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## **REPORT FROM THE COMMISSION**

### **Monitoring the application of European Union law 2015 Annual Report**

{ SWD(2016) 230 final}  
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I.	Introduction .....	3
II.	Enforcement in priority policy areas .....	4
1.	A new boost for jobs, growth and investment.....	4
2.	A connected 'digital single market'.....	6
3.	A resilient energy union with a forward-looking climate change policy .....	6
4.	A deeper and fairer internal market with a strengthened industrial base .....	6
5.	A deeper and fairer economic and monetary union.....	9
6.	An area of justice and fundamental rights based on mutual trust .....	9
7.	Towards a new policy on migration .....	11
8.	Working with Member States to ensure proper implementation of EU law .....	12
8.1.	Implementation plans: state of play.....	12
8.2.	Explanatory documents: state of play .....	13
III.	Stages in infringement procedures.....	16
IV.	Before an infringement procedure is started .....	17
1.	Detecting problems.....	17
1.1.	Own-initiative cases.....	17
1.2.	Complaints and petitions .....	17
2.	Solving problems .....	19
V.	Infringement procedures.....	22
1.	Pre-litigation phase .....	22
2.	Referrals to the Court of Justice under Articles 258 and 260(2) TFEU .....	25
VI.	Transposition of directives .....	27
1.	Late transposition .....	27
2.	Referrals to the Court of Justice under Article 258/260(3) TFEU.....	29
VII.	Conclusions .....	31

## I. Introduction

Applying EU laws effectively is essential to deliver the benefits of European Union policies to the public and businesses. Proper application of the law ensures that individuals and companies can enjoy their rights and obtain rapid and effective redress if these are violated. Making sure that EU law is implemented is therefore a priority for the European Commission. If laws are not implemented or correctly applied, the foundations of the EU are weakened.

Monitoring and enhancing the application of EU law is a priority of the Juncker Commission and a key part of the Better Regulation Package<sup>1</sup>. The results of the monitoring feed into evaluations of the law, into impact assessments of new initiatives and, more generally, into the legislative life cycle. The objective is to improve the implementation and enforcement of existing legislation as well as the quality of new legislation.

The Member States are responsible for transposing directives into their national law on time and accurately, as well as for correctly applying and implementing the entire body of EU legislation (the *acquis*<sup>2</sup>). The Commission, as guardian of the Treaties, monitors the Member States' measures and ensures that their legislation complies with EU law.<sup>3</sup> Focus is on ensuring that the Member States comply with EU law, by working in partnership and providing support and assistance as needed.

If the Commission detects a possible infringement, the first step is to discuss the matter with the Member State concerned, which is invited to solve the problem quickly and effectively in compliance with EU law. If these problem-solving efforts are not successful, the Commission may start a formal infringement procedure. Should a Member State still fail to comply with Union law, the Commission may bring the case before the Court of Justice. As a final step, financial penalties may be proposed when a Member State fails to implement a Court judgement or to communicate the transposition measures of a legislative directive to the Commission<sup>4</sup>.

This annual report highlights the main developments in enforcement policy in 2015. The structure of the report reflects the focus on enforcement in the political priority areas of this Commission. The Commission pursued enforcement actions, for example, in the area of migration and asylum, where full and consistent application of the common rules on asylum and irregular migration was put to the fore in the light of the refugee crisis. Another example is the former third pillar instruments, in the area of police and judicial cooperation in criminal matters, where full transposition and implementation of EU law is essential for providing a coordinated European response to security threats. In addition to the priority areas, the documents accompanying the report<sup>5</sup> examine how well EU law was applied, and the challenges faced, in each Member State and policy area.

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<sup>1</sup> In May 2015 the Commission presented a set of measures to boost openness and transparency in the EU decision-making process, improve the quality of new and existing laws so that EU policies achieve their objectives in the most effective and efficient way, see: COM(2015)215 final.

<sup>2</sup> Article 291(1) of the Treaty on the Functioning of the European Union (TFEU).

<sup>3</sup> 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 [...]'].

<sup>4</sup> Articles 258 and 260(2) of the Treaty of the Functioning of the European Union (TFEU)

<sup>5</sup> SWD(2016) 230 final – SWD(2016) 231 final.

## II. Enforcement in priority policy areas

Ensuring the EU's legal instruments are applied and implemented better is a prerequisite for delivering on the EU's policies in general and in particular on the political priorities of the Juncker Commission. The Commission uses a wide array of tools, including infringement procedures, to achieve the objectives of EU policies. The 2015 Annual Report provides an overview of the Commission's actions in this respect.

### 1. A new boost for jobs, growth and investment

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

The Commission's enforcement activities in 2015 focused on the following areas:

#### *Enforcing the competition acquis*

The Commission actively pursued its efforts to enforce antitrust and State aid rules. For example, infringement procedures were launched to tackle privileged rights granted to a publicly owned company for a country's hydropower concessions. The Commission also investigated legislative provisions limiting the powers of national competition authorities. It actively followed up on proceedings under Article 260(2) TFEU, asking the Court of Justice to impose lump sums and penalty payments on the Member States which failed to recover illegal and incompatible State aid. Consistent enforcement of decisions is essential for the credibility of the Commission's controls on State aids.

#### *Enforcing the acquis on health and safety at work*

The correct and timely transposition and application of the EU Directives in the area of health and safety at work is crucial to ensuring the effective protection of workers health and safety, as well as a level playing field across the internal market contributing to growth, jobs and investment in the EU.

The Commission initiated checks regarding the Member States' transposition of the Directive<sup>6</sup> on the alignment of the directives in the area of health and safety at work with the Regulation on classification, labelling and packaging of substances and mixtures.<sup>7</sup> By ensuring the link between occupational safety and health directives and the classification, labelling and packaging of substances and mixtures Regulation, this Directive constitutes an important contribution to protecting workers' health against the risk of exposure to hazardous chemicals. The Commission is also carrying out checks regarding the correct transposition in the Member States of the Council Directive implementing the social partners' Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector.<sup>8</sup>

#### *Enforcing the education acquis*

The correct application of EU law provisions in the field of education has a major impact on the rights of EU citizens, including mobile students. The complaints received by the Commission in this area concern access to education and especially matters pertaining to equal treatment when it comes to scholarships, grants and loans, tuition fees, language requirements, reduced transport fares for students or administrative practices, among other things. The primary objective of the Commission is to facilitate the learning mobility of citizens through the correct application of EU law which enhances their educational careers and thus contributes to jobs and growth.

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<sup>6</sup> Directive [2014/27/EU](#).

<sup>7</sup> Regulation (EC) [No 1272/2008](#).

<sup>8</sup> Directive [2010/32/EU](#).

### *Enforcing the environmental acquis*

The Commission targeted its enforcement of EU environmental rules towards achieving the Europe 2020 objectives and contributing to a stronger and more 'circular' economy which uses resources in a more sustainable way. Effective enforcement of environmental law is not only part of upholding the rule of law and a precondition for creating a healthier environment across the EU. It also helps to ensure a level playing field for all Member States and economic operators that need to meet the environmental requirements. Strict enforcement also stimulates the market to find innovative ways to increase resource efficiency and reduce import dependency. Such innovation can give EU companies a competitive edge and create jobs.

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

The Commission continued to address these deficiencies through legal means, in particular infringement procedures, but also by supporting compliance. For example, the Commission supports improvement of municipal waste management in regions with poor or average performance. Based on an assessment of the waste management situation in each Member State, 'roadmaps' with recommendations for improving municipal waste management in each country are drawn up. Such initiatives help implement the 'circular economy' initiative issued by the Commission in December 2015.<sup>9</sup>

### *Enforcing the agricultural acquis*

The Commission's enforcement strategy focused on ensuring that agricultural measures with the greatest potential to support growth and create jobs were implemented. A priority was the correct implementation by the Member States of provisions governing the direct payments scheme under the 2014-2020 reform of the common agricultural policy. Annual direct payments provide a basic protection for farmers' income against the shocks to which agriculture is exposed, such as price changes and the weather. This helps to prevent excessive loss of jobs and output, within both farming and the many other sectors which depend on it.

The Commission also closely monitored the implementation of EU quality labelling schemes, which enable farmers and food producers to build consumer recognition for products with particular qualities linked to their origin (in the case of so-called Geographical Indications). In addition, compliance checks were conducted in the organic sector to prevent, detect and address fraud and boost consumer confidence.

Major efforts were also made to ensure that the rural development support provided by Member States through rural development programmes is granted in accordance with the relevant EU rules and the criteria of the approved programmes.

### *Enforcing the acquis on maritime affairs and fisheries*

The Commission closely monitored areas of fisheries conservation and control that are essential to building a 'circular' economy in which fish resources are used sustainably. This will help ensure jobs and growth in the fisheries sector in the long term. Particular attention was given to systemic deficiencies in national fisheries monitoring systems that allow illegal fishing activities to go undetected, harming the sector's sustainability. In line with the EU's objective of becoming a stronger global actor in the field of fisheries, the Commission also acted in several cases where the EU's exclusive external competence was not respected.

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<sup>9</sup> [COM\(2015\)614 final](#).

## 2. A connected 'digital single market'

The Commission's enforcement strategy in the area of communication networks, content and technology targeted priorities. Priorities include for instance structural elements of legislation in electronic communications, such as: the independence of national regulatory authorities, respect for consultation procedures and deadlines in the market review process, spectrum management and freedom of establishment. Enforcement activities also addressed key provisions for preserving the internal market in audiovisual services, such as the country of origin principle and freedom of reception. In addition, the Commission carried out compliance checks on Member States' transposition of the Directive on the re-use of public sector information (the 'PSI Directive').<sup>10</sup>

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

The Commission's 'Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy'<sup>11</sup> provides that 'full implementation and strict enforcement of existing energy and related legislation is the first priority to establish the Energy Union.'

The Commission closely monitored the application of the *acquis* in the climate and energy policy areas. It undertook systematic checks on Member States' transposition of, and conformity with:

- the Third Energy Package Directives,<sup>12</sup>
- the Offshore Safety Directive,<sup>13</sup>
- the Energy Efficiency Directive,<sup>14</sup>
- the Energy Performance of Buildings Directive,<sup>15</sup>
- the Renewable Energy Directive,<sup>16</sup>
- the Oil Stocks Directive,<sup>17</sup> and
- the Radioactive Waste Directive.<sup>18</sup>
- the EU Emissions Trading System Directives<sup>19</sup>,
- the Fuel Quality Directive<sup>20</sup>, and
- the Geological Storage of Carbon Dioxide Directive<sup>21</sup>.

The Commission launched 15 infringement procedures for late transposition of the Offshore Safety Directive. In addition, EU Pilot dialogues<sup>22</sup> and infringement procedures were systematically launched for non-compliance with reporting obligations, mainly under the Energy Efficiency and Energy Performance of Buildings Directives and the Security of Gas Supply Regulation.<sup>23</sup> This resulted in nearly 100 % compliance with the reporting obligations in question.

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

The single market provides enormous opportunities for European businesses as well as greater choice and lower prices for consumers. It enables people to travel, live, work and study wherever they

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<sup>10</sup> Directive [2013/37/EU](#).

<sup>11</sup> [COM\(2015\)80](#).

<sup>12</sup> Directives [2009/72/EC](#) and [2009/73/EC](#).

<sup>13</sup> Directive [2013/30/EU](#).

<sup>14</sup> Directive [2012/27/EU](#).

<sup>15</sup> Directive [2010/31/EU](#).

<sup>16</sup> Directive [2009/28/EC](#).

<sup>17</sup> Directive [2009/119/EC](#).

<sup>18</sup> Directive [2011/70/EURATOM](#).

<sup>19</sup> Directives [2008/101/EC](#) and [2009/29/EC](#).

<sup>20</sup> Directive [2009/30/EC](#).

<sup>21</sup> Directive [2009/31/EC](#).

<sup>22</sup> See section IV(2) of this report.

<sup>23</sup> Regulation (EU) No [994/2010](#).

wish. But these benefits do not materialise when single market rules are not applied or implemented, or if they are undermined by other barriers.

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

The Commission's new single market strategy<sup>24</sup> envisages a more holistic approach to enforcing the internal market rules, including the application of a smart enforcement strategy. This covers all stages of policy-making, from policy design and implementation to information, in line with the Better Regulation approach. It includes better integrating evaluation and enforcement into policy design and providing better assistance and guidance to Member States on how to implement internal market rules. The strategy also promises a more consistent and efficient enforcement policy aimed at improving overall compliance with single market rules and EU law in general.

In line with the new approach, in 2015 the Commission and several Member States developed national strategies on public procurement to address the root causes of systemic and recurrent problems. The Commission held dialogues with Member States on specific issues to help prevent difficulties in implementation. In addition, the Commission undertook to identify specific application and implementation issues arising from procurement rules in sectors such as health, IT, energy and waste management.

The Commission also acted on identified breaches of internal market rules on legal form and shareholdings under the Services Directive. This led to the initiation of 10 EU Pilot dialogues and 6 infringement procedures in 2015.

Infringement cases linked to the Late Payment Directive<sup>25</sup> have a strong bearing on Member States' financial adjustment programmes. Payments of arrears to private suppliers under the Directive are covered by the memorandum of understanding between the European Stability Mechanism and Greece, and by Portugal's post-programme surveillance. As these programmes provide that all public arrears should be cleared in a specific time-frame, this may have implications as regards the compliance with the obligations under Late Payment Directive.

*Enforcing the acquis on consumer protection*

The Court of Justice of the EU (CJEU) has consistently strengthened the principle that Member States' procedural rules have to take into account the generally weaker position of consumers so that they can effectively benefit from EU consumer protection law. In 2015, the CJEU further developed this case law based on the principles of *ex officio* control by national courts, equivalence and effectiveness. The Commission has therefore raised the implications of the Court's case law based on these principles with individual Member States, in EU Pilot dialogues but also in infringement procedures. The Commission also commissioned a study on the impact of the CJEU's case law on procedures in the Member States.

The Commission initiated infringement procedures for late transposition of the Directive on alternative dispute resolution,<sup>26</sup> which relates to the development of an effective alternative dispute resolution system for consumers in combination with an online platform. The Commission also assessed the quality of national measures transposing the Consumer Rights Directive,<sup>27</sup> which applies to online contracts, among other things. As a result of these checks the Commission opened 20 EU Pilot dialogues for non-compliance with the Directive.

Many Member States continued to make legislative changes in 2015 to bring their legislation into conformity with the Unfair Commercial Practices Directive.<sup>28</sup> In parallel, the Commission continued its

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<sup>24</sup> [COM\(2015\) 550 final.](#)

<sup>25</sup> Directive [2011/7/EU](#).

<sup>26</sup> Directive [2013/11/EU](#).

<sup>27</sup> Directive [2011/83/EC](#).

<sup>28</sup> Directive [2005/29/EC](#).



work on updating the 2009 guidance document on the application of the Directive<sup>29</sup> in order to improve compliance by businesses and enforcement in the Member States. Similarly, EU Pilot dialogues and infringement cases regarding the transposition of the Package Travel Directive<sup>30</sup> triggered legislative changes in several Member States. These changes aim at compliance with the requirement that organisers of packages and/or retailers selling packages have to provide evidence of security for the payments they receive and for repatriating holidaymakers in the event of insolvency. In December 2015 the Commission also presented a report<sup>31</sup> on the application of the Timeshare Directive.<sup>32</sup>

In addition the Commission has been working closely together with the consumer authorities to better enforce consumer rights. In the car rental sector, five major car hire companies have agreed to significantly review how they deal with consumers. Citizens will benefit from more clarity on insurance policies and tank refuelling options, and more price transparency.<sup>33</sup>

#### *Enforcing the acquis on health and food safety*

In 2015 the Commission focused on ensuring the full transposition of the Cross Border Healthcare Directive.<sup>34</sup> This included launching a set of infringement cases. In response, Member States stepped up their efforts to complete transposition before the cases were referred to the Court of Justice. In the health sector, the Commission launched EU Pilot dialogues on the correct transposition of the Directive on human tissues and cells.<sup>35</sup> Enforcement in the animal welfare sector had started by launching infringement procedures against a number of Member States for non-compliance with the requirements for laying hens and group housing of sows. In 2015 these delivered the expected results, with the closure of most cases due to compliance with the relevant Directives.<sup>36</sup>

#### *Enforcing the acquis on mobility and transport*

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

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

In 2015 Member States stepped up their efforts to comply with the Court's decisions requiring full application of the provisions of the First Railway Package. The Commission was therefore able to close the related infringement procedures against three Member States. However, Member States did not make similar efforts to transpose the Directive establishing a single European railway area<sup>37</sup> on time. Consequently the Commission opened 20 infringement procedures.

The Commission actively pursued efforts to enhance the use of digital technologies, in particular in the road transport sector. Monitoring of the application of EU law in this area has been intensified and in 2015 several infringement procedures were initiated or pursued over application of the Directive on the

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<sup>29</sup> [SEC\(2009\)1666](#).

<sup>30</sup> Directive [90/314/EEC](#).

<sup>31</sup> [COM\(2015\) 644 final](#).

<sup>32</sup> Directive [2008/122/EC](#).

<sup>33</sup> [http://ec.europa.eu/justice/newsroom/consumer-marketing/news/150713\\_en.htm](http://ec.europa.eu/justice/newsroom/consumer-marketing/news/150713_en.htm).

<sup>34</sup> Directive [2011/24/EU](#).

<sup>35</sup> Directive [2004/23/EC](#).

<sup>36</sup> Directives [1999/74/EC](#) and [2008/120/EC](#).

<sup>37</sup> Directive [2012/34](#).



interoperability of electronic road toll systems.<sup>38</sup> Conformity checks on the implementation of the Directive on driving licences<sup>39</sup> led to the launch of 20 infringement procedures in 2015.

#### *Enforcing the acquis on direct taxation*

The Commission pursued three initiatives on compliance with EU direct tax law launched between 2011 and 2014. All three are designed to benefit taxpayers. The first initiative is examining whether Member States give equal tax treatment to people who inherit assets in another Member State.<sup>40</sup> The second is checking whether people who live in one Member State but work in another (cross-border workers) receive equal tax treatment.<sup>41</sup> The third initiative, initiated at the end of 2014, complements and completes the previous ones by examining the tax treatment of people who actually move from one EU Member State to another (mobile persons).<sup>42</sup>

### 5. A deeper and fairer economic and monetary union

Developing the capital markets union, completing the banking union and facilitating cross-border investment are essential for financial stability. The Commission's enforcement policy in this area focused on monitoring the timely and correct transposition of the Directives adopted under the financial reform.

Particular attention was paid to the Directives on bank recovery and resolution<sup>43</sup> and deposit guarantee schemes.<sup>44</sup> The transposition of these is essential for bringing into effect the newly created Single Resolution Mechanism, which will further deepen economic and monetary union. The Commission also checked whether the Accounting and Transparency Directives<sup>45</sup> had been transposed into national law on time. In addition, it carried out compliance checks and, where necessary, launched infringement procedures for non-compliance with:

- the Directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms,<sup>46</sup>
- the Financial Conglomerates Directive,<sup>47</sup>
- the Solvency II and Omnibus II Directives,<sup>48</sup>
- the Alternative Investment Fund Managers Directive,<sup>49</sup> and
- the Credit Ratings Directive.<sup>50</sup>

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

Europeans share values and enjoy the rights that are spelled out in the EU Treaties and the Charter of Fundamental Rights.

One of the EU's fundamental freedoms is the *free movement of persons*. The application of the Free Movement Directive<sup>51</sup> and the related *acquis* by national administrations at local level is central to ensuring that Europeans can fully enjoy their right to free movement. Lack of clarity over the rights and

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<sup>38</sup> Directive [2004/52/EC](#).

<sup>39</sup> Directive [2006/126/EC](#).

<sup>40</sup> [IP/11/1551](#).

<sup>41</sup> [IP/12/340](#).

<sup>42</sup> [IP/14/31](#).

<sup>43</sup> Directive [2014/59/EU](#).

<sup>44</sup> Directive [2014/49/EU](#).

<sup>45</sup> Directive [2013/34/EU](#).

<sup>46</sup> Directive [2013/36/EU](#).

<sup>47</sup> Directive [2011/89/EU](#).

<sup>48</sup> Directive [2009/138/EC](#) and [2014/51/EU](#).

<sup>49</sup> Directive [2011/61/EU](#).

<sup>50</sup> Directives [2013/14/EU](#) and [2013/50/EU](#).

<sup>51</sup> Directive [2004/38/EC](#).

obligations of EU citizens may put strains on their free movement. The Commission is therefore committed to helping national administrations overcome this information gap. To this end, it is developing an e-learning tool on EU citizens' rights of free movement. This will provide national administrations — which have a direct or indirect impact on EU citizens' rights of free movement — with a practical instrument to better understand the rights and obligations associated with free movement and thus to improve their application in practice. Substantial progress was made in 2015 and the tool will be made available to Member States' authorities in 2016.

In the area of *criminal law*, in 2015 Member States had to transpose two key directives concerning justice and fundamental rights into their national legislation. One is intended to ensure appropriate protection measures for victims of crime (European protection order<sup>52</sup>). The other establishes minimum standards on the rights, support and protection of such victims.<sup>53</sup> The Commission initiated infringement procedures against Member States which failed to comply with their obligations. It also launched or completed checks on the conformity of national legislation with the Directives on procedural rights,<sup>54</sup> and initiated EU Pilot dialogues where it found gaps.

On *judicial cooperation in civil matters*, the Commission gave prominence to promoting and protecting the rights of children, and in particular to preventing and combating international child abduction. The Commission took the view that the entire matter of international child abduction (including the acceptance of newly acceding countries to the 1980 Hague Convention on International Child Abduction) was covered by the exclusive external competence of the EU because of the adoption of parallel internal EU legislation (Brussels IIa Regulation<sup>55</sup>). In the light of opposition from most Member States, and after launching infringement procedures against several Member States for not respecting the EU's exclusive external competence in this field, the Commission sought the opinion of the Court of Justice. The Court confirmed<sup>56</sup> that the EU's exclusive competence encompasses the acceptance of the accession of a third state to the Hague Convention. Following the Court's opinion, the Council resumed negotiations on the pending Commission proposals related to this issue, which the Commission published in 2015.

In the field of *data protection*, in its judgment of 6 October 2015<sup>57</sup> the Court declared invalid the Commission's Safe Harbour Decision.<sup>58</sup> It ruled that the Decision did not contain sufficient findings by the Commission that U.S. public authorities' access to data transferred under the decision was limited or that effective legal protection against such interference existed, with particular view to Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union. Following the judgment, on 6 November 2015 the Commission issued a Communication on the transfer of personal data from the EU to the U.S. under the Data Protection Directive.<sup>59</sup> This provides an overview of the alternative tools for transatlantic data transfers under the Directive in the absence of an adequacy decision.

In the area of *equal treatment and anti-discrimination*, the Commission continued to fight against the discrimination of Roma in the Member States through strengthened enforcement of the Racial Equality Directive<sup>60</sup>. It initiated infringement proceedings against a second Member State due to discrimination of Roma children in the field of education and continued EU Pilot dialogue with several other Member States due to suspected discrimination of Roma in the areas of housing and/or education. The Commission also continued its efforts to strengthen national equality bodies set up under the equal treatment directives to fight against discrimination and to help victims of discrimination.

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<sup>52</sup> Directive [2011/99/EU](#).

<sup>53</sup> Directive [2012/29/EU](#).

<sup>54</sup> Directive [2010/64/EU](#) and Directive [2012/13/EU](#).

<sup>55</sup> Regulation (EC) No [2201/2003](#).

<sup>56</sup> [Opinion 1/13](#).

<sup>57</sup> Maximilian Schrems v Data Protection Commissioner, [C-362/14](#).

<sup>58</sup> Commission Decision [2000/520/EC](#).

<sup>59</sup> Directive [95/46/EC](#).

<sup>60</sup> Directive [2000/43/EC](#).

The *European Agenda on Security* adopted in 2015<sup>61</sup> aims to provide Member States with the tools to combat both short and long-term security challenges. In this context the Commission has initiated EU Pilot dialogues with 12 Member States which did not comply with obligations under the Explosives Precursors Regulation<sup>62</sup>. The Commission has continued the efforts to ensure the complete transposition and correct implementation of the Directives on preventing and combating trafficking in human beings and protecting its victims<sup>63</sup> and on combating the sexual abuse and sexual exploitation of children and child pornography<sup>64</sup>. What is more, in the course of 2015 Member States had to transpose the Directive on attacks against information systems<sup>65</sup>. The Commission initiated infringement procedures against Member States which failed to comply with their obligations. Moreover, correct transposition and implementation of former 'third pillar' instruments in the area of police cooperation and judicial cooperation in criminal matters is being given priority under the Agenda.

The transitional period provided for in Protocol 36 to the Lisbon Treaty ended on 1 December 2014. With this, the limitations were lifted on judicial control by the European Court of Justice and on the Commission's powers under Article 258 TFEU to monitor the application of EU legislation on police cooperation and judicial cooperation in criminal matters.

The correct transposition and implementation of former third pillar instruments is essential for the good functioning of EU policies on freedom, security and justice. To get a complete and accurate overview of the implementation of these instruments, and to enable it to fulfil its role as guardian of the Treaties, the Commission invited all Member States to notify their national measures for transposing the instruments applicable to them by 15 March 2015, which has been extended until 15 May 2015.

While the Commission received a large number of notifications, some Member States failed to notify any measures to transpose a number of these instruments. In December 2015 the Commission contacted those which had failed to notify complete measures for transposing the following instruments:

- Council Framework Decision [2006/960/JHA](#) (also called the 'Swedish initiative'),
- Council Framework Decision [2003/568/JHA](#) on combating corruption in the private sector,
- Council Framework Decision [2008/841/JHA](#) on the fight against organised crime,
- Framework Decision [2009/315/JHA](#) on exchange of information extracted from criminal records between Member States (ECRIS),
- Framework Decision [2009/829/JHA](#) on the European supervision order,
- Framework Decision [2008/947/JHA](#) on probation and alternative sanctions, and
- Framework Decision [2008/909/JHA](#) on transfer of prisoners.

The Commission also assessed the conformity with EU law of the national transposition measures notified.

## 7. Towards a new policy on migration

President Juncker's political guidelines of July 2014 put migration among the Commission's top political priorities for its 2014-2019 term. In this context, in 2015 the Commission adopted the European Agenda on Migration.<sup>66</sup> The Agenda provides a new and comprehensive approach which combines both internal and external policies and is grounded in mutual trust and solidarity between EU Member States and institutions. It puts the focus on effective implementation of EU law. Full and consistent application by the Member States of the common rules on asylum and irregular migration should be ensured by systematic monitoring by the Commission.

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<sup>61</sup> [COM\(2015\)185 final](#).

<sup>62</sup> Regulation (EU) No [98/2013](#).

<sup>63</sup> Directive [2011/36/EU](#).

<sup>64</sup> Directive [2011/93/EU](#).

<sup>65</sup> Directive [2013/40/EU](#).

<sup>66</sup> [COM\(2015\)240 final](#).

In the light of the Agenda, in 2015 the Commission gave priority to work concerning infringements of any legal instruments on asylum, with a particular focus on swift handling of all late transposition cases. By the end of the year the Commission had opened 37 infringement cases for late transposition of the recast Asylum Procedures Directive<sup>67</sup> and the recast Reception Conditions Directive<sup>68</sup>. In two cases of late transposition of the recast Qualifications Directive,<sup>69</sup> the Commission addressed reasoned opinions to the Member States concerned.

The Commission also pursued infringement procedures against Member States for incorrect implementation and/or breaches of EU asylum legislation. These involved in particular systemic deficiencies (addressed in a second additional letter of formal notice to Greece) and in the case of Hungary the compliance of newly adopted legislation with the EU asylum *acquis* and the Charter of Fundamental Rights. The Commission also opened infringement procedures against four Member States for incorrect implementation of the Eurodac Regulation.<sup>70</sup> These related to the obligation to take the fingerprints of people applying for asylum or entering irregularly at external borders, and to transmit them to the Eurodac system.

Correct implementation of the Return Directive<sup>71</sup> is key for achieving the Agenda's objectives in combating and preventing irregular migration. In this area, the Commission addressed administrative letters to Member States on the issuance of return decisions and on their enforcement in compliance with the Return Directive. It also opened an infringement procedure against one Member State for incorrect implementation of the Directive.

The Commission reported regularly to the public on the state of play in implementation of the EU asylum *acquis*.<sup>72</sup>

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

One of the key goals of the Better Regulation Package is to ensure that EU law is correctly applied and implemented by the Member States. The way new legislation will be implemented is to be taken into account already during its design, and well before its adoption. According to the consistent case-law of the Court of Justice, Member States have to inform the Commission in a clear and precise way on how they translate EU directives into their national rules.<sup>73</sup>

Furthermore, in justified cases the legislator, upon proposal of the Commission, inserts a recital which refers to the commitment of the Member States to transmit explanatory documents to the Commission, in addition to the text of the national transposition measures, (see subsection 8.2.).

### 8.1. Implementation plans: state of play

In the Better Regulation Package, the Commission committed to actively help Member States transpose and implement legislation by preparing implementation plans for certain directives and regulations. While the responsibility for the application of EU law lies with the Member States, the implementation plans aim to help them apply the law effectively and on time. The plans identify challenges which the Member States will face and which need to be taken into account when they prepare to transpose and implement the law. The plans also provide for a wide range of tools to help Member States implement EU laws, such as guidance documents, expert groups and dedicated websites.

Implementation plans accompanied five proposals for directives — one on employment and social inclusion and four on the environment — issued by the Commission in 2015.

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<sup>67</sup> Directive [2013/32/EU](#).

<sup>68</sup> Directive [2013/33/EU](#).

<sup>69</sup> Directive [2011/95/EU](#).

<sup>70</sup> Regulation (EU) No [603/2013](#).

<sup>71</sup> Directive [2008/115/EC](#).

<sup>72</sup> [COM\(2015\)490 final](#) and [COM\(2015\)510 final](#).

<sup>73</sup> Case C-427/07, *Commission v Ireland*, point 107.

An implementation plan was prepared for the Commission proposal on a directive to facilitate disabled consumers' access to a number of products and services.<sup>74</sup> The plan outlines the Commission's assistance to Member States in the following main risk areas:

- proper transposition of the directive within two years and its correct application from six years from adoption;
- adequate monitoring and evaluation of the Directive, which is to be ensured by reports every five years; and
- efforts to ensure consumer awareness of the products and services targeted by the Directive. These will require close cooperation with economic operators, stakeholders and national authorities.

Another implementation plan accompanied four proposals for directives that form part of the 'Circular Economy' Package<sup>75</sup>. These proposals would amend six waste management Directives: on waste,<sup>76</sup> packaging and packaging waste,<sup>77</sup> landfill of waste,<sup>78</sup> end-of-life vehicles,<sup>79</sup> batteries and accumulators and waste batteries and accumulators,<sup>80</sup> and waste electrical and electronic equipment.<sup>81</sup> The plan identifies the following implementation challenges, together with possible support actions by the Commission:

- reaching the targets within the deadlines. This involves developing infrastructure for separate collection and treatment of waste, updating waste management plans, enforcement and coordination between authorities at all levels, reducing the use of landfilling capacities, and implementing economic instruments; and
- monitoring and quality reporting. This includes improving data collection and developing more reliable data verification systems and reporting schemes.

The Commission considers that these plans will help Member States transpose and implement the proposed directives effectively. The Commission will monitor the use Member States make of the implementation plans.

## *8.2. Explanatory documents: state of play*

The EU institutions and the Member States agreed in 2011 that Member States, when notifying national transposition measures to the Commission, may also have to provide information on how they have transposed directives into their law.<sup>82</sup> The Commission can ask Member States to submit this supporting information ('explanatory documents') in justified cases.<sup>83</sup>

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

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<sup>74</sup> Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services, [COM\(2015\)615](#).

<sup>75</sup> [IP/15/6203](#).

<sup>76</sup> Directive [2008/98/EC](#).

<sup>77</sup> Directive [94/62/EC](#).

<sup>78</sup> Directive [1999/31/EC](#).

<sup>79</sup> Directive [2000/53/EC](#).

<sup>80</sup> Directive [2006/66/EC](#).

<sup>81</sup> Directive [2012/19/EC](#).

<sup>82</sup> The policy is contained in a (1) Joint Political Declaration of 28 September 2011 between the Commission and the Member States ([OJ 2011/C 369/02](#)) and (2) a Joint Political Declaration of 27 October 2011 between the European Parliament, the Council and the Commission ([OJ 2011/C 369/03](#)).

<sup>83</sup> The standard recital in such directives reads as follows: Member States 'undertake to accompany the notification of transposition measures with one or more explanatory documents, which can take the form of correlation tables or other documents serving the same purpose'. The Commission will have 'to justify on a case by case basis, when submitting the relevant proposals, the need for, and the proportionality of, providing such documents'.

In 2015, the Commission requested explanatory documents in 12 out of 14 proposals for directives submitted to the European Parliament and the Council. The 38 directives that the Parliament and the Council adopted during the year included 7 for which the Commission had requested explanatory documents. In all seven, the agreed recital on the need for such documents was maintained in the final text.

During the year Member States had to transpose 56 directives<sup>84</sup>. They had undertaken to submit explanatory documents for 11 of these<sup>85</sup>. The process of assessing the national measures for these directives is under way, so the Commission cannot yet draw conclusions on the quality of the explanatory documents received.

Two of the eleven directives for which the Member States had undertaken to provide explanatory documents concern the **environment**. The Commission received 12 explanatory documents for the Directive on the control of major-accident hazards involving dangerous substances<sup>86</sup> and 13 for the Directive on priority substances in the field of water policy.<sup>87</sup> These documents helped the Commission to assess the transposition of these directives in the Member States concerned. A good practice was the correlation tables notified by Hungary for the Directive on major-accident hazards. They were of good quality and contained the details needed, enabling the Commission to assess the completeness of Hungary's transposition of this important directive into national law.

Four of the eleven directives are in the field of **financial markets**. Member States notified to the Commission 11 explanatory documents for the Accounting Directive,<sup>88</sup> 5 for the Transparency Directive,<sup>89</sup> 9 for the Deposit Guarantee Schemes Directive<sup>90</sup> and 13 for the Omnibus II Directive.<sup>91</sup> In many cases, the explanatory documents provided are correlation tables, which in general include accurate information on the transposition of the provisions of the Directive and the related national provisions. The quality of the documents submitted varies. In one case, in addition to the national provisions transposing each provision of the Deposit Guarantee Schemes Directive, they also show which provisions have not been transposed and why, and the options and discretions that have been exercised. In other cases, explanatory documents submitted for the Omnibus II Directive, which amends two previous directives,<sup>92</sup> are incomplete; they refer to only one of the Directives amended and do not provide an overview of the transposition of the other parts of the amending directive.

Two of the eleven directives concern **transport**. The Commission received six explanatory documents for the Directive establishing a single European railway area<sup>93</sup> and eleven for the Directive on driving licences.<sup>94</sup> The quality of the documents on the former appears satisfactory and they provide the Commission with the necessary information. Assessment of those on the Driving Licences Directive is only starting as the transposition deadline was 31 December 2015.

Two of the eleven directives are in the field of **migration and home affairs**. Fifteen Member States submitted documents in the form of correlation tables on their transposition of the Asylum Procedures

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<sup>84</sup> For some of these 56 directives, some Member States have a transitional period and some other Member States are not concerned.

<sup>85</sup> Directives [2012/18/EU](#) (ENVIRONMENT), [2013/39/EU](#) (ENVIRONMENT), [2013/34/EU](#) (FISMA), [2013/50/EU](#) (FISMA), [2014/49/EU](#) (FISMA), [2014/51/EU](#) (FISMA), [2013/32/EU](#) (HOME), [2013/33/EU](#) (HOME), [2013/11/EU](#) (JUST), [2012/34/EU](#) (MOVE) and [2014/85/EU](#) (MOVE).

<sup>86</sup> Directive [2012/18/EU](#).

<sup>87</sup> Directive [2013/39/EU](#).

<sup>88</sup> Directive [2013/34/EU](#).

<sup>89</sup> Directive [2013/50/EU](#).

<sup>90</sup> Directive [2014/49/EU](#).

<sup>91</sup> Directive [2014/51/EU](#).

<sup>92</sup> Directives [2009/138/EC](#) and [2003/71/EC](#).

<sup>93</sup> Directive [2012/34/EU](#).

<sup>94</sup> Directive [2014/85/EU](#).



Directive.<sup>95</sup> For the Reception Conditions Directive,<sup>96</sup> 13 Member States submitted explanatory documents. In almost all cases detailed correlation tables have been submitted.

The last of the 11 directives is on **alternative dispute resolution for consumer disputes**<sup>97</sup>. For this the Commission received 11 explanatory documents. Their quality seems satisfactory. In particular, one Member State included comments on national case law and administrative measures which shed light on the national system. Another Member State provided indications of how transposition has been carried out and why there was no need to transpose certain measures since national rules already existed (which were always copied into the document). One Member State gave clear references for rules transposed at decentralised level.

In 2015, Member States did not deliver in all cases on their commitment to provide explanatory documents together with the national measures transposing the directives in their legal order. Where explanatory documents have been submitted, a first assessment indicates that their quality was uneven..

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

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<sup>95</sup> Directive [2013/32/EU](#).

<sup>96</sup> Directive [2013/33/EU](#).

<sup>97</sup> Directive [2013/11/EU](#).



### III. Infringement procedures

There are three main types of infringements of EU law:

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

Infringements may be detected by the Commission's own investigations or brought to its attention by complaints or petitions from members of the public, businesses, NGOs or other organisations. The Commission actively associates citizens to the handling of their complaints, informing them of the decisions taken throughout all stages of the procedure.<sup>98</sup>

If an EU Pilot dialogue with a Member State regarding a suspected infringement is unsuccessful, or if urgency or other overriding interest require immediate action, 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*.

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

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

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

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

The Court of Justice may also address conformity issues of national laws in regard of EU legislation in preliminary rulings under Article 267 TFEU at the request of national courts. Whilst preliminary rulings are distinct from infringement judgments, this gives the Commission an additional opportunity to ensure that violations of Union law deriving from national legislation or its application are remedied. The Commission is systematically following-up on Court's preliminary rulings where the Court identified non-conformities of national legislations.

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<sup>98</sup> Communication from the Commission to the Council and the European Parliament on updating the handling of relations with the complainant in respect of the application of Union law, [COM\(2012\)154 final](#).

## IV. Before an infringement procedure is started

### 1. Detecting problems

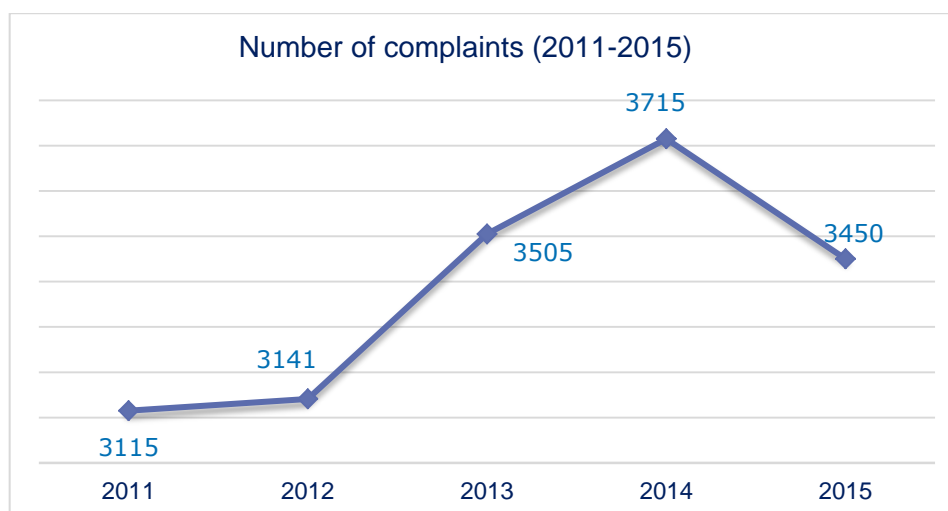
#### 1.1. Own-initiative cases

The Commission examines the implementation of EU law mainly on its own initiative. Unless urgency or an overriding interest require otherwise, when it suspects non-compliance the Commission usually first opens bilateral discussions with the Member State concerned via EU Pilot with a view to finding a solution complying with EU law (EU Pilot is explained in point 2 below). 578 EU Pilot investigations were launched in 2015 (against 777 in 2014).

In 2015 mobility and transport, energy and environment were the three policy areas with the highest number of potential infringements (with 96, 84 and 77 new EU Pilot files respectively). The Member States primarily concerned were Italy, Portugal and Germany (37, 30 and 28 new EU Pilot files respectively).

#### 1.2. Complaints and petitions

In 2015, members of the public, businesses, NGOs and other organisations remained very active in reporting potential breaches of EU law. However, the number of new complaints fell for the first time since 2011 (by around 9 % against 2014).



The chart below shows further key data on complaints from members of the public.<sup>99</sup>

#### Public complaints open at year-end

2963 > Complaints open at end-2014

3450 > New complaints registered in 2015

3315 > Complaints handled in 2015

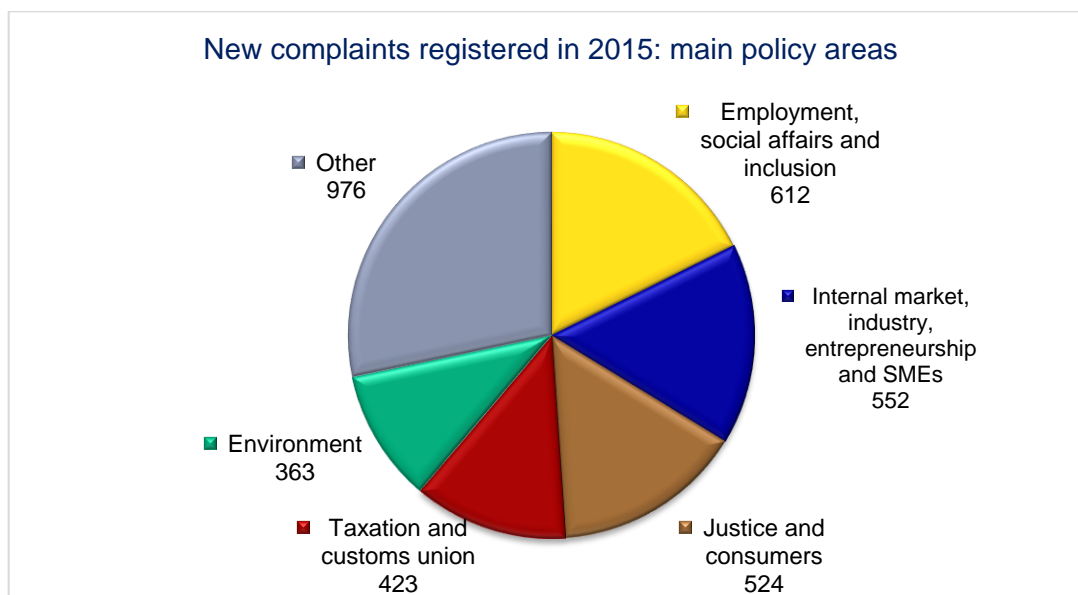
= 3098 > Complaints open at end-2015

**3450 new complaints were registered in 2015.** The three Member States against which the most complaints were filed were Italy, Spain and Germany.

<sup>99</sup> From the sum of complaint files open at end-2014 and new complaints opened in 2015 (2963+3450=6413), the number of complaints handled during 2015 is subtracted to give the number of complaints open at end-2015 (6413-3315=3098).

- **Italy:** 637 complaints, most of them related to: employment, social affairs and inclusion (286 complaints); taxation and customs union (69 complaints); and internal market, industry, entrepreneurship and SMEs (64 complaints);
- **Spain:** 342 complaints, especially in connection with: employment, social affairs and inclusion (66 complaints); justice and consumers (65 complaints); and internal market, industry, entrepreneurship and SMEs (59 complaints); and
- **Germany:** 274 complaints, mainly related to: justice and consumers (48 complaints); taxation and customs union (36 complaints); and internal market, industry, entrepreneurship and SMEs (32 complaints).

The following chart shows the five policy areas with the highest number of new complaints. Together they account for 72% of all complaints submitted against all Member States in 2015.



**3315 complaints were handled in 2015.** Once it had assessed the complaints, the Commission opened EU Pilot dialogues with Member States to clarify whether EU rules had been breached. Not all complaints led to bilateral discussions with Member States, for the following reasons: no EU laws were breached (2247), the Commission had no power to act (152) or the correspondence did not qualify as a complaint (454). These 2853 complaints have therefore been closed.

Complaints leading to discussions in EU Pilot were most frequently related to the internal market, industry, entrepreneurship and SMEs; taxation and customs; and employment, social affairs and inclusion (76, 55 and 28 files opened under EU Pilot respectively).

These complaints also mainly concerned Italy, Spain and Germany.

- **Italy:** 30 new EU Pilot files, most of them related to complaints about taxation and customs (8); internal market, industry, entrepreneurship and SMEs (5) and health and food safety (4);
- **Spain:** 24 new EU Pilot files, especially in connection with complaints about employment, social affairs and inclusion (7) and internal market, industry, entrepreneurship and SMEs (4); and
- **Germany:** 21 new EU Pilot files, most of them related to complaints about the internal market, industry, entrepreneurship and SMEs (10) and taxation and customs (5).

Through petitions and questions, the European Parliament alerted the Commission to shortcomings in the way some Member States were implementing and applying certain EU laws in 2015. These include:

- **Environment:** A letter of formal notice was sent to Finland over its transposition of the Directive on public access to environmental information<sup>100</sup>.

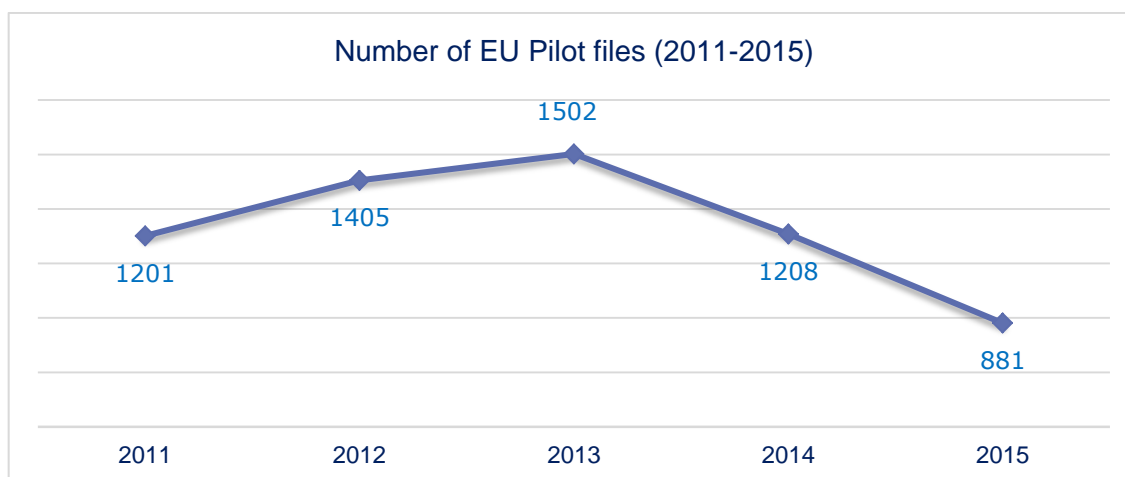
In five other environmental cases the Commission began bilateral dialogues with the Member States concerned. The cases involve shale gas, management of wolves, incorrect application of the Directive on strategic environmental assessment<sup>101</sup>, and the conformity of national legislation with the requirements of the Directive on public access to environmental information<sup>102</sup>.

- **Justice:** A written question in Parliament led the Commission to raise concerns with a Member State about the compatibility of its national legislation on law enforcement workers with the principle of free movement of persons. Also, following a petition, the Commission started a bilateral dialogue with a Member State over its restrictions on name-changing after marriage.
- **Taxation:** The Commission launched bilateral discussions with a number of Member States on taxes on immovable properties and local residence tax paid by students.

## 2. Solving problems

EU Pilot is a Commission initiative which aims to find solutions to problems in the application of EU law. It is supported by an online database and communication tool. Through the dialogue in EU Pilot, problems can be often solved more quickly ensuring compliance with the obligations of EU law, to the benefit of the public and businesses.

The number of new EU Pilot files increased gradually between 2011 and 2013 (see the chart below). However, in 2015 the number fell back below its 2011 level: 881 new files were opened (a drop of around 30 % from 2014).



<sup>100</sup> Directive [2003/4/EC](#).

<sup>101</sup> Directive [2001/42/EC](#).

<sup>102</sup> Directive [2003/4/EC](#).

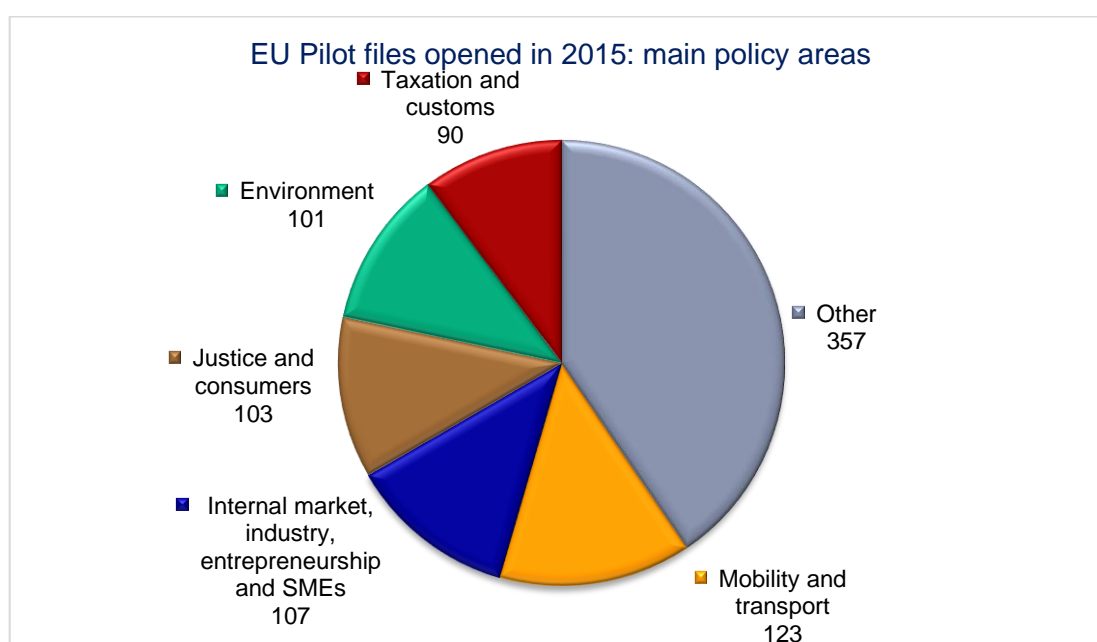
The following chart shows the main EU Pilot figures for 2015:<sup>103</sup>

EU Pilot files open at the year-end

1348	>	EU Pilot files open at end-2014
881	>	New EU Pilot files registered in 2015
969	>	EU Pilot files handled in 2015
= 1260	>	EU Pilot files open at end-2015

**881 new EU Pilot files were opened in 2015.** Of these 295 were triggered by complaints and 578 were opened by the Commission on its own initiative.

The following pie chart shows the policy areas in which most new EU Pilot files were opened in 2015:

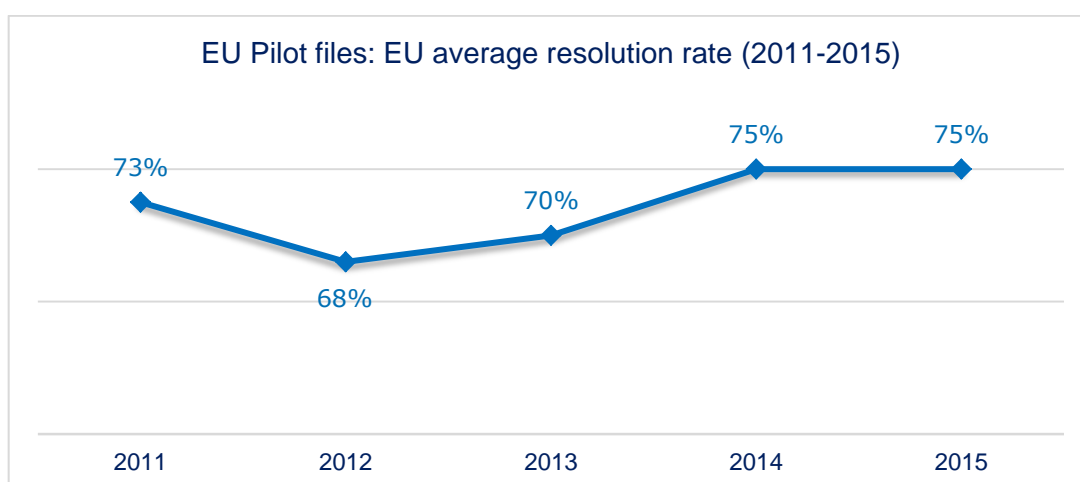


**969 EU Pilot files were handled in 2015.** The Commission closed 726 of these after receiving satisfactory answers from the Member States concerned. This gives a resolution rate of 75 %, exactly the same as in 2014.

Altogether, 243 EU Pilot files were closed because the Commission rejected the responses provided by Member States. Of these, **201** were followed by formal infringement procedures (there were 325 such files in 2014). While **65** of them were complaint-based, the remaining **136** were own initiatives by the Commission.

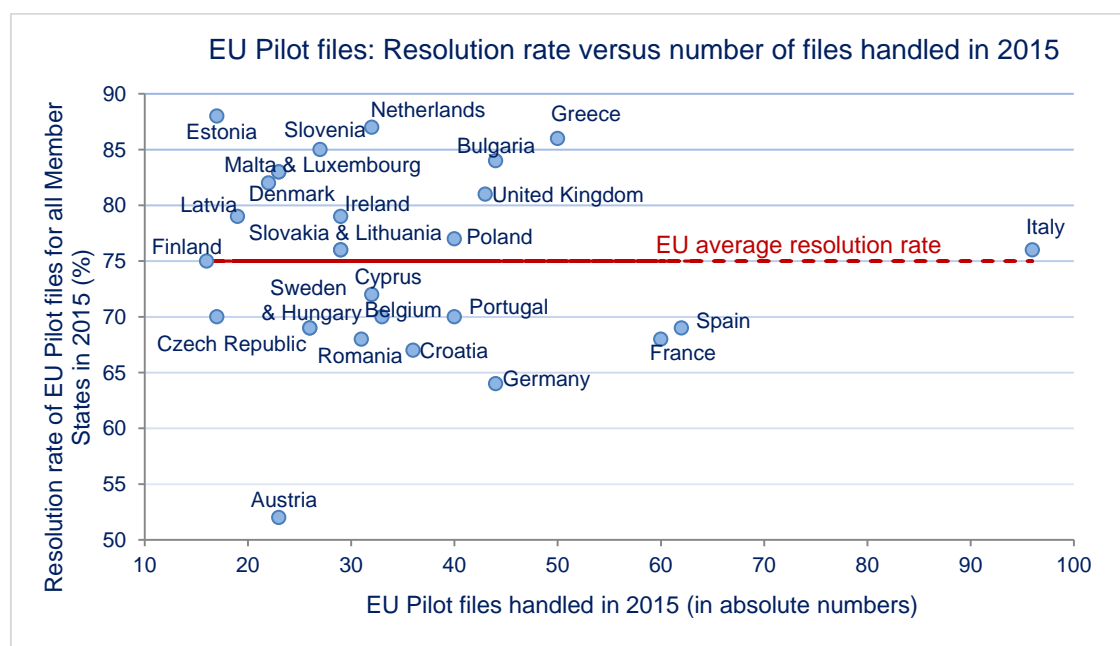
Most EU Pilot files which led to formal infringement procedures concerned the following policy areas: mobility and transport (50 cases), environment (38), internal market, industry, entrepreneurship and SMEs (29), and taxation and customs union (26). Italy, France and Spain had the highest number of files in EU Pilot that were followed by infringement procedures (at 19, 17 and 16 files each respectively).

<sup>103</sup> From the sum of EU Pilot files open at end-2014 and new EU Pilot files opened in 2015 (1348+881=2229), the number of files handled during 2015 is subtracted to give the number of files open at end-2015 (2229-969=1260).

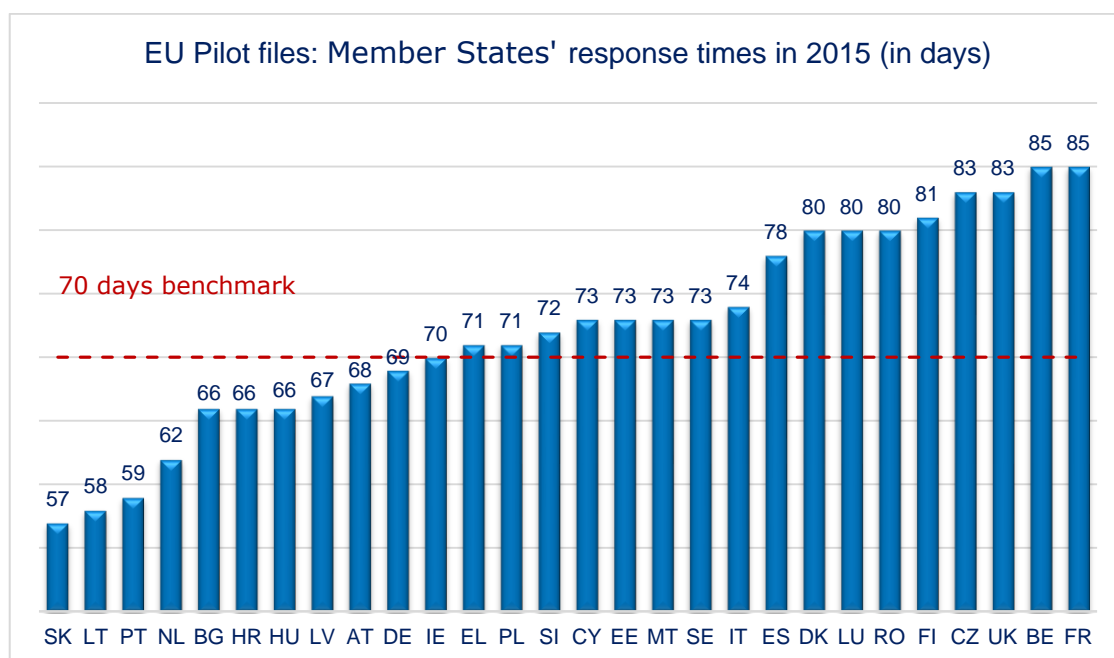


**1 260 EU Pilot files were open at the end of 2015.** Most of them concerned Italy (111), Spain (78), and Poland (74). The environment remained the main policy area concerned, with 298 open files, followed by justice (191) and taxation and customs (141).

The following chart shows the EU Pilot resolution rate (the number of files the Commission closed without opening an infringement case by Member States in 2015) related to the number of files handled in the same year.



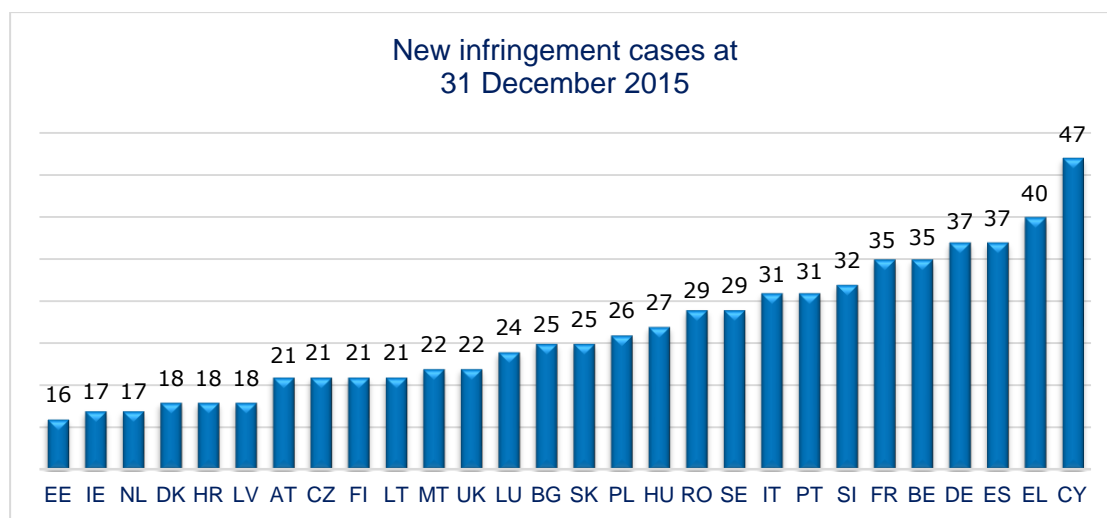
Member States should provide a solution to a problem within 10 weeks (70 days) of being notified of it by the Commission in EU Pilot. The next chart shows the average response time by Member State in 2015.



## V. Stages in infringement procedures

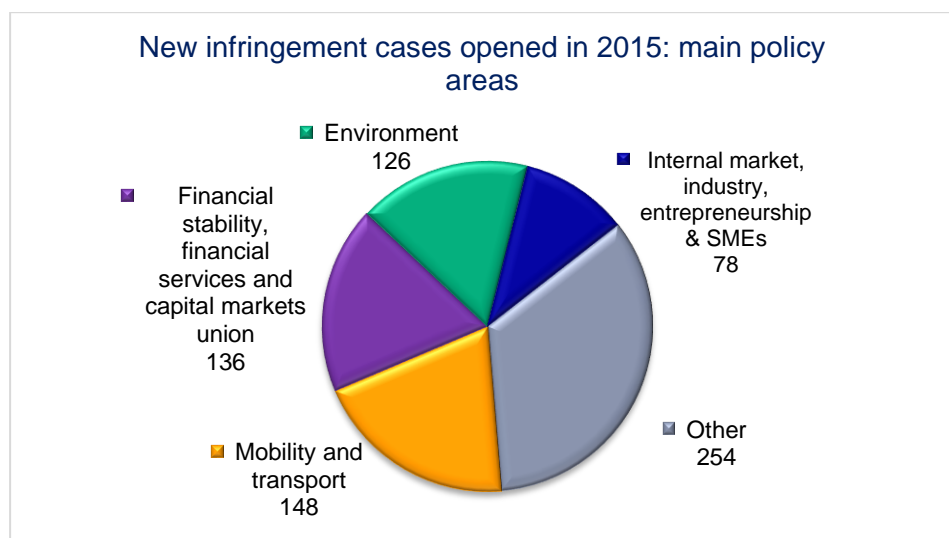
### 1. Pre-litigation phase

In 2015, the Commission launched **742** new procedures by sending a letter of formal notice. The following chart gives the breakdown by Member State.



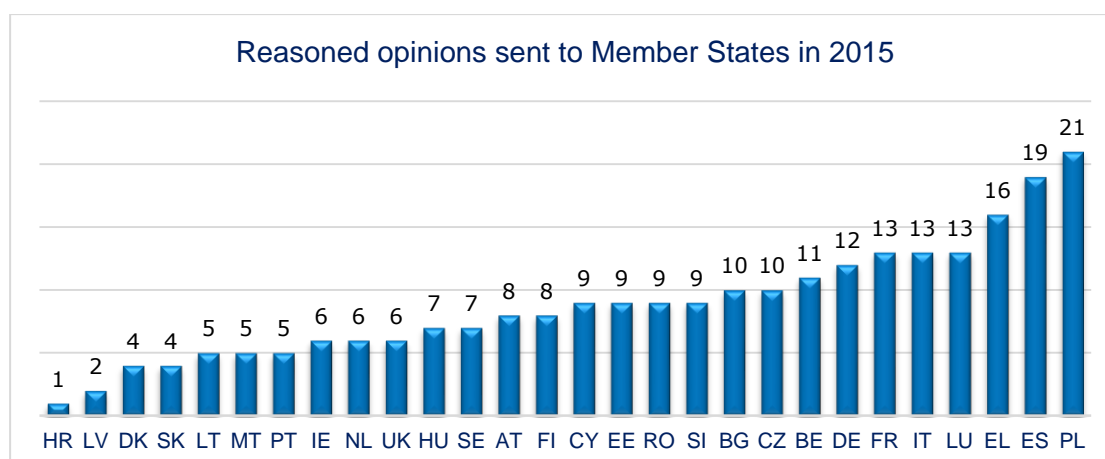


The following chart shows the main policy areas in which new procedures were opened.

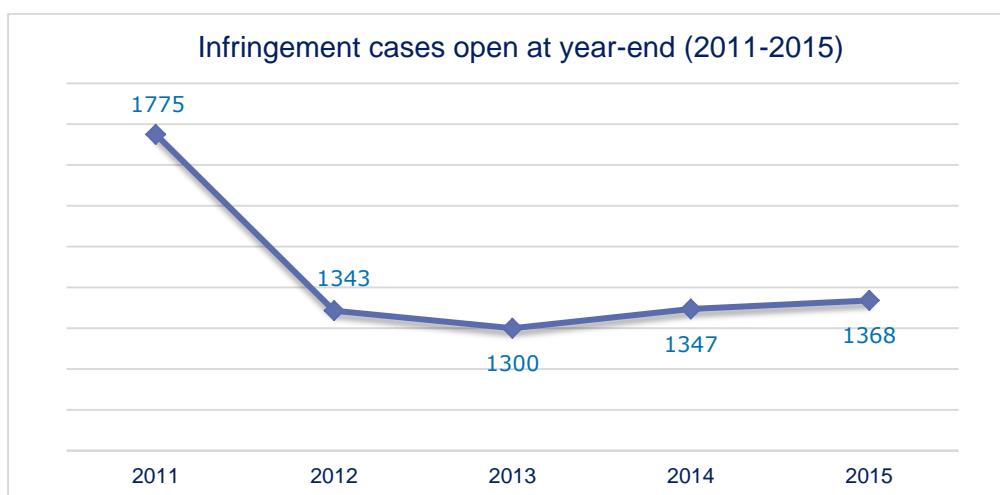


The Commission also sent 248 reasoned opinions to Member States during 2015. The main policy areas concerned were mobility and transport (49), environment (40), financial services (40) and energy (36).

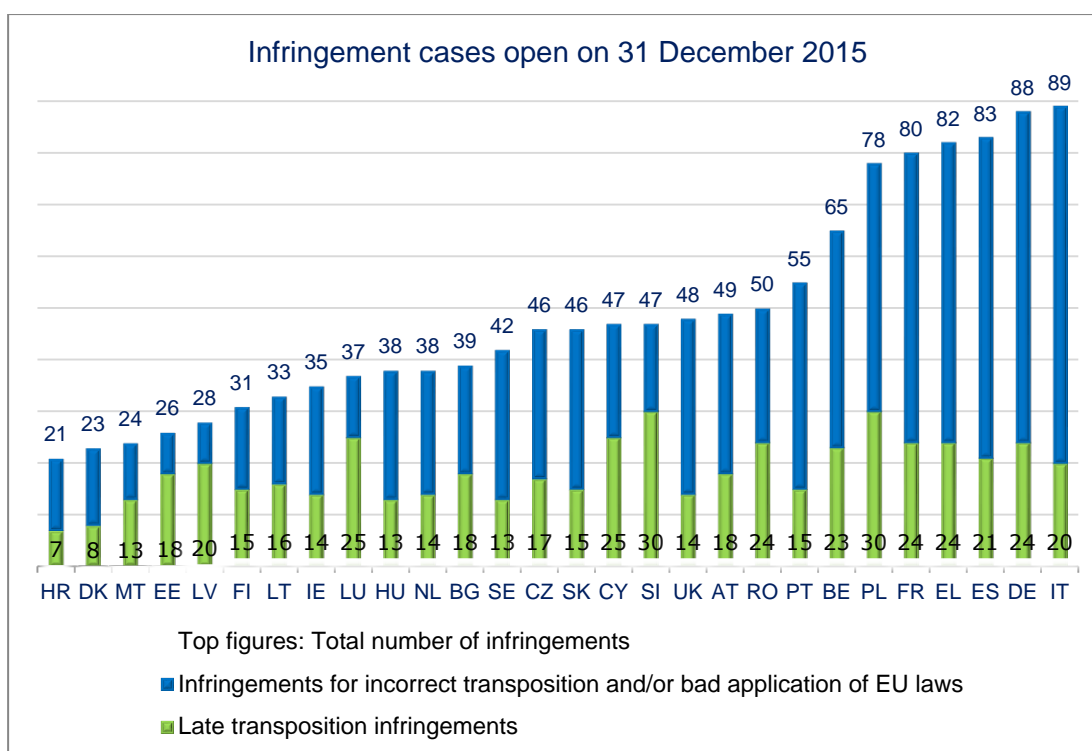
The following chart gives the breakdown by Member State.



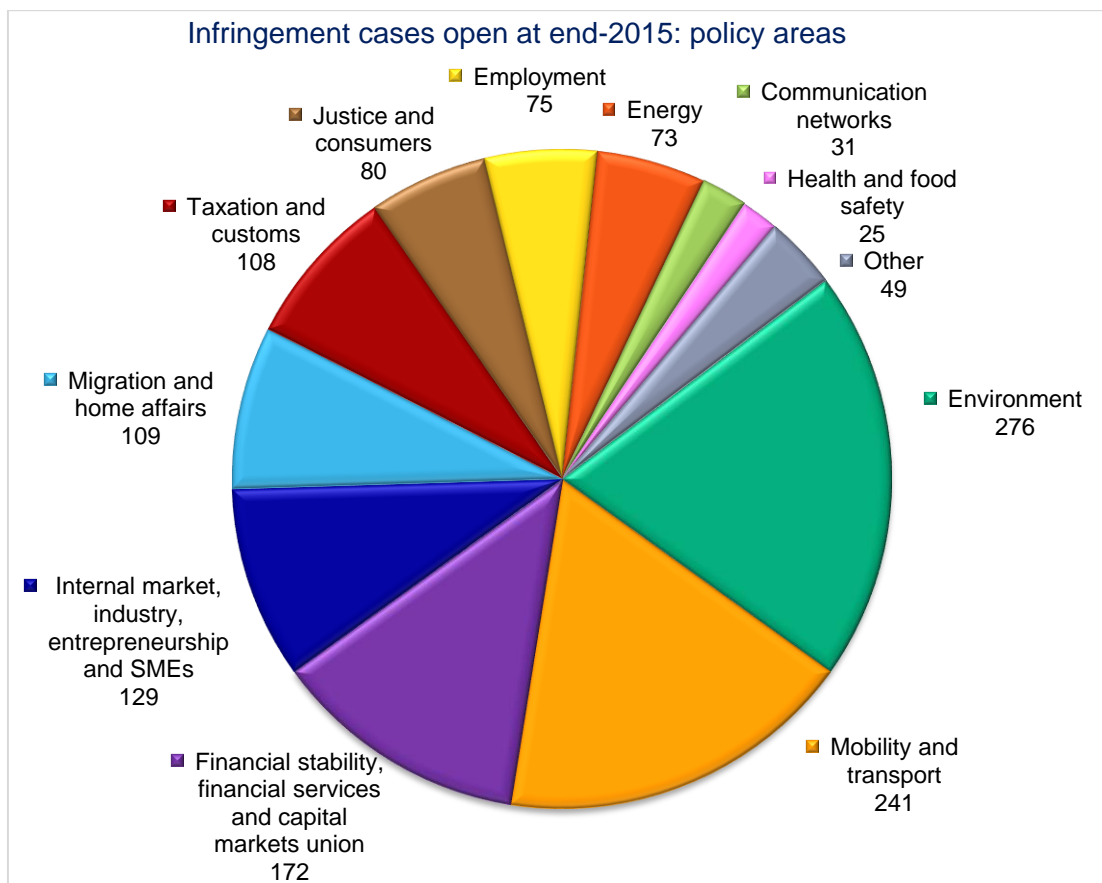
At the end of 2015, **1 368** infringement cases remained open. This is a slight increase from the previous year but still well below the 2011 level, as the following chart shows.



The following chart shows the number of open infringement cases by Member State at the end of 2015:



The following chart shows the breakdown of the infringement cases open at the end of 2015, by policy area:



Even after it has launched a formal procedure the Commission continues its dialogue with the Member State in order to seek compliance. Statistics confirm that Member States make serious efforts to settle their infringements before the Court hands down its ruling.<sup>104</sup>

In 2015, the Commission closed:

- 474 infringements after sending letters of formal notice;
- 183 cases after sending reasoned opinions; and
- 12 cases after deciding to refer the case to the Court but before submitting the application. In addition, the Commission withdrew 13 cases from the Court before the latter handed down its ruling.

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

In 2015 the Court gave 25 judgments under Article 258 TFEU, of which 18 (82 %) were in the Commission's favour. The Court delivered the most judgments against:

- Poland (four, all in the Commission's favour),
- Belgium (two, both in the Commission's favour),
- Bulgaria (two, both in the Commission's favour),

<sup>104</sup> The figures that follow were calculated for all infringement cases irrespective of origin (i.e. complaint, Commission's own initiative or late transposition of directives by Member States).

- France (two, both in the Commission's favour),
- Germany (two, both in the Commission's favour),
- Greece (two, both in the Commission's favour),
- Luxembourg (two, both in the Commission's favour),
- Slovakia (two, both in Slovakia's favour) and
- the United Kingdom (two, one of them in the United Kingdom's favour).

Taxation (9), employment (6) and environment (4) were the subject of the most Court judgments in 2015.

Member States frequently take the measures needed to comply with a Court judgment promptly. However, at the end of the year 85 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 involved Greece (10), Poland (8) and Spain (7) and were related to environment (35), transport (12), taxation (9) and health and consumer protection (7).

Of these 85 cases, 2 had already been referred to the Court for the second time. When the Court imposes financial penalties under Article 260(2) TFEU, the defaulting Member State must pay the lump sum immediately and continue to pay the periodic penalty until it complies fully with the first and second Court judgments. In 2015, the Court delivered three judgments under Article 260(2) TFEU. It imposed penalty payments on Italy<sup>105</sup> and Greece<sup>106</sup>. At the end of 2015, seven infringement procedures were still open after a Court ruling under Article 260(2) TFEU.

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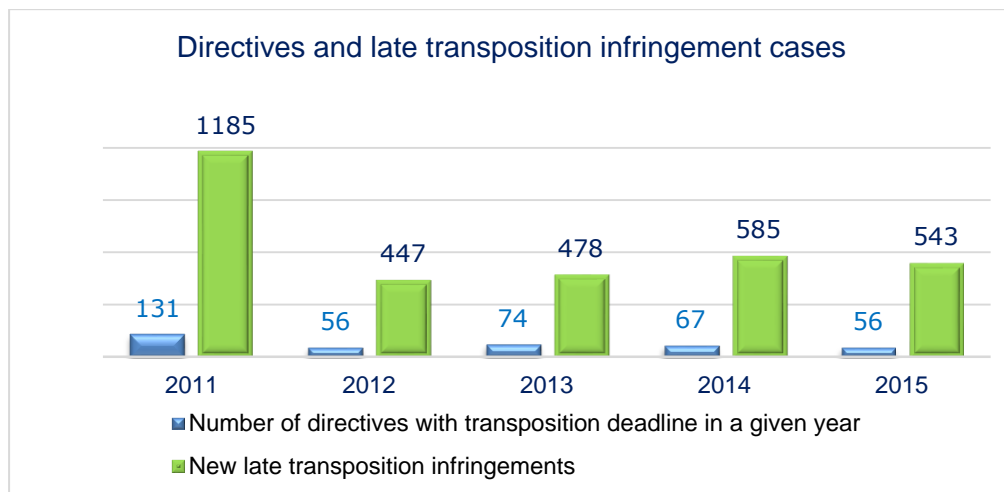
<sup>105</sup> Commission v Italy, [C-653/13](#) (lump sum payment of EUR 20 million; penalty: EUR 120 000 for each day of non-compliance with the judgment under Article 258 TFEU); Commission v Italy, [C-367/14](#) (lump sum payment of EUR 30 million; penalty: EUR 12 million for each half-year of non-compliance with the judgment under Article 258 TFEU).

<sup>106</sup> Commission v Greece, [C-167/14](#) (lump sum payment of EUR 10 million; penalty: EUR 3.64 million for each half-year of non-compliance with the judgment under Article 258 TFEU).

## VI. Transposition of directives

### 1. Late transposition

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



There were 56 directives to transpose in 2015, fewer than the 67 in 2014. **New late transposition infringements also fell slightly, to 543 from 585.**

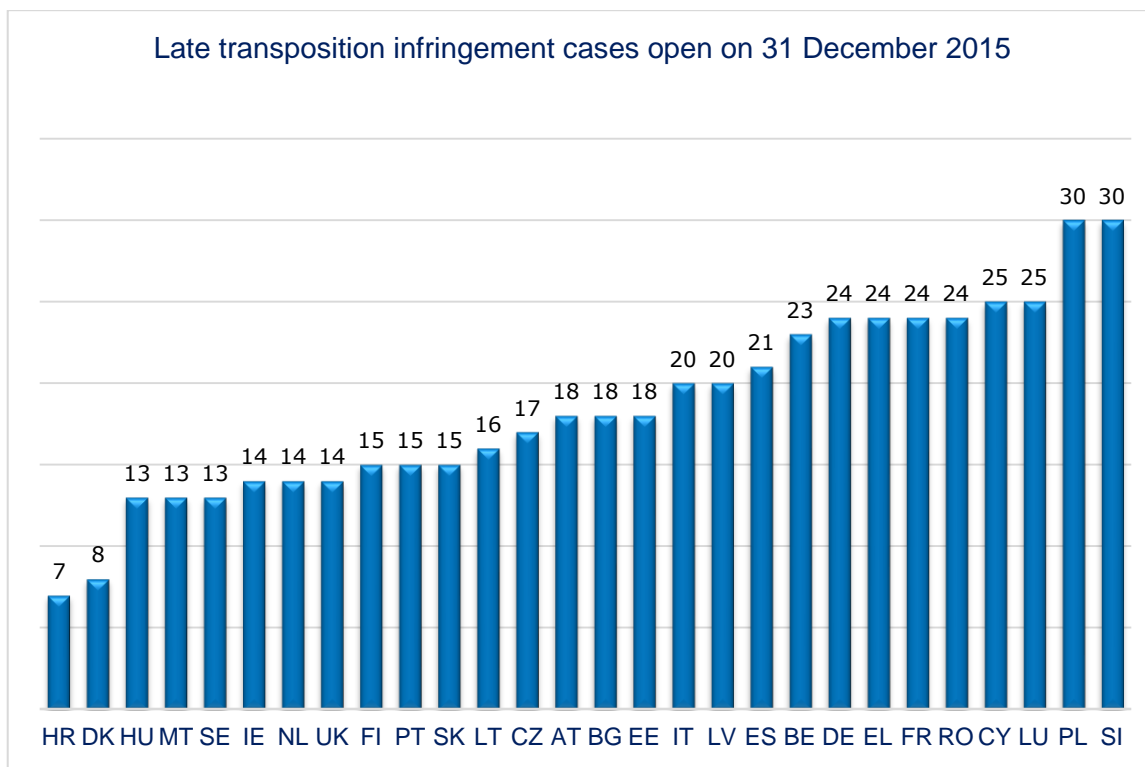
**518 late transposition infringement cases were still open** at the end of 2015, a 19 % increase on the 421 cases open at the end of 2014.

The following chart gives the key figures on late transposition infringement cases (LTIs) launched by the Commission in 2015:

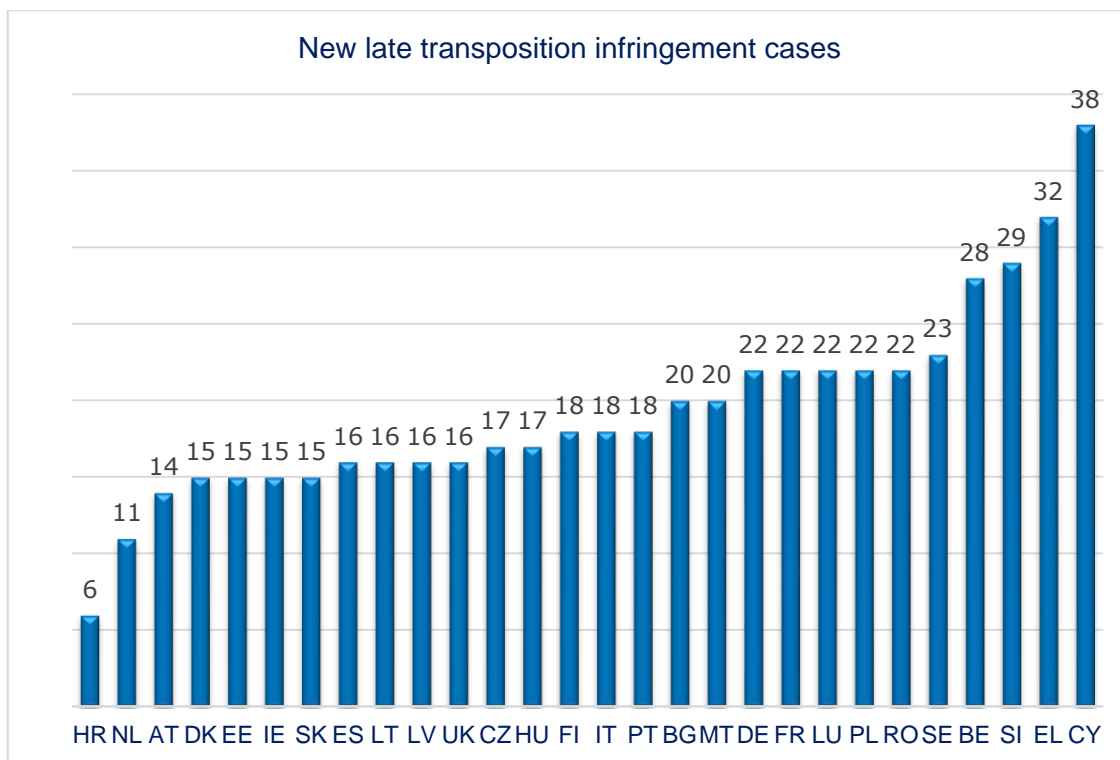
#### Late transposition infringement cases open at year-end

421	>	LTIs open at end-2014
543	>	New LTIs registered in 2015
446	>	LTIs closed in 2015
= 518	>	LTIs open at end-2015

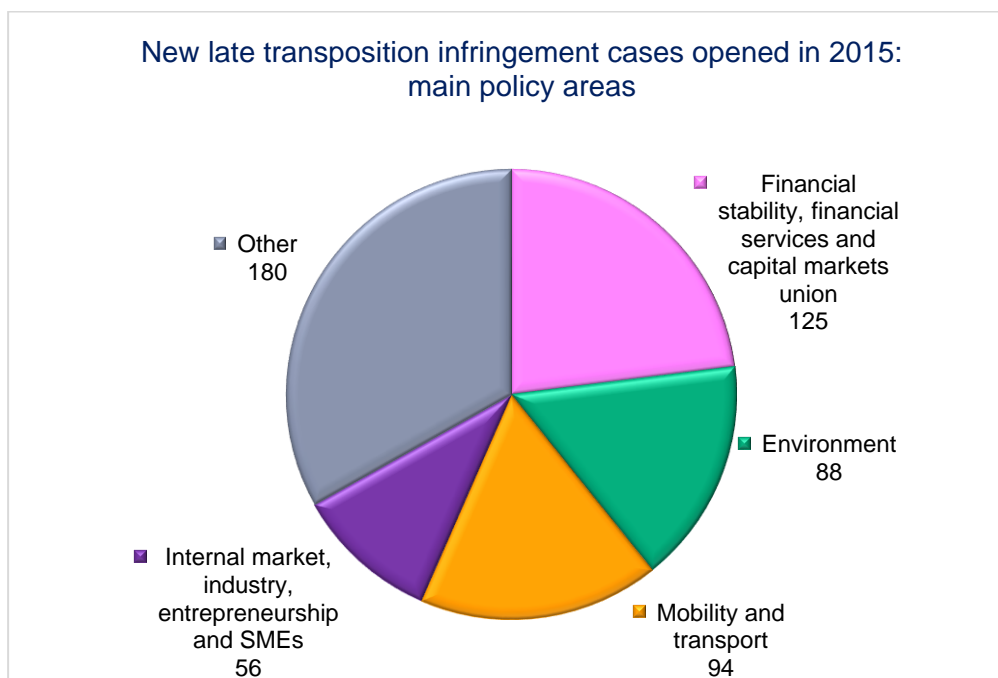
The following chart shows the number of LTIs open at the end of 2015 by Member State, irrespective of the year in which the case was opened.



The next chart shows new LTI cases (**543** in total) opened in 2015, by Member State.



The policy areas in which the new cases were launched in 2015 are shown in the following chart:



New cases were launched against 26 Member States for late transposition of the Directive establishing a framework for the recovery and resolution of credit institutions and investment firms.<sup>107</sup> In addition, 23 Member States were involved in cases of late transposition of the Directive on the powers of the European Supervisory Authority.<sup>108</sup> Twenty-one procedures were launched over late transposition of the Solvency II Directive,<sup>109</sup> the Directive on the control of major-accident hazards involving dangerous substances<sup>110</sup> and the Directive establishing a single European railway area.<sup>111</sup>

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

Under Article 260(3) TFEU, the Commission may propose financial penalties even when referring a case for the first time to the Court of Justice under Article 258 TFEU for absence of complete transposition of a legislative Directive. This innovation, introduced in the Treaty of Lisbon, aims to give Member States a greater incentive to transpose directives on time. The Commission decides on the level of financial penalties to propose in line with the policy laid down in its Communication on the implementation of Article 260(3) TFEU.<sup>112</sup>

In 2015, the Commission continued to bring late transposition infringement cases to the Court of Justice with a request for daily penalties under Article 260(3) TFEU. Five Member States were referred to the Court in 2015: Poland (two cases)<sup>113</sup> and Germany,<sup>114</sup> Greece,<sup>115</sup>

<sup>107</sup> Directive [2014/59/EU](#).

<sup>108</sup> Directive [2014/51/EU](#).

<sup>109</sup> Directive [2009/138/EC](#).

<sup>110</sup> Directive [2012/18/EU](#).

<sup>111</sup> Directive [2012/34/EU](#).

<sup>112</sup> OJ C 12, 15.1.2011, p. 1–5.

<sup>113</sup> Commission v Poland, [C-545/15](#). The Commission referred Poland to the Court for failing to fully implement the Waste Electrical and Electronic Equipment Directive. It proposed a daily penalty of EUR 71 610; Commission v Poland, [C-683/15](#). The Commission referred Poland to the Court for failing to fully implement the Directive establishing a framework for the recovery and resolution of credit institutions and investment firms. It proposed a daily penalty of EUR 51 456.



Luxembourg<sup>116</sup> and Slovenia<sup>117</sup> (one case each). The Commission withdrew its application from the Court in the case concerning Slovenia's late transposition of the Waste Directive.<sup>118</sup> In another case concerning late transposition of the Directive on the protection of animals used for scientific purposes, the Commission took a decision for referral but the Member State adopted the necessary transposition measures before the application was sent to Court and thus avoided the Court procedure.

In 2015, Member States increased their efforts to complete transposition before the Court of Justice delivered its judgments. However, four cases with a proposal for daily penalties remained open: two cases against Poland, and one case each against Greece and Luxembourg.

In one case, the Member State concerned completed transposition and the Commission accordingly withdrew the infringement action at a very late stage in the Court proceedings.<sup>119</sup> This particularly late withdrawal led the Commission to consider revising its policy on the implementation of Art 260(3) TFEU<sup>120</sup> in order to ensure more effective and timely transposition of EU Directives in the Member States.<sup>121</sup>

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<sup>114</sup> Commission v Germany, [C-546/15](#). The Commission referred Germany to the Court for failing to fully implement the Waste Electrical and Electronic Equipment Directive. It proposed a daily penalty of EUR 210 078.

<sup>115</sup> Commission v Greece, [C-540/15](#). The Commission referred Greece to the Court for failing to fully implement the Energy Efficiency Directive. It proposed a daily penalty of EUR 29 145.6.

<sup>116</sup> Commission v Luxembourg, [C-684/15](#). The Commission referred Luxembourg to the Court for failing to fully implement the Directive establishing a framework for the recovery and resolution of credit institutions and investment firms. It proposed a daily penalty of EUR 6 700.

<sup>117</sup> Commission v Slovenia, [C-357/15](#). The Commission referred Slovenia to the Court for failing to fully implement the Waste Electrical and Electronic Equipment Directive. It proposed a daily penalty of EUR 8 408.4.

<sup>118</sup> Directive [2012/19/EU](#).

<sup>119</sup> Commission v. Poland [C-320/13](#), [IP/15/4499](#).

<sup>120</sup> [OJ C12, 15.01.2011, p.1-5](#).

<sup>121</sup> [IP/15/4499](#).

## VII. Conclusions

The high number of infringement procedures in 2015 shows that ensuring timely and correct application of EU legislation in the Member States remains a serious challenge. The Commission will further strengthen its response when breaches of EU law are detected. The adoption of the Better Regulation Package in May 2015 will provide Member States with the support and assistance they need during the implementation phase and will make it easier to enforce EU legislation. As part of the Better Regulation Agenda, the Commission has already reinforced its preventive action to support Member States in the implementation process of Union legislation. In this respect, the Commission provides guidance and support to Member States using a wide array of tools (guidance documents, meetings, workshops, expert bodies, implementation and ex-post evaluation reports, etc.). At the same time, the Commission intends to strengthen enforcement of EU law based on structured and systematic transposition and conformity checks of national legislation. However, Member States should also step up their efforts to comply, for the benefit of the public and businesses alike.

In line with the Juncker Commission's focus on priority files ("big on big, small on small"), current approaches to Commission' enforcement policy need to evolve with a view to more timely and effective enforcement. The Commission will take stock of this evolution in a new Communication on the application of Union law, which aims at a more strategic approach to enforcement across all policy areas.