensures swifter handling of complaints.

2. 'Third pillar' transition: Police and judicial cooperation in criminal matters now on an equal footing with other EU policies

1 December 2014 saw the expiry of rules that limited the Court of Justice's judicial control on the EU rules on police cooperation and judicial cooperation in criminal matters and the Commission's power to monitor the application of EU legislation in that area³⁶.

The Treaty of Lisbon's entry into force on 1 December 2009 had ended the 'third pillar' of EU legislation (justice and home affairs).³⁷ Treaty provisions on police and judicial cooperation in criminal matters were incorporated into Title V of the Treaty on the Functioning of the European Union (TFEU).

As a transitional measure, however, Protocol 36 to the Lisbon Treaty provided that until 1 December 2014, the powers of the Commission under Article 258 TFEU (infringement proceedings) and of the Court of Justice did not apply to acts in the field of police and judicial cooperation in criminal matters that had been adopted before the entry into force of the Treaty, unless they were repealed, annulled or amended (conditions sometimes referred to as 'Lisbonisation') after its entry into force.

³³ These services include Your Europe Advice (clarification of a situation by independent lawyers), [SOLVIT](#) (solving problems with public administrations), Enterprise Europe Network and the Points of Single Contact (support for SMEs), EURES (job matching) and the ECC-Net (consumer centres). In addition, [the Europe Direct Contact Centre](#) also informs citizens about their rights and either forwards their messages or refers them to specialised services when needed.

³⁴ CHAP is the Commission's IT tool for registering and managing complaints and enquiries about Member States' application of EU law.

³⁵ [COM/2012/0154](#) final.

³⁶ Article 10 of Protocol 36 to the Lisbon Treaty. For more info see press release [IP/14/2266](#).

³⁷ The Treaty of Maastricht (1992) introduced a new institutional structure composed of the three 'pillars' of the EU. The third pillar was inter-governmental and focused on justice and home affairs (JHA), which was renamed police and judicial cooperation in criminal matters (PJC), after the Treaty of Amsterdam (1999) transferred certain fields to the first pillar (free movement, asylum, immigration, borders, visa policy and civil law). The third pillar then focused on cooperation in law enforcement and combating racism while retaining its inter-governmental character. The development of many important policies such as the European arrest warrant, the common European asylum system and the Schengen area started off under the third pillar.

Certain Member States (Denmark, Ireland and UK) have special status as regards these policy areas.³⁸

The abolition of the pillar structure and the full integration of police and judicial cooperation in criminal matters into the mainstream of EU law and institutions contribute to the efficient functioning of instruments for freedom, security and justice and enhance both mutual trust between the Member States and public confidence in the EU.

3. Implementation plans and explanatory documents: current state of play

3.1 Implementation plans

The Commission provides implementation plans to make it easier to apply the Union law effectively and on time, while fully recognising that applying the Union law is the responsibility of Member States. The implementation plans are drafted at an early stage when drafting new legislation. They identify challenges which the Member States will face in applying the law and which need to be taken into account when Member States prepare for the work of transposition and implementation. They also provide for a wide range of tools to assist Member States to implement Union law, for example guidance documents, expert groups and dedicated websites.

In 2014, the Commission adopted 4 directives (3 on the internal market and 1 on environment) with an implementation plan. The plans identify the main challenges and deliverables for Member States in transposing the directives. They suggest useful actions (such as reaching the target within the deadline, using experience gained from previous exercises, monitoring and quality reporting, implementation workshops and bilateral meetings and expert groups). They also name the 'contact points' (lead departments) in the Commission.

The Commission considers that these plans will contribute to efficient transposition and implementation of the proposed directives. The Commission will monitor the use of implementation plans.

3.2 Explanatory documents

While Member States are responsible for transposing directives accurately and on time, it is the Commission's role as guardian of the Treaties to check that this is done. For this purpose, the information that Member States give the Commission must be clear and precise. In 2011, the EU institutions and Member States agreed on a new framework under which Member States provide supporting information about how they have transposed directives into their law.³⁹ It was agreed that such supporting information ('explanatory documents') will be submitted in justified cases together with the measures to transpose directives.⁴⁰

In 2014, the Commission requested explanatory documents in 8 out of 12 proposals for directives submitted to the Council and Parliament. During this

³⁸ Protocols 21, 22 and 36 to the Treaty on the European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, introduced by the Lisbon Treaty.

³⁹ The policy is contained in a (1) Joint Political Declaration of 28 September 2011 between the Commission and the Member States (OJ 2011/C 369/02) and (2) a Joint Political Declaration of 27 October 2011 between the EP, Council and Commission (OJ 2011/C 369/03).

⁴⁰ Member States 'undertake to accompany the notification of transposition measures with one or more explanatory documents, which can take the form of correlation tables or other documents serving the same purpose'. The Commission will have 'to justify on a case by case basis, when submitting the relevant proposals, the need for, and the proportionality of ,providing such documents'.

period, the Council and Parliament adopted 23 directives (out of 65) for which the Commission requested explanatory documents and which maintained the agreed recital on the need for such documents.

In 2014, Member States had to transpose 67 directives,⁴¹ for 8 of which they had undertaken to submit explanatory documents.⁴² Some Member States have not sent any explanatory documents. For the directives in the field of justice (2 out of the 8), the Commission received 16 explanatory documents for the first directive (9 in the form of 'correlation tables') and 16 for the second (10 in the form of 'correlation tables'). For the directives on environment (3 out of 8), the Commission received 7 explanatory documents for the first directive (4 in the form of 'correlation tables'), 8 on the second (5 in the form of 'correlation tables') and 16 on the third (10 in the form of 'correlation tables'). For the directive in the field of energy, the Commission received 28 'correlation tables' (not by all Member States but sometimes several per Member State) and 14 other explanatory documents. For the directives on financial markets (2 out of 8), the Commission received 9 explanatory documents (8 in the form of 'correlation tables') on the first directive and only 1 explanatory document (in the form of a 'correlation table') on the second.

The documents received vary in form and content, ranging from a mere reference to the national legal texts transposing the directive to detailed correlation tables. They include letters and memos, including tables, to the Commission explaining how the Member State has transposed the directive. Some provide details of how the new directive is already reflected in existing national legislation.

On the basis of a first assessment, it appears that some Member States clearly state how the directive has been transposed in their national law. However, others do not fully respect their earlier commitments, as they do not in all cases provide the clear and precise information required by settled case-law.⁴³

A more extensive assessment will be possible once the Commission has received explanatory documents for a more representative number of directives. The Commission will continue to report to the European Parliament and the Council on this in its Annual Reports on the application of EU law.

4. Better Regulation Agenda

The Commission's 2015 Work Programme⁴⁴ confirms that the Commission will continue working actively to ensure that EU law is properly applied implemented and enforced so it delivers real benefits to citizens. This goes hand in hand with the creation, within the Juncker Commission, of the position of First Vice-President with cross-cutting responsibility for Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights.

There were several important developments in the Better Regulation Agenda in 2014.

Public consultations were held on evaluation, impact assessment and stakeholder consultation guidelines, feeding into the preparation of the Better Regulation Guidelines.⁴⁵

⁴¹ Of these 67 directives, some have been repealed; some Member States have a transitional period and some other Member States are not concerned.

⁴² Directives [2012/17/EU](#) (JUST), [2013/1/EU](#) (JUST), [2012/18/EU](#) (ENV), [2012/19/EU](#) (ENV), [2012/33/EU](#) (ENV), [2012/27/EU](#) (ENER), [2013/14/EU](#) (MARKT) and [2014/59/EU](#) (MARKT).

⁴³ See Court of Justice Case [C-427/07](#) and the case-law cited there.

⁴⁴ http://ec.europa.eu/atwork/pdf/cwp_2015_en.pdf.

⁴⁵ http://ec.europa.eu/smart-regulation/evaluation/consultation/index_en.htm.

5. EU regulatory fitness

With its Regulatory Fitness and Performance Programme (REFIT),⁴⁶ the Commission set out an ambitious agenda with almost 200 individual actions to simplify and reduce the regulatory burden, repeal existing regulation and withdraw proposals for new regulation. In addition, it provided for Fitness Checks and evaluations to assess the efficiency and effectiveness of EU regulation and prepare future burden reduction initiatives.

In June 2014 the Commission adopted a communication⁴⁷ including a number of new REFIT initiatives and published the first edition of an annual scoreboard⁴⁸ to facilitate monitoring of implementation and stakeholder dialogue. The new Commission's Work Programme confirms REFIT initiatives to be implemented in 2015.⁴⁹

http://ec.europa.eu/smart-regulation/impact/consultation_2014/index_en.htm.
http://ec.europa.eu/smart-regulation/guidelines/consultation_2014/stakeholder-consultation/index_en.htm.

⁴⁶ [COM\(2013\) 685 final](#).

⁴⁷ [COM\(2014\) 368](#).

⁴⁸ [SWD\(2014\)192final/2](#).

⁴⁹ [COM\(2014\) 910final](#).

VIII. CONCLUSIONS

Effective application of EU law continued to face major challenges in 2014.

The high number of possible breaches of Union law requires increased efforts from the Member States to implement the law correctly and on time, to the benefit of people and businesses. The overall decrease in the number of formal infringement procedures in the last five years (from nearly 2900 to 1347) reflects the effectiveness of structured dialogue via the EU Pilot in resolving potential infringements quickly, to the benefit of people and businesses. In the coming year, the Commission aims to fully play its role as *Guardian of the Treaties* and strengthen the cooperation with Member States to prevent infringements from arising and speed up correction of breaches of EU law where necessary. At the same time, the Commission will continue to provide useful information to members of the public and businesses on EU law and help them solve problems by further strengthening relevant tools such as SOLVIT and by pursuing initiatives aimed at strengthening how the benefits of EU law are delivered. The rising number of infringements relating to late transposition shows that prompt transposition continues to be a challenge in numerous Member States and requires an effective response by the Commission.

As part of the Better Regulation Agenda, the Commission will focus on ensuring the clarity, operability and enforceability of EU legislation. This objective cannot be achieved without an active contribution from all parties involved in the EU's legislative process. Increased attention will be paid to aspects of implementation, management and enforcement, both when the Commission drafts proposals and throughout the legislative process.

Once directives are adopted, the Commission will use the period before the transposition deadline expires to focus on providing assistance to Member States on implementation. After the transposition deadline expires, the Commission will strengthen enforcement of EU law based on structured and systematic transposition and conformity checks of national legislation.

Timely and correct transposition of EU law into national legislation and a clear domestic legislative framework should be a priority for the Member States. This should considerably reduce breaches of EU law and hence the number of complaints, thereby benefiting people and businesses.