



Brussels, 30.11.2012
COM(2012) 714 final

REPORT FROM THE COMMISSION

**29TH ANNUAL REPORT ON MONITORING THE APPLICATION OF EU LAW
(2011)**

{SWD(2012) 399 final}
{SWD(2012) 400 final}

REPORT FROM THE COMMISSION
29TH ANNUAL REPORT ON MONITORING THE APPLICATION OF EU LAW
(2011)

INTRODUCTION

The European Union cannot achieve its policy goals if Member States do not apply EU law effectively on the ground. The respective responsibilities for the Commission and the Member States are clearly defined in the Treaties. The Member States are responsible for the correct application of the *acquis*¹, with the obligation to transpose directives in a correct and timely manner. The Commission has the responsibility for monitoring the Member States' efforts and ensuring compliance with EU law, including the resort to formal legal procedures.

With a view to effective policy implementation, the Commission works in partnership with the Member States to try to solve in an efficient and satisfactory manner, problems and complaints from citizens, business, NGOs and other stakeholders, concerning the application of EU law before starting formal infringement procedures.

Should these problem solving efforts not be successful, the Commission may launch formal infringement procedures (under Article 258 TFEU²). These procedures may concern late or incorrect transposition of directives or bad application of the law.

This Report reviews performance on key aspects of the application of EU law and provides an overview of strategic issues. Performance and challenges in the application of EU law by sector and by Member State are examined in the Staff Working Documents accompanying this Report.

1. TRANSPOSITION OF DIRECTIVES

1.1. Overview of the 2011 transposition work

Member States had to transpose more directives in 2011 compared to the previous year (i.e. 131 in contrast to 111 directives in 2010).

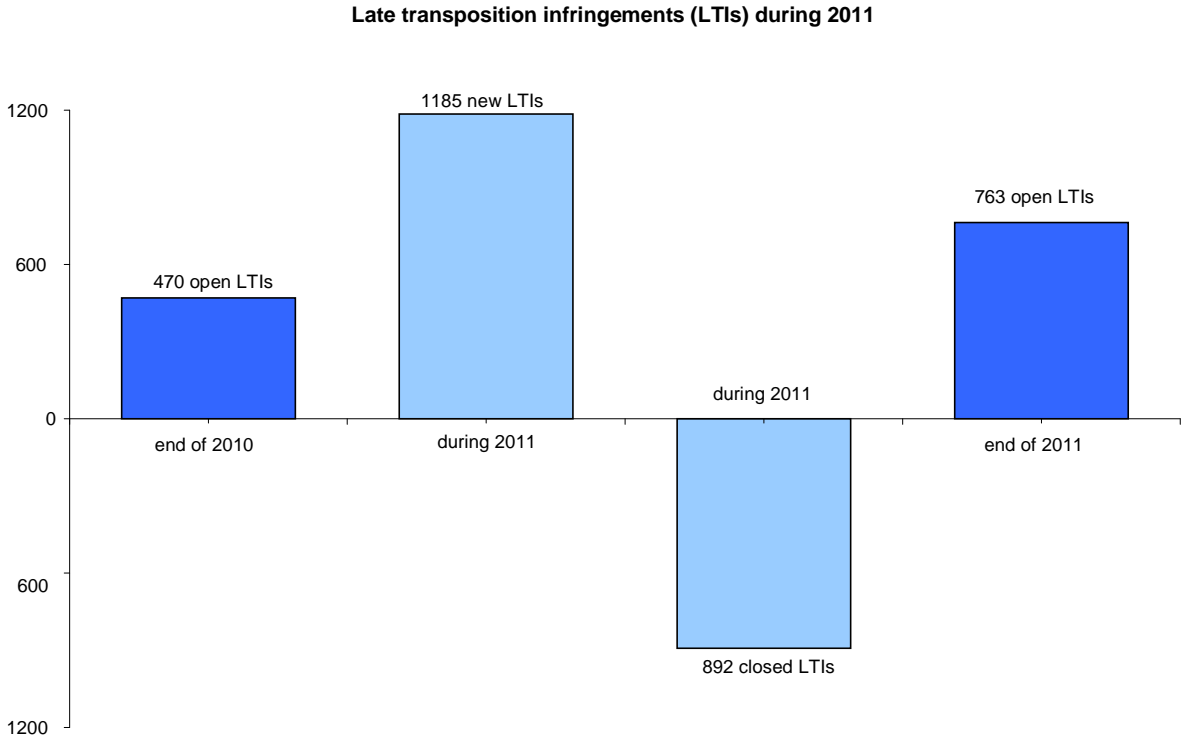
There has been a significant increase in late transposition in 2011 compared to the previous year. The Commission launched 1185 late transposition infringements in 2011 compared to

¹ By the end of 2011, the *acquis* of the EU consisted of 8862 regulations (2010: approx. 8400) and 1885 directives (2010: approx. 2000) in addition to the primary law (the Treaties).

² It should be noted that infringement procedures can also be initiated under other provisions of EU law, for example Article 106 TFEU in combination with Articles 101 or 102 TFEU.

855 in 2010 and 531 in 2009. Compared to the end of 2010, 763 late transposition cases were open at the end of 2011, representing a 60% increase. Monitoring late transposition is a Commission priority³ and the Commission proposes fines under the special penalty regime established by Article 260(3) TFEU against Member States if they do not transpose directives in time (details in point 1.2 below).

The following chart contains the key figures⁴ on late transposition infringements initiated by the Commission during 2011:

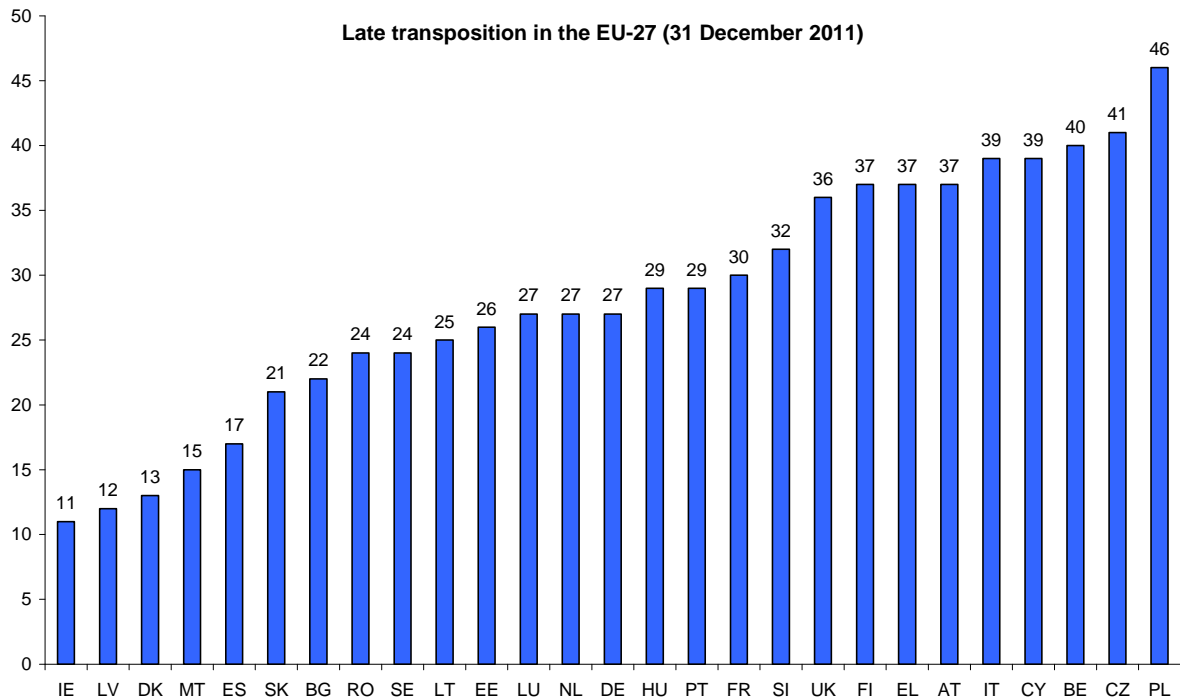


The following table shows late transposition infringements by Member State:⁵

³ Commission Communication on 'A Europe of results – Applying Community law', [COM\(2007\)502 final](#), p. 9.

⁴ From the sum of the 2010 open LTIs and the 2011 new LTIs (470+1185=1655), the number of closed LTIs is deducted (1655-893=763).

⁵ The table below indicates the number of late transposition infringements open on 31 December 2011, irrespective of the year when the infringement was opened. By contrast, the section “Transposition of directives” in the Member State pages of Annex I shows how many *new* late transposition infringements were initiated against the Member States *in 2011*.



The three policy areas where the most late transposition infringements were launched in 2011 were transport (240 procedures), internal market & services (198) and health & consumers (164).

Many of these cases concerned a large number of Member States. For example, the Commission launched procedures against 23 Member States concerning late transposition of the directive on energy-efficient transport vehicles.⁶ Similarly, 22 Member States were involved in late transposition infringements under the directive on road infrastructure safety management,⁷ 23 were launched concerning the directive on public procurement in the defence and security sector⁸ and the UCITS recast directive⁹ triggered the same number. Late transposition infringements were launched against 12 Member States concerning the market authorisation of medicinal products.¹⁰

⁶ [Directive 2009/33/EC](#) on the promotion of clean and energy-efficient road transport vehicles

⁷ [Directive 2008/96/EC](#) on road infrastructure safety management

⁸ [Directive 2009/81/EC](#) on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security

⁹ [Directive 2009/65/EC](#) on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

¹⁰ [Directive 2009/53/EC](#) amending [previous directives], as regards variations to the terms of marketing authorisations for medicinal products

1.2. Referrals to the Court under Articles 258 / 260(3) TFEU

Under Article 260(3) TFEU, when referring a late transposition infringement to the Court according to Article 258 TFEU, the Commission may specify financial penalties without having to wait for a first judgment.

The purpose of this innovation in the Lisbon Treaty is to give a stronger incentive to Member States to transpose directives within the deadlines laid down by the legislator and hence to ensure that Union legislation is genuinely effective.

The Commission referred the first late transposition infringement to the Court with a request for financial sanctions under Article 260(3) TFEU in late 2011.¹¹ Five Member States were involved in nine such decisions in 2011: Austria (1 case), Germany (3), Greece (1) Italy (1) and Poland (3). The proposed daily penalty ranged from €44,876.16 to €215,409.60 (lump sum payments were not requested).

The Member States' infringement profiles in the Staff Working Document contain more detailed information on these cases.

2. INCORRECT TRANSPOSITION AND BAD APPLICATION OF EU LAWS

While the Commission in its duty as guardian of the Treaty conducts its own enquiries to detect infringements of EU Law (point 2.1.2), citizens, businesses and stakeholder organisations make a significant contribution to such monitoring task by reporting shortcomings in the transposition and/or application of EU law by Member State authorities (see complaints under point 2.1.1). Once detected, problems are followed up by bilateral discussions between the Commission and the Member State concerned in order to remedy them, to the extent possible, using the EU Pilot platform.

2.1. Detection of problems and informal solutions

2.1.1. Complaints

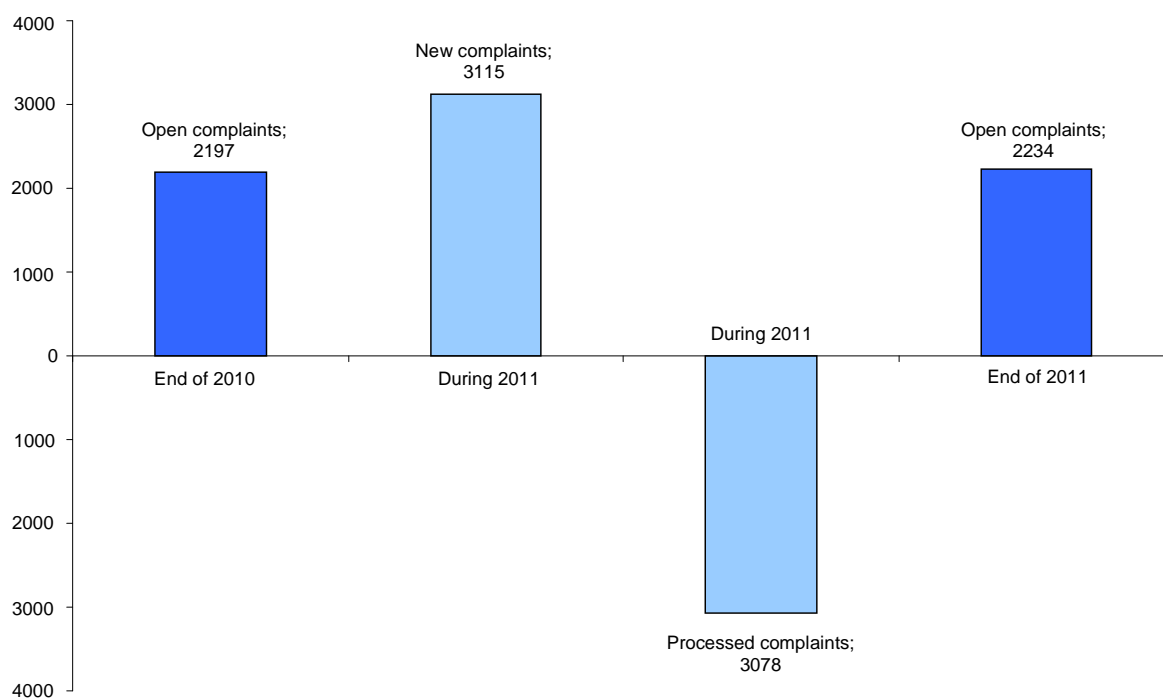
Complaints are submitted by citizens, businesses, NGOs or other organisations. They are handled in line with the Commission's Communication on the handling of relations with the complainant in respect of application of Union law¹² which sets a target of 12 months for the closure of a case or the launch of the formal procedure from the registration of a complaint. The chart below shows the key data¹³ on citizens' complaints in 2011:

¹¹ The Commission [Communication](#) on the Implementation of Article 260(3) of the Treaty on the Functioning of the European Union contains detailed guidelines on how the Commission applies this Article.

¹² [COM\(2002\)141 final](#) This Communication has been replaced by [COM\(2012\)154](#) on 2 April 2012.

¹³ From the sum of the 2010 open complaints and the 2011 new complaints (2197+3115=5312), the number of processed complaints is deducted (5312-3078=2234).

Submitted and processed complaints (2011)



3115 new complaints – The three Member States against which the most complaints have been filed were Italy (386 complaints), Spain (306) and Germany (263). Citizens, businesses and organisations reported irregularities especially in connection with environment, internal market & services and justice affairs (604, 530 and 434 complaints, respectively).

3078 processed complaints – Following an initial assessment of more than three thousand submissions in 2011, the Commission opened bilateral discussions with the Member State concerned in relation to 619 complaints in order to clarify whether EU rules had been breached.¹⁴ Complaints that led to bilateral discussions were most frequently related to environment, internal market & services and taxation & customs union (149, 101 and 87 pre-infringement files, respectively). Bilateral discussions with Member States are dealt with within EU Pilot (see under point 2.1.3).

Petitions by citizens to the European Parliament continued to point out deficiencies in the way how Member States apply EU law. Environment, employment, justice & fundamental rights, regional policy and health & consumers issues received particular attention from the

¹⁴ The rest of the complaints have not been further processed because either EU laws were not breached or the Commission lacked competence or the correspondence did not qualify as complaint. It is also noted that in urgent and exceptional cases, the Commission may decide to address a letter of formal notice (Article 258 TFEU) to the Member State without prior bilateral discussion.

European Parliament. Detailed information on petitions is provided in the Staff Working Document (Part II).

2.1.2. *Own initiative cases*

The Commission's own findings also reveal potential EU law infringements. Similarly to complaints, the Commission initiates first a bilateral discussion with the Member State concerned with a view to find a speedy solution. 1271 investigations were launched during 2011. Environment, transport and taxation & customs union were the three policy areas where the most potential infringements were identified (376, 178 and 177 new files, respectively). The Member States primarily concerned were Italy, Spain and Poland (125, 113 and 81 new files, respectively).

Some formal infringement procedures were launched directly by the Commission, without using EU Pilot, by sending a letter of formal notice under Article 258 TFEU. These exceptional cases included:

- The actions of 20 Member States within the OIV (*Organisation Internationale de la Vigne et du Vin*); and
- The bilateral agreement between Italy and China exempting holders of diplomatic passports from the visa requirement.

2.1.3. *Partnership with Member States: EU Pilot*

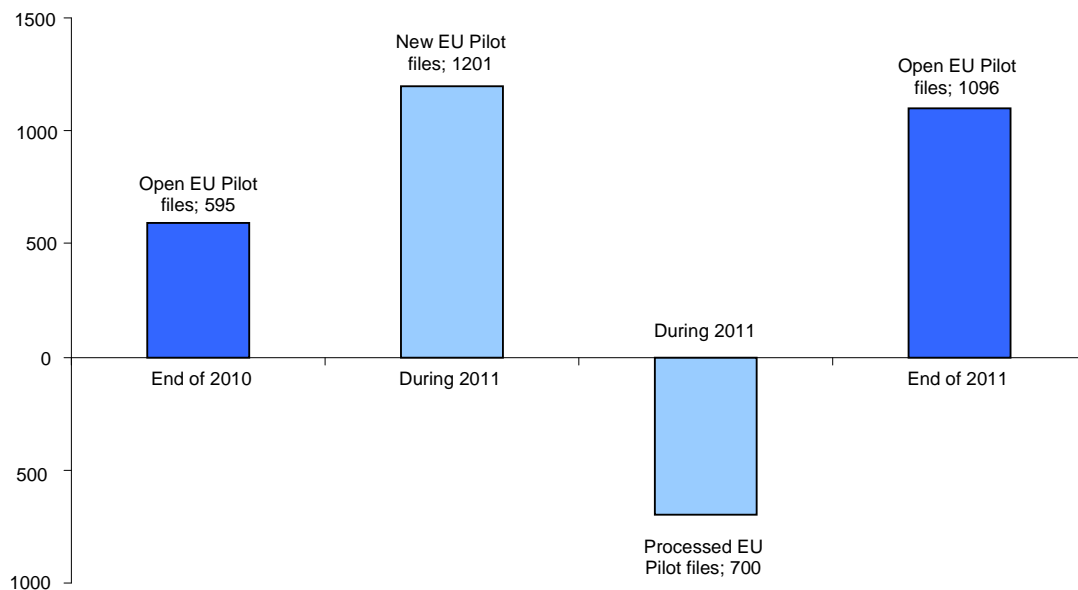
EU Pilot is a Commission initiative aimed at responding to questions and identifying solutions to problems related to the application of EU law. It is supported by an on-line data base and communication tool. EU Pilot provides the opportunity to resolve problems before entering into formal infringement procedures. Given that cases should, in principle, be dealt with within 20 weeks, EU Pilot dialogue facilitates speedy resolution of problems.

Participation of Member States in EU Pilot has been phased in gradually. By the end of 2011, 25 Member States had signed up and preparatory work was well advanced with the remaining two.¹⁵ The following chart contains the main EU Pilot figures¹⁶ for 2011:

¹⁵ Belgium, Poland Latvia and Romania joined EU Pilot in January 2011, followed by Cyprus in March. After France and Greece had entered in September 2011, only Luxembourg and Malta remained outside the system in 2011.

¹⁶ From the sum of the 2010 open EU Pilot files and the 2011 new EU Pilot files (1384+1201=2585), the number of processed files is deducted (2585-804=1781).

Newly opened and processed EU Pilot files (2011)



1201 new dossiers during 2011 – This figure is composed of 510 complaints confirmed by the Commission and 691 new own initiative files.

700 files were closed during 2011 – Of the 700 EU Pilot files in 2011, the Commission closed 508 files because the Member State provided a satisfactory response. This is a 72.5 % resolution rate for the Member States (an 8.5 % decrease from the 2010 rate of 81%).¹⁷

1096 files remained pending – By the end of 2011, most of the EU Pilot files were addressed to Italy (371), followed by Spain (365) and Germany (193). From the point of view of policy areas, environment was the leading field with 335 open dossiers before internal market & services (129) and taxation & customs union (117).

The Commission closed 183 EU Pilot files last year by launching formal infringement procedures. Negative outcomes of the procedure under EU Pilot were most frequent in dossiers on environment (49 such cases), taxation and customs union (24) and transport (21 refusals). Italy, Poland and Spain had the highest number of such transfers to infringement proceedings (21, 15 and 14 files, respectively).

The latest Evaluation Report on EU Pilot¹⁸ provides more detailed information.

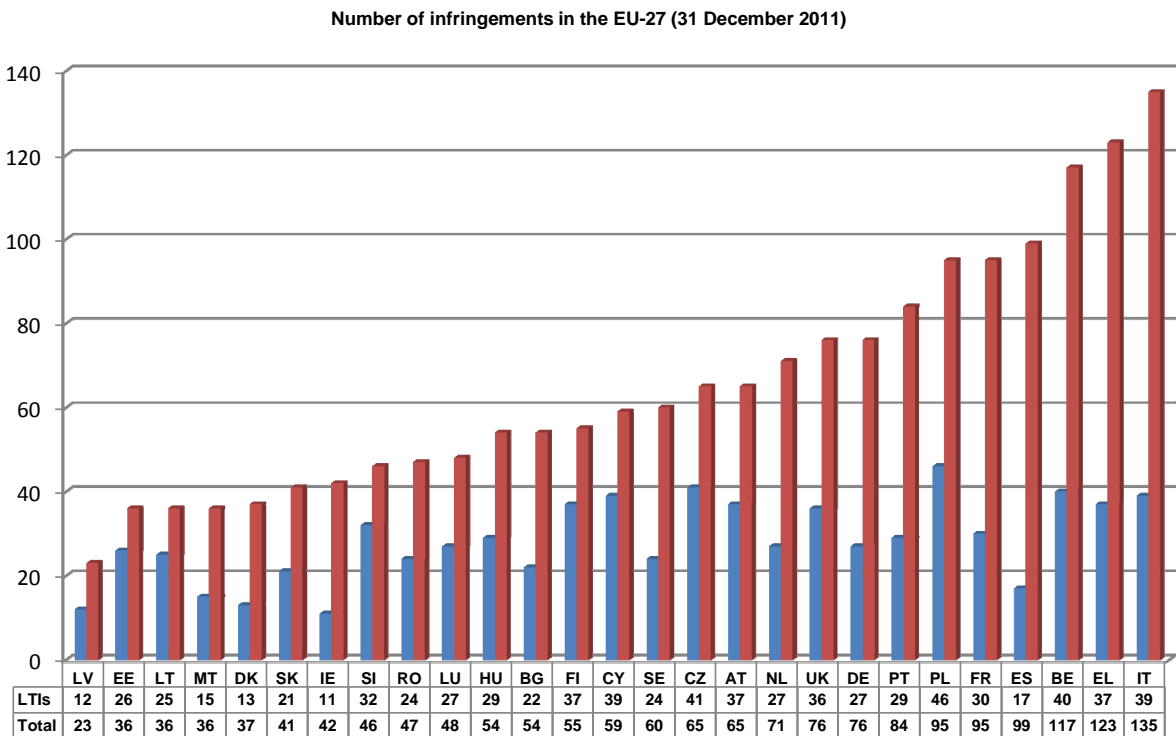
¹⁷ 28th [Annual Report](#) on Monitoring the Application of EU Law (2010)

¹⁸ Second Evaluation [Report](#) on EU Pilot, published on 21 December 2011

2.2. Infringement procedures

If a Member State does not resolve the alleged breach of EU law, the Commission launches infringement procedures under Art 258 TFEU¹⁹ and may refer the dispute to the Court of Justice of the European Union (the “Court”).

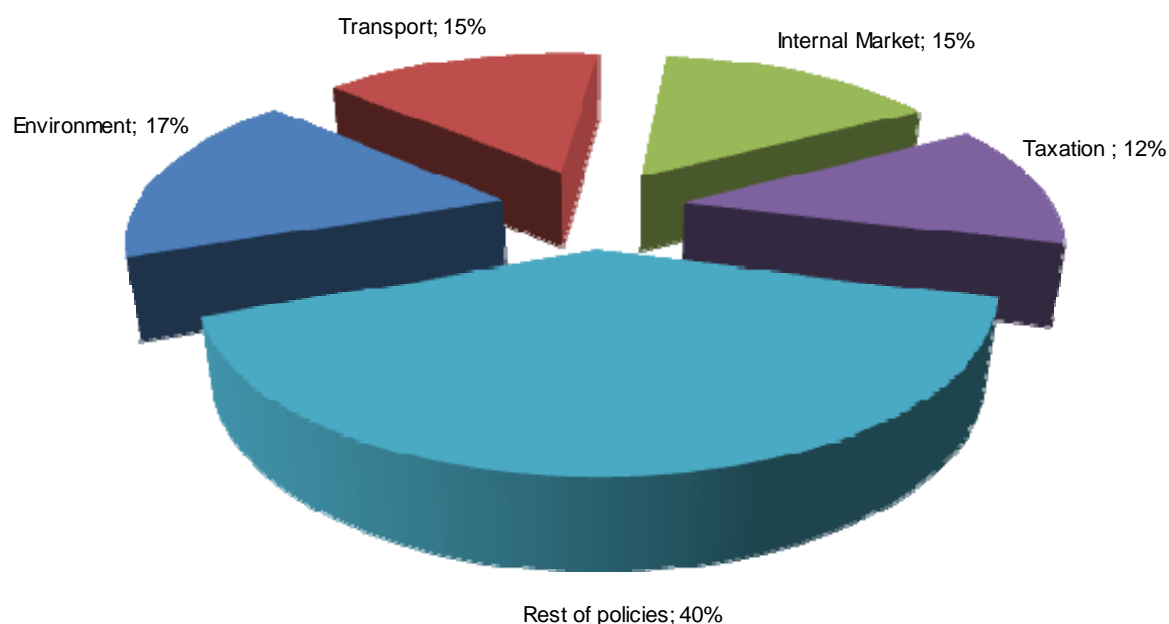
At the end of 2011, 1775 infringement cases were open.²⁰ The number of open infringement cases has been falling year on year - 2100 cases in 2010 and nearly 2900 cases in 2009. The following charts break down infringements according to Member States and policy areas:



¹⁹ Or under other provisions of the TFEU, see footnote 2 above.

²⁰ This includes all procedures where the Member State has received at least a letter of formal notice from the Commission under Article 258 TFEU.

The four most infringement-prone policy areas in 2011



Discussions between the Member State and the Commission continue during the formal procedure, in order to bring national law in line with EU legislation. Statistics confirm that Member States make serious efforts to settle their infringements without Court procedures.²¹ During 2011:

- the Commission closed 203 infringements after sending the letter of formal notice;
- a further 167 cases were solved after reasoned opinion were sent to the Member State; and
- 29 infringements were closed (or withdrawn from the Court) after the Commission decided to refer the case to the Court.

In total, 399 infringement cases were closed because the Member State has demonstrated its compliance with EU law. The Court had delivered 62 judgements under Article 258 TFEU in 2011, out of which 53 judgments (85 %) were in favour of the Commission.

Member States usually take the necessary measures to comply with the judgment of the Court in a timely manner. However, at the end of 2011, the Commission still had to continue 77 infringement procedures under Article 260(2) TFEU given that Member States failed to comply with Court judgments. Most of these cases concerned Greece (13), Italy (12) and

²¹ The following figures were calculated for complaint-based and own initiative cases and do not include data on late transposition infringements, which are discussed in point I above.

Spain (8). Almost half of the Article 260(2) TFEU infringements related to environment (36) with a few cases also in the fields of internal market & services (10) and transport (8).

Out of these 77 cases, 11 had already been referred to the Court for the second time at end-2011. Only two Court judgements were delivered under Article 260(2) TFEU last year, against Greece²² and Italy²³. In principle, a Court judgment under Article 260(2) TFEU imposes lump sum and / or daily penalty on the defaulting Member State. The latter must pay immediately the lump sum while paying the daily penalty until it reaches full compliance with the first Court judgment.

3. INFRINGEMENTS IN THE POLICY CYCLE

3.1. Infringement data - a trigger for action

The data on performance of Member States in the application of law feeds into the policy cycle. A high frequency of infringements points to possible implementation problems which need solutions (e.g. amending existing rules, clarifying the interpretation of existing laws or possibly preparing new laws). Some of the strategic initiatives in the 2011 Commission Work Programme were designed specifically in response to implementation problems.

- The new legislative proposal for posting of workers aimed at improving “the implementation and application in practice of Directive 96/71/EC on Posting of Workers”²⁴;
- The proposal for a new legal framework on the freezing and confiscation of proceeds of crime acknowledges that due to the unclear existing EU legal framework, “several provisions have not been transposed or properly implemented into national legislation”²⁵;
- The initiative to amend the Capital Requirements Directives (CRD IV) argued that “numerous national options and discretions in the earlier CRD prevented a consistent implementation of the capital requirements across Europe...”²⁶.

3.2. Better Preparation and Planning for Implementation

Understanding the challenges of transposition and application of law are essential at the early stages of policy development (for example, at the stage of the impact assessment). In order to

²² Commission v Greece, [C-407/09](#) (lump sum payment amounting to €3.000.000,00)

²³ Commission v Italy, [C-496/09](#) (lump sum payment amounting to €30.000.000,00)

²⁴ [Roadmap](#) and [Proposal](#) to a directive on the enforcement of Directive 96/71/ec on posting of workers

²⁵ [Roadmap](#) and [Proposal](#) for a directive on the freezing and confiscation of proceeds of crime

²⁶ [Roadmap](#) and Proposals ([1](#), [2](#)) to amend the Capital Requirements Directives (CRD IV) 2006/48/EC and 2006/49/EC

be able to assess whether a proposal is sound, the Commission needs to have an idea at an early stage of how it might be implemented in the Member States.

Looking at the implementation challenge at the impact assessment phase facilitates further work on implementation downstream. The Commission can support the competent national authorities in ensuring the correct transposition and application of EU rules by identifying the main risks for timely and correct implementation of new (or amended) pieces of legislation and recommending actions to mitigate those risks in implementation plans.

The Commission prepared a number of implementation plans for strategic initiatives in 2011. These included insider dealing and market manipulation (market abuse)²⁷; alternative dispute resolution for consumer disputes²⁸; amendments to Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts²⁹; and the Common Consolidated Corporate Tax Base³⁰.

Other forms of support to the Member States include bilateral contact between the national administrations and the Commission, convening of expert groups and the release of guidelines, handbooks, interpretative notes and working papers.

3.3. Sharing Information – Towards a Better Knowledge Base

It is essential for 'Smart Regulation' objectives that citizens and businesses understand how EU legislation is being applied in Member States. In 2011 a long-standing disagreement between EU institutions in this area could be solved. The disagreement concerned the way Member States have to explain in detail how they transpose directives into their legal order (see the section on "Correlation tables" in the previous Annual Reports on Monitoring the Application of EU Law).

The solution agreed between the EU institutions is set up in Joint Political Declarations and took effect as from 1 November 2011³¹. Under these arrangements the Commission may request, on a case-by-case basis and with proper justification, the transmission of '*explanatory documents*' by the Member States. If the Member States consider it useful these documents can also take the form of a correlation table. Explanatory documents have to illustrate the relationship between national transposing rules and the specific provisions of a given directive. The directive's preamble will contain a recital referring to the Member States' political commitment to submit to the Commission one or more explanatory documents.

²⁷ [COM\(2011\) 651 final](#)

²⁸ [COM\(2011\) 793 final](#)

²⁹ [COM\(2011\) 778](#)

³⁰ [COM\(2011\) 121/4](#)

³¹ Joint Political Declarations on explanatory documents dated 28 September 2011 ([OJ C 369, 17.12.2011, p. 14–14](#)) and 27 October 2011 ([OJ C 369, 17.12.2011, p. 15–15](#))

The first review to see whether these Declarations achieved their objectives will be done by 1 November 2013.

4. CONCLUSIONS

The correct application of EU law continues to present challenges for the Member States. Problems are frequent in the early stages of implementation, with late transposition becoming increasingly problematic. Late transposition infringements have steadily increased for the past three years, indicating a worrisome trend. However, once the Commission opens infringement procedures, national measures are usually notified swiftly.

Problem solving mechanisms are working. During 2011, a further 7 Member States joined EU Pilot, bringing the total number of participants up to 25. The problem solving discussions under EU Pilot allowed for timely resolution of nearly two thirds of potential infringements in 2011.

The number of formal infringement procedures launched continued to decrease as did the number of cases referred to the ECJ. This reflects in part the success of EU Pilot and that Member States have made serious efforts to bring their laws or practices in line with EU law once a procedure is launched.

The Commission as Guardian of the Treaties will continue to actively monitor the application of EU law. With implementation being key for successful and efficient policy-making at EU level and an integral component of the Commission's Smart Regulation agenda, infringement performance data is also being more systematically fed into the policy development cycle, in particular into evaluations.