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COMMISSION STAFF WORKING DOCUMENT

Part II: Member States

Accompanying the document

Monitoring the application of European Union law 2016 Annual Report

{ COM(2017) 370 final }

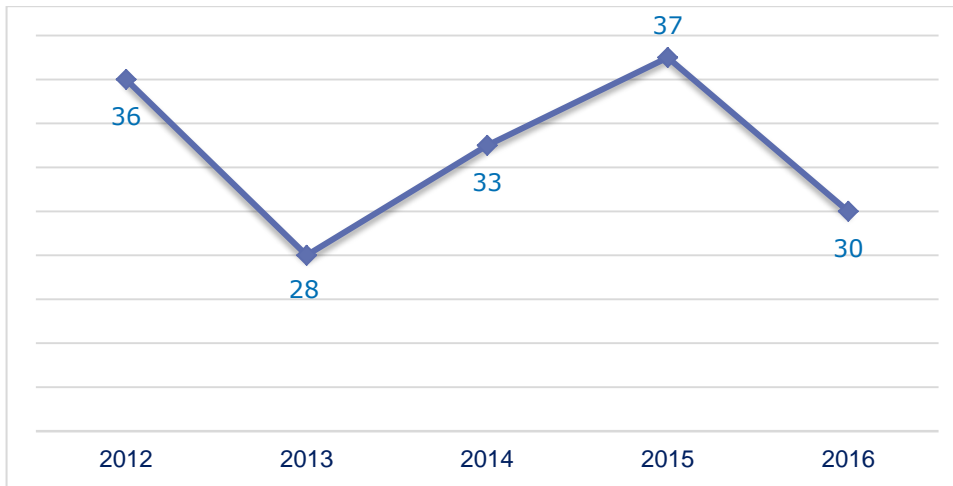
{ SWD(2017) 259 final }

Lithuania

In 2016 new complaints against Lithuania fell after rising for 2 years. The number of new EU Pilot files continued its downward trend. However, both the numbers of open infringement cases and of new cases for late transposition rose to their highest levels since 2012.

I. COMPLAINTS

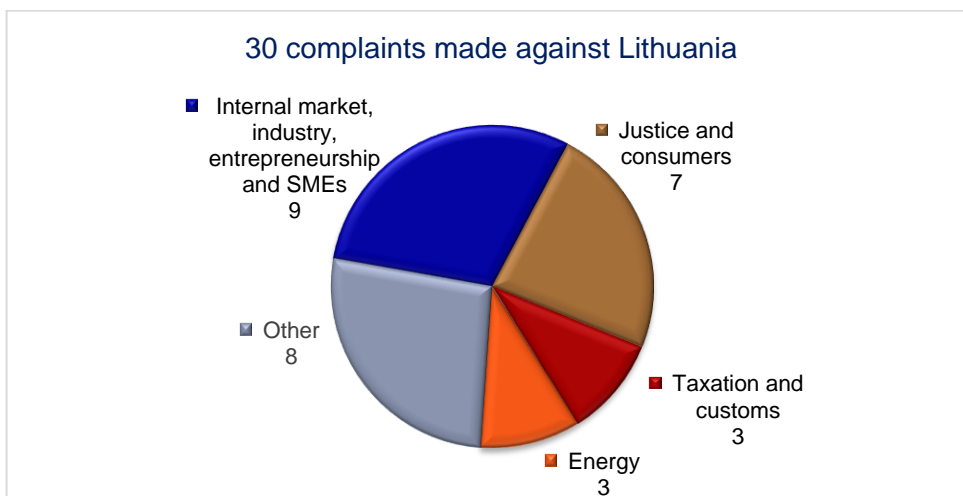
1. New complaints made against Lithuania by members of the public (2012-2016)



2. Public complaints against Lithuania open at year-end

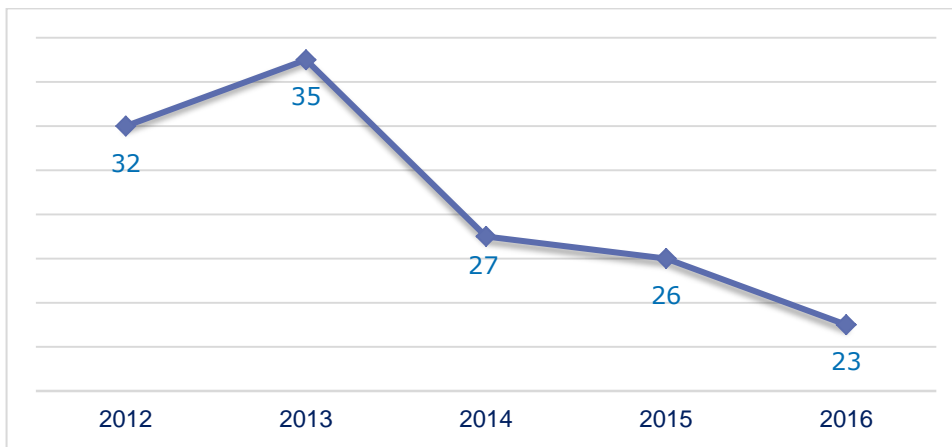
45	>	Complaints open at end-2015
30	>	New complaints registered in 2016
36	>	Complaints handled in 2016
<hr/>		
= 39	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

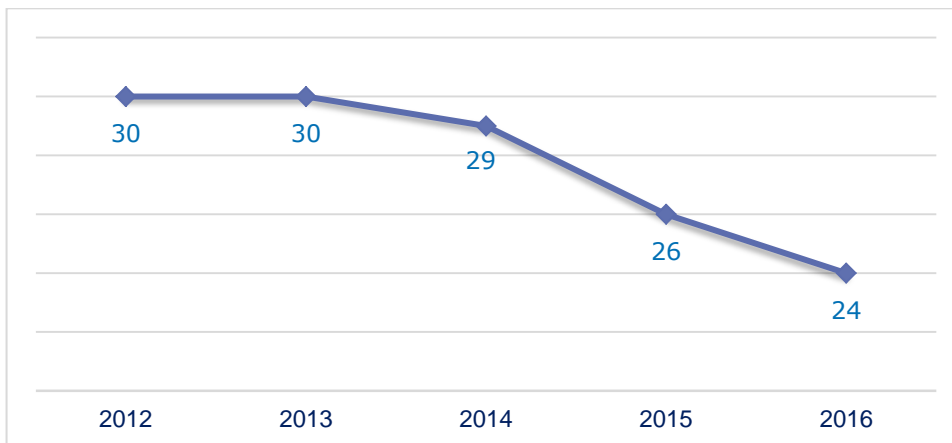


II. EU PILOT

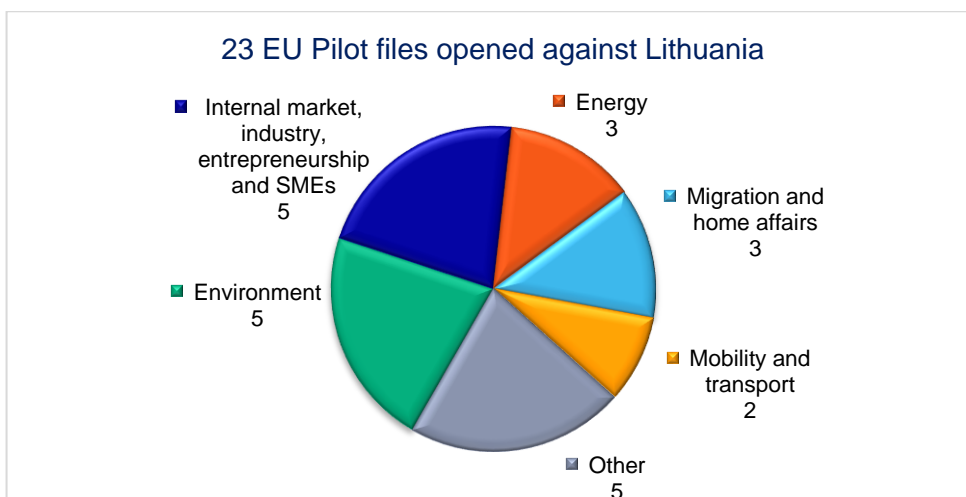
1. New EU Pilot files opened against Lithuania (2012-2016)



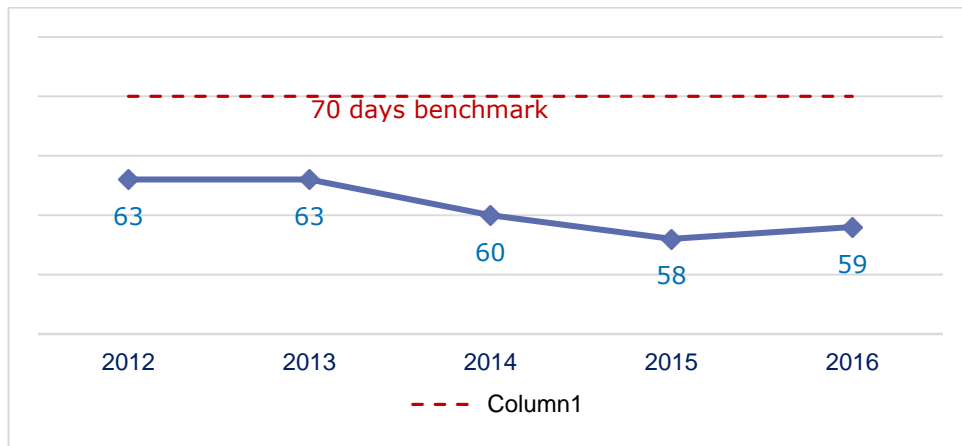
2. Files relating to Lithuania open in EU Pilot at year-end



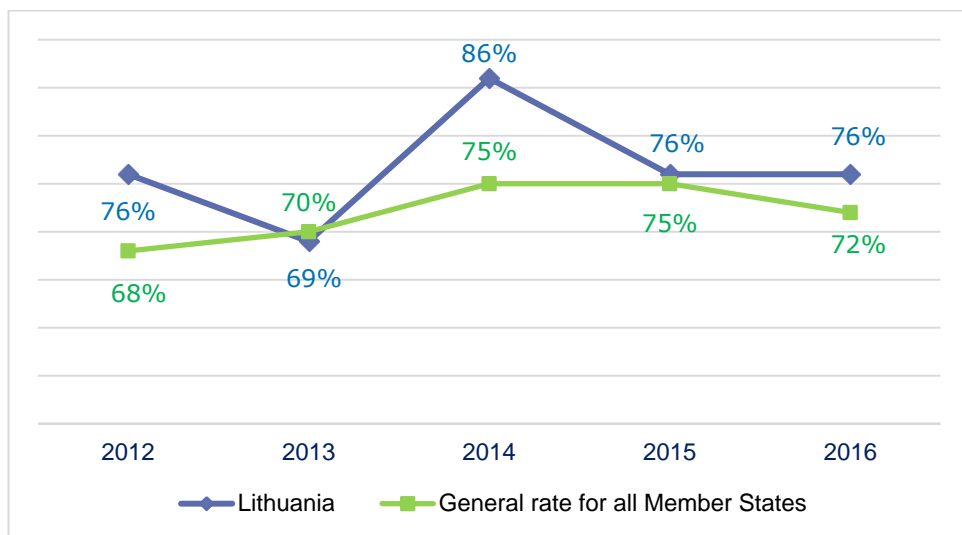
3. New EU Pilot files opened in 2016: main policy areas



4. EU Pilot files: Lithuania's average response time in 2012-2016 (in days)

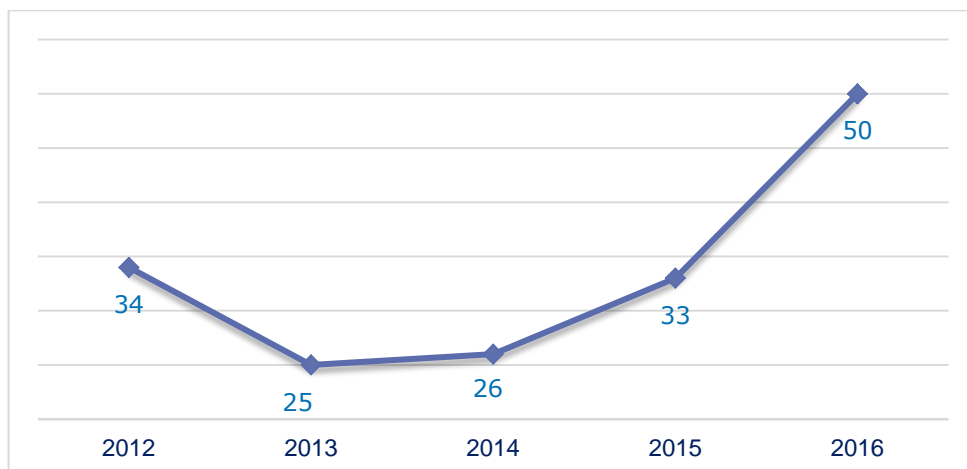


5. EU Pilot files: Lithuania's resolution rate in 2012-2016

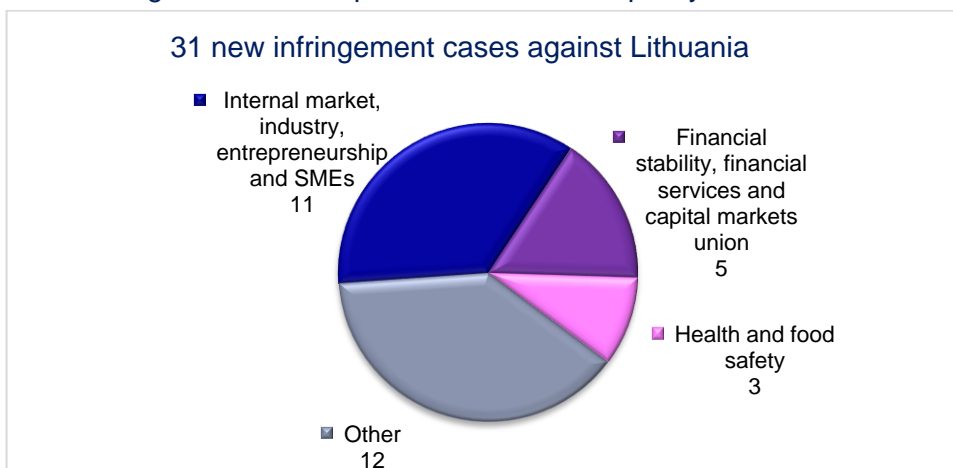


III. INFRINGEMENT CASES

1. Infringement cases against Lithuania open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 31 new infringement cases against Lithuania in 2016. These, and other major ongoing infringement cases, include:
- non-communication of national measures transposing the Framework Decision on the 'Swedish initiative' on simplifying the exchange of information and intelligence between law enforcement authorities of EU Member States;¹
 - non-communication of national measures transposing the Directive on interpretation and translation in criminal proceedings;²
 - national restrictions on the acquisition of agricultural land which limit the free movement of capital and freedom of establishment by being discriminatory and/or disproportionate;³
 - restrictions on the freedom to provide port services and the freedom of establishment;
 - non-communication of national measures transposing the Maritime Spatial Planning Directive;⁴
 - excessive and unjustified obstacles in the area of professional services that run counter to the Services Directive;⁵
 - failure to transpose in full one or more of the three Directives on public procurement and concessions;⁶
 - failure to fulfil the obligations under EU vehicle type approval legislation.⁷
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

¹ Framework Decision [2006/960/JHA](#).

² Directive [2010/64/EU](#); [MEMO/16/3644](#).

³ Press releases [IP/16/1827](#) and [MEMO/16/1823](#).

⁴ Directive [2014/89/EU](#).

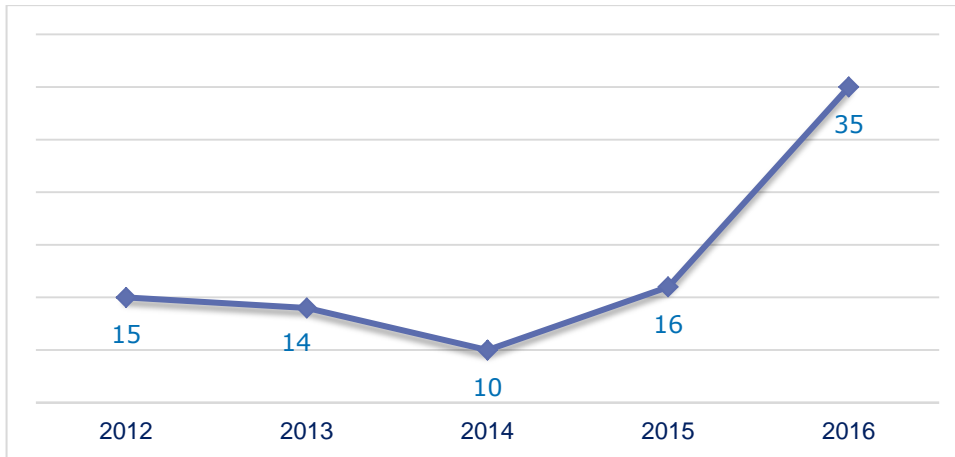
⁵ Directive [2006/123/EC](#), [IP/16/3646](#), [MEMO/16/3644](#).

⁶ Directives [2014/23/EU](#), [2014/24/EU](#), [2014/25/EU](#), [MEMO/16/1823](#).

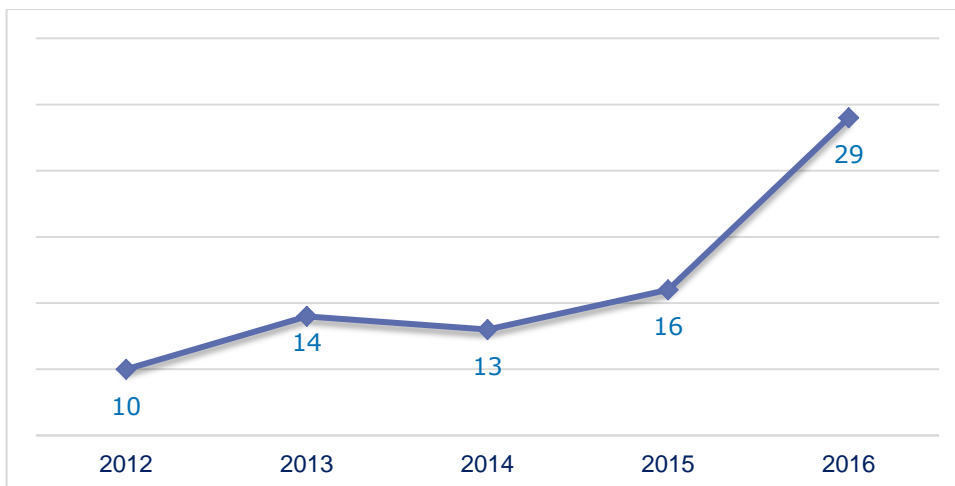
⁷ Directive [2007/46/EC](#) and Regulation [2007/715/EC](#), [IP/16/4214](#).

IV. TRANSPOSITION OF DIRECTIVES

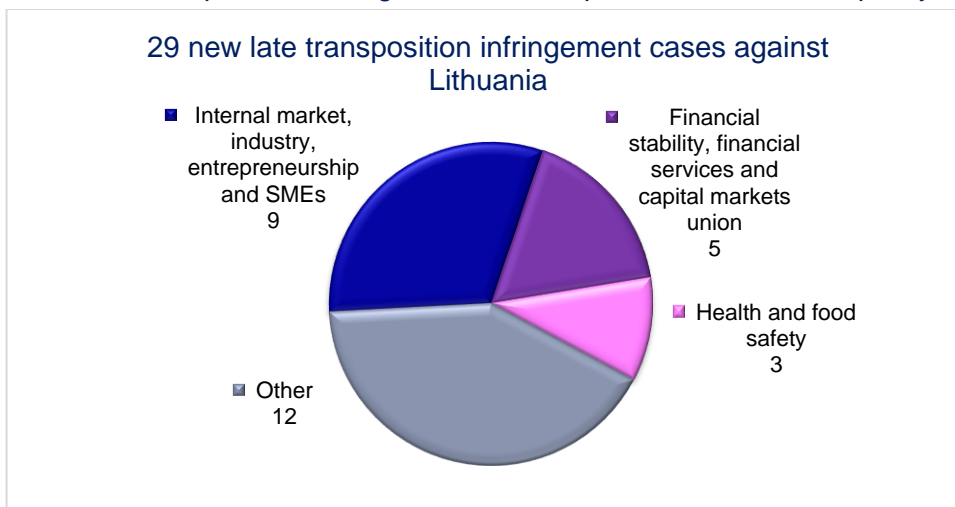
1. Late transposition infringement cases against Lithuania open on 31 December (2012-2016)



2. New late transposition infringement cases against Lithuania (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- non-communication of national measures transposing the Seveso III Directive;⁸
- completing the notification of all national measures necessary to transpose the Capital Requirements Directive⁹ and the Bank Resolution and Recovery Directive;¹⁰
- non-compliance with the Railway Safety Directive;¹¹
- lack of implementation of the Regulations on airworthiness.¹²

VI. IMPORTANT JUDGMENTS

1. Court rulings¹³

There were no major Court rulings in 2016.

2. Preliminary rulings

In a preliminary ruling addressed to the Lithuanian judiciary, the Court held that:

- an air carrier which has concluded a contract of international carriage with an employer of persons carried as passengers is liable to that employer for damage caused by a delay in flights on which its employees were passengers under that contract.¹⁴
- an organ of the executive such as the Ministry of Justice of the Republic of Lithuania cannot be designated as 'issuing judicial authority' and the act issued by such body cannot be regarded as a 'judicial decision' for the purpose of executing a European arrest warrant.¹⁵

⁸ Directive [2012/18/EU](#).

⁹ Directive [2013/36/EU](#).

¹⁰ Directive [2014/59/EU](#).

¹¹ Directive [2004/49/EC](#).

¹² Regulations (EU) [748/2012](#) and [1321/2014](#).

¹³ These rulings are almost exclusively handed down in infringement procedures.

¹⁴ *Air Baltic Corporation AS v Lietuvos Respublikos specialiujų tyrimų tarnyba*, [C-429/14](#).

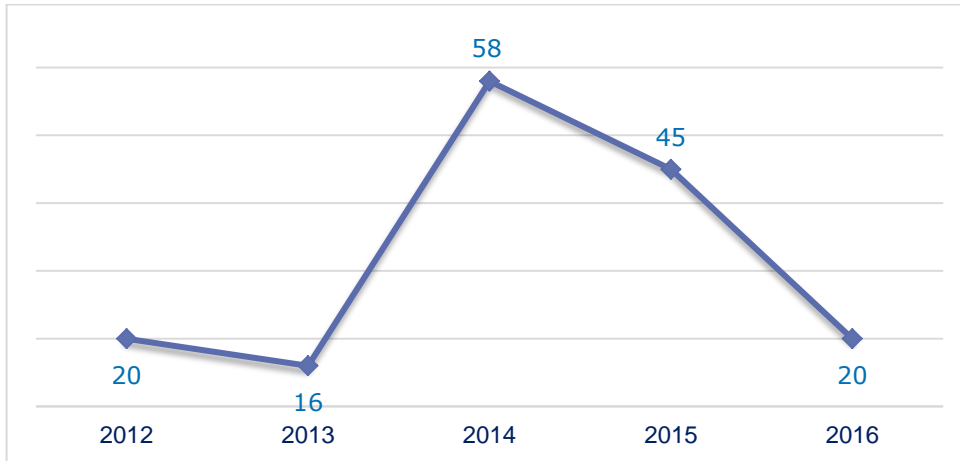
¹⁵ *Kovalkovas*, [C-477/16 PPU](#).

Luxembourg

New complaints against Luxembourg in 2016 fell by more than half, the second drop in a row. The number of new EU Pilot files was unchanged. By contrast, open infringement cases and new infringement cases for late transposition both increased quite sharply.

I. COMPLAINTS

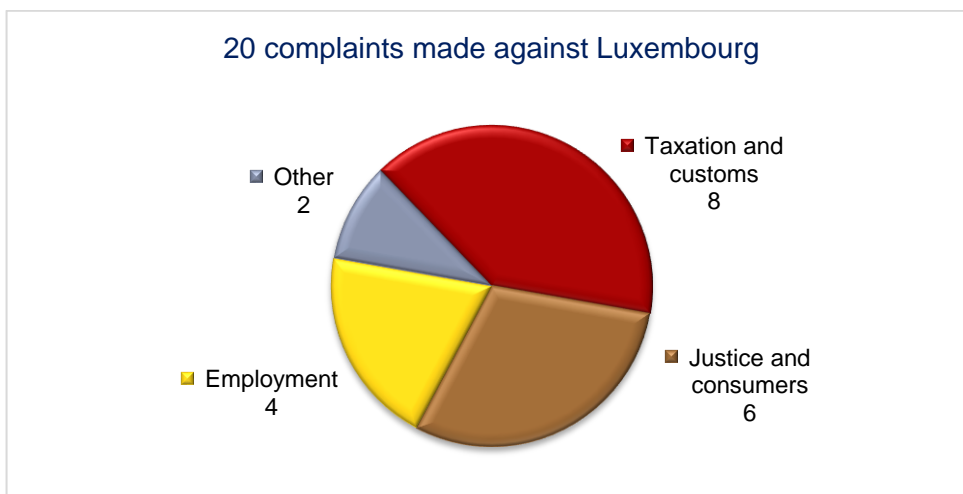
1. New complaints made against Luxembourg by members of the public (2012-2016)



2. Public complaints against Luxembourg open at year-end

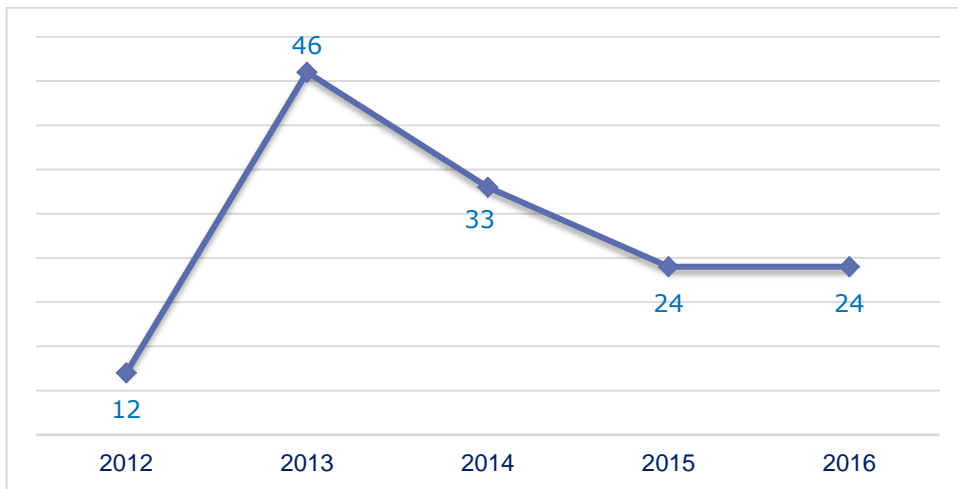
41	>	Complaints open at end-2015
20	>	New complaints registered in 2016
24	>	Complaints handled in 2016
<hr/>		
= 37	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

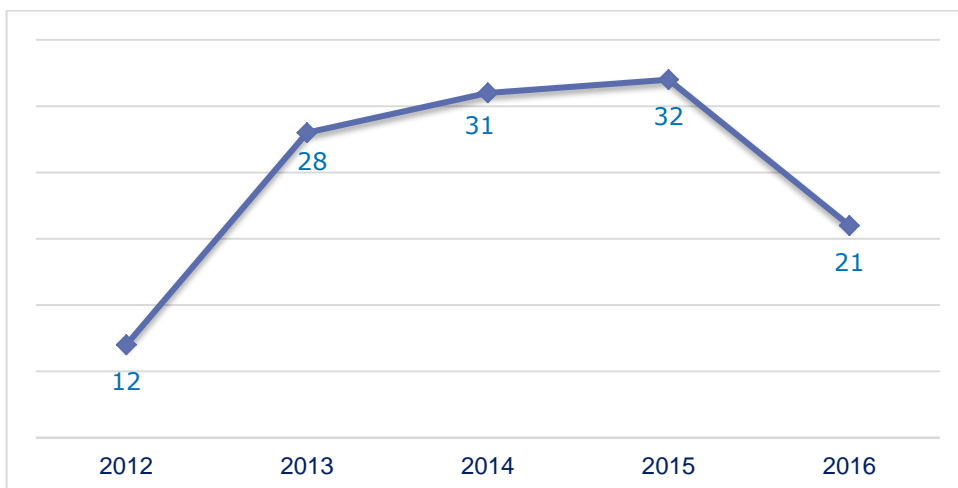


II. EU PILOT

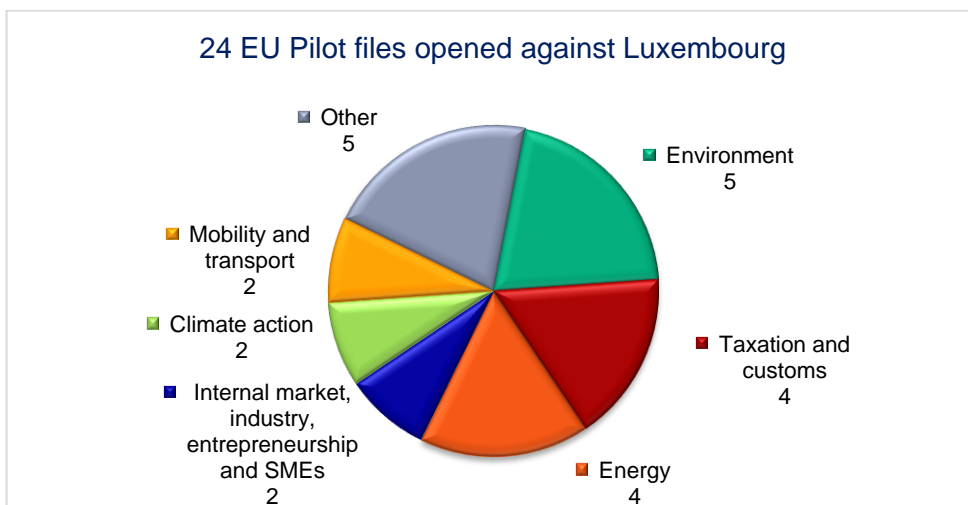
1. New EU Pilot files opened against Luxembourg (2012-2016)



2. Files relating to Luxembourg open in EU Pilot at year-end

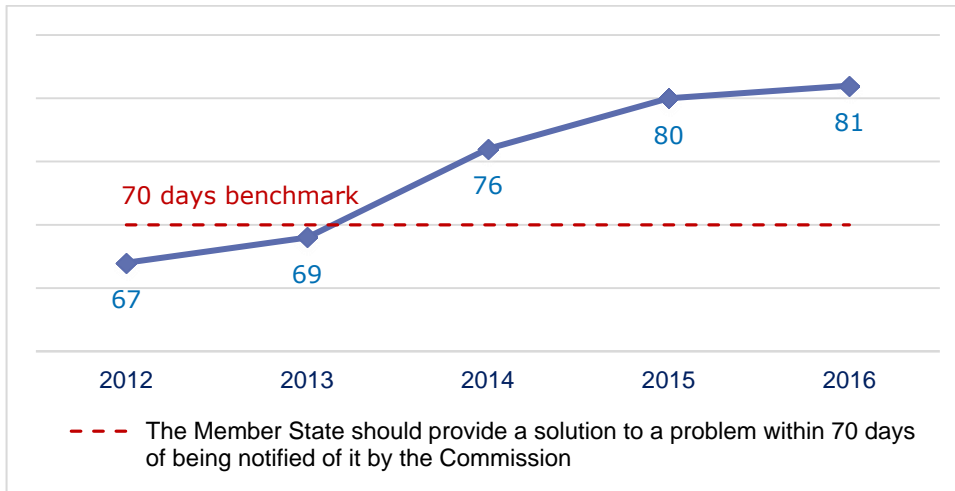


3. New EU Pilot files opened in 2016: main policy areas

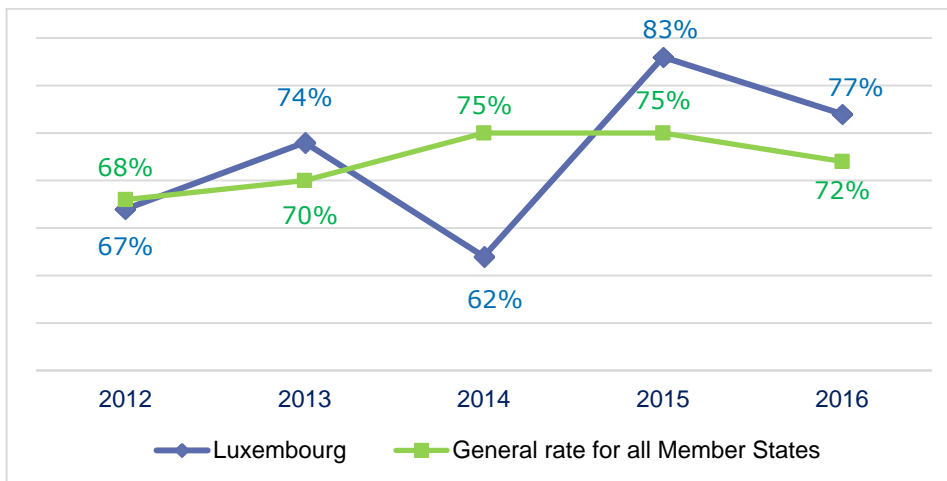


Luxembourg

4. EU Pilot files: Luxembourg's average response time in 2012-2016 (in days)

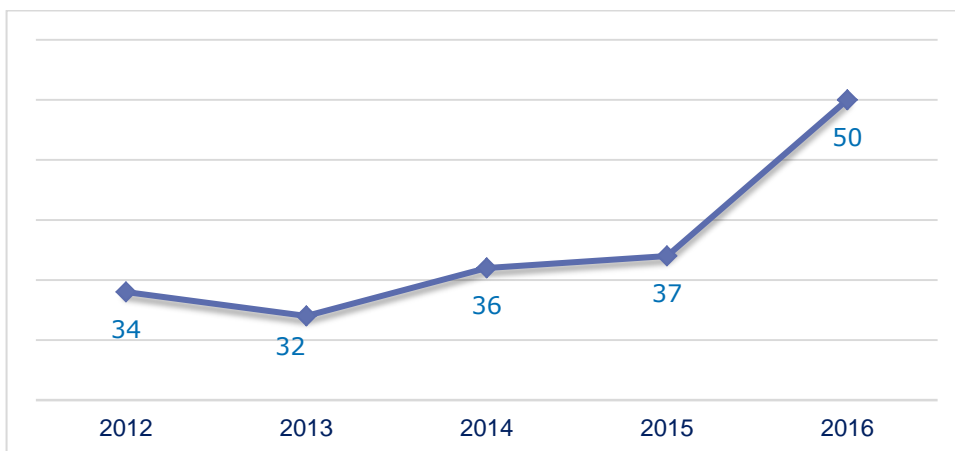


5. EU Pilot files: Luxembourg's resolution rate in 2012-2016

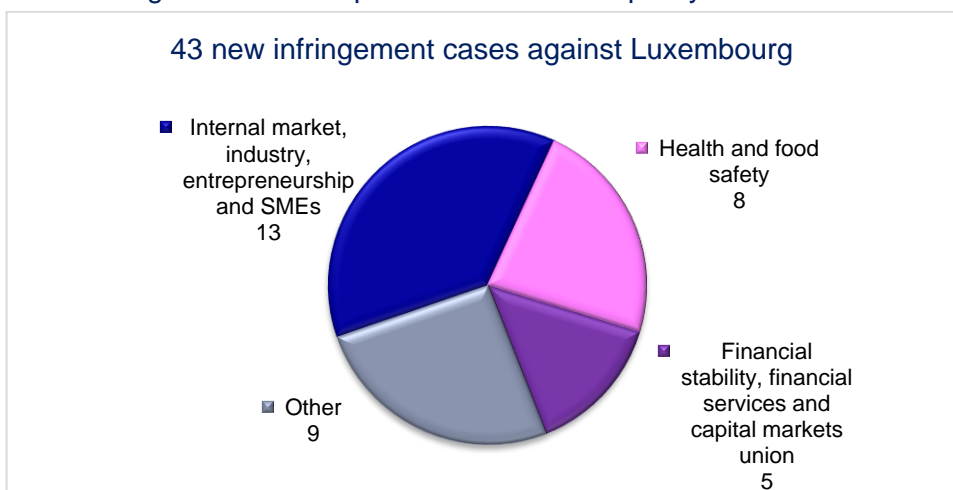


III. INFRINGEMENT CASES

1. Infringement cases against Luxembourg open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 43 new infringement cases against Luxembourg in 2016. These, and other major ongoing infringement cases, include:
- failure to notify measures transposing the Tobacco Directive;¹
 - failure to communicate all national measures transposing the Mortgage Credit Directive;²
 - non-compliance with the Regulation on the marketing and use of explosives precursors;³
 - repeal of the minimum entity tax. This is incompatible with the Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;⁴
 - failure to notify transposition measures for the 'Swedish initiative' on simplifying the exchange of information and intelligence between law enforcement authorities of EU Member States;⁵
 - incorrect application of the Regulation on the rights of passengers travelling by sea and inland waterway;⁶
 - failure to transpose in full one or more of the three Directives on public procurement and concessions;⁷
 - failure to fulfil the obligations under EU vehicle type approval legislation;⁸
 - failure to transpose in full the Directive amending the EU legislation on the recognition of professional qualifications and the Internal Market Information System.⁹
- b) The Commission referred one case to the Court under Article 258 TFEU. It concerns:
- failure to meet the obligation to interconnect a national electronic register of road transport undertakings.¹⁰
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

¹ Directive [2014/40/EU](#); [MEMO/16/4211](#).

² Directive [2014/17/EU](#); [MEMO/16/3644](#).

³ Regulation (EU) No [98/2013](#); [MEMO/16/3125](#).

⁴ Directive [2011/96/EU](#).

⁵ Framework Decision [2006/960/JHA](#).

⁶ Regulation (EU) No [1177/2010](#); [MEMO/16/3644](#).

⁷ Directives [2014/23/EU](#), [2014/24/EU](#) and [2014/25/EU](#); [MEMO/16/1823](#).

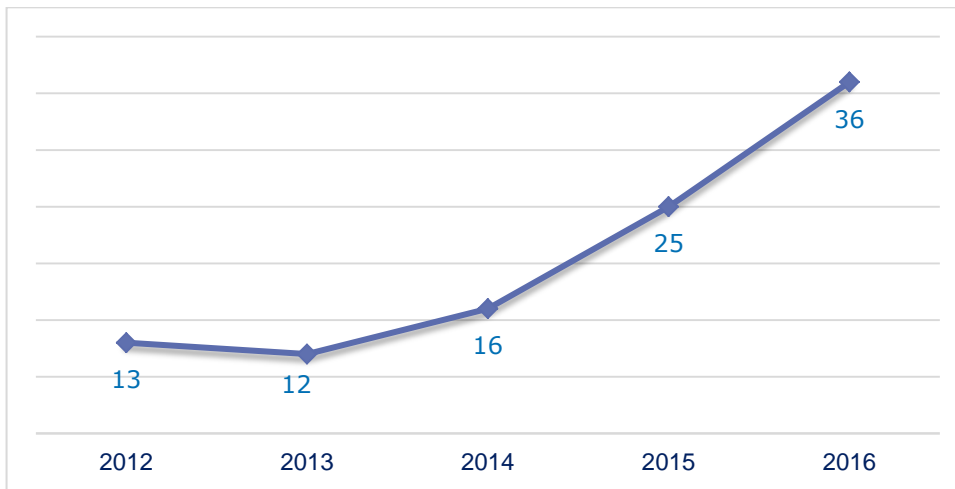
⁸ Directive [2007/46/EC](#) and Regulation [2007/715/EC](#); [IP/16/4214](#).

⁹ Directive [2013/55/EU](#); [MEMO/16/3125](#).

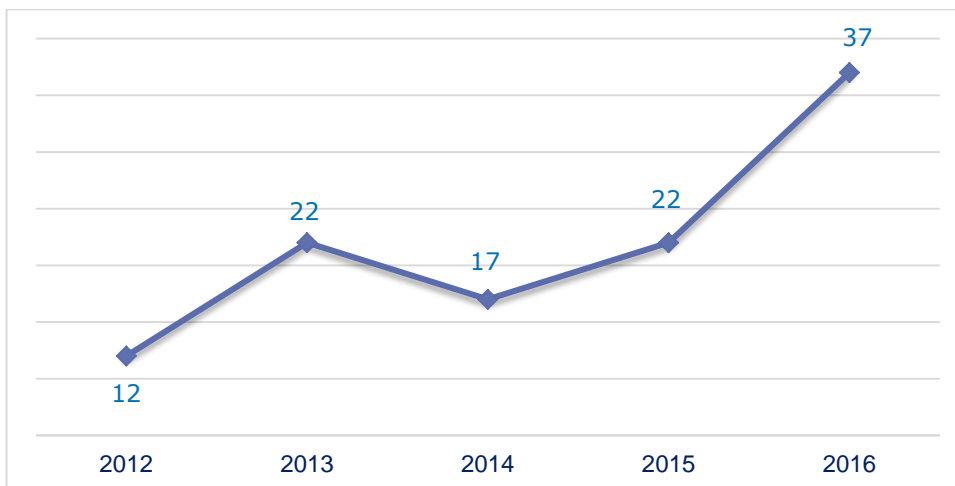
¹⁰ Commission v Luxembourg, [C-152/16](#); [IP/15/5829](#) and [MEMO/15/5826](#).

IV. TRANSPOSITION OF DIRECTIVES

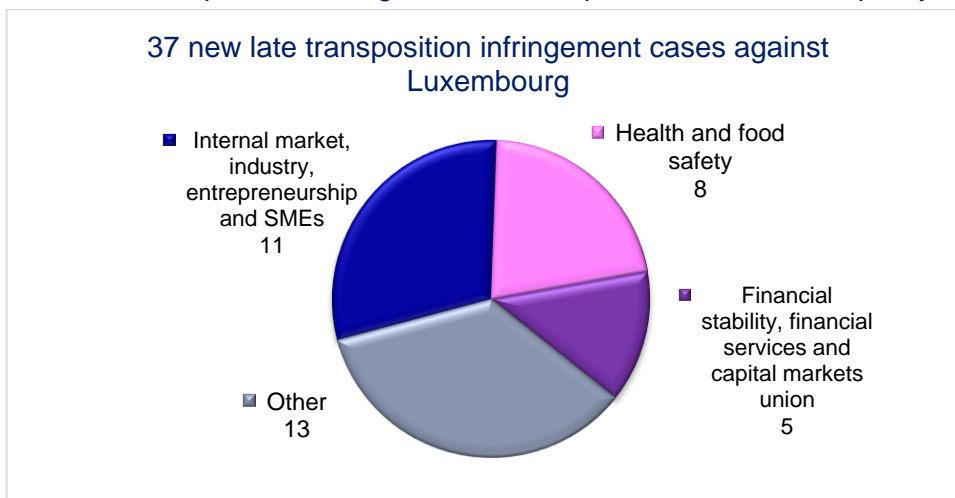
1. Late transposition infringement cases against Luxembourg open on 31 December (2012-2016)



2. New late transposition infringement cases against Luxembourg (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

The Commission referred three cases to the Court under Articles 258 and 260(3) TFEU. They concern:

- late transposition of the Directive¹¹ aligning various rules to the Regulation¹² on classification, labelling and packaging of substances and mixtures;¹³
- failure to transpose the Packaging & Labelling Directive;¹⁴
- failure to transpose the Directive on a single European railway area.¹⁵

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- non-communication of national measures transposing the Seveso III Directive;¹⁶
- completing the notification of all national measures necessary to transpose:
 - the Capital Requirements Directive;¹⁷
 - the Bank Resolution and Recovery Directive;¹⁸
 - the Deposit Guarantee Schemes Directive;¹⁹
 - the Over-reliance on credit ratings Directive;²⁰
 - the Financial Conglomerates Directive;²¹
- non-compliance with the Directive on the protection of employees in the event of the insolvency of their employer;²²
- repeal of the minimum entity tax. This was incompatible with the Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.²³

VI. IMPORTANT JUDGMENTS

1. Court rulings²⁴

The Court ruled that:

- Luxembourg failed to establish a national electronic register and to interconnect with the national electronic registers of other Member States.²⁵

2. Preliminary rulings

In preliminary rulings addressed to the Luxembourgish judiciary, the Court held that:

- the grant of financial aid for higher education studies to a non-resident student cannot be made conditional on whether at least one of the student's parents worked in Luxembourg for a minimum and continuous period of 5 years;²⁶

¹¹ Directive [2014/27/EU](#).

¹² Regulation (EC) No [1272/2008](#).

¹³ Commission v Luxembourg [C-511/16](#); [IP/16/2599](#).

¹⁴ Directive [2014/27/EU](#), Commission v Luxembourg [C-511/16](#); [IP/16/2599](#).

¹⁵ Directive [2012/34/EU](#), Commission v Luxembourg [C-489/16](#); [IP/16/2494](#) and [MEMO/16/2490](#).

¹⁶ Directive [2012/18/EU](#).

¹⁷ Directive [2013/36/EU](#).

¹⁸ Directive [2014/59/EU](#).

¹⁹ Directive [2014/49/EU](#).

²⁰ Directive [2013/14/EU](#).

²¹ Directive [2011/89/EU](#).

²² Directive [2008/94/EC](#).

²³ Directive [2011/96/EU](#).

²⁴ These rulings are almost exclusively handed down on infringement procedures.

²⁵ Regulation (EC) No [1071/2009](#); Commission v Luxembourg, [C-152/16](#).

²⁶ Bragança Linares Verruga and Others, [C-238/15](#).

Luxembourg

- national laws may not limit access to pensioners' tax credit to resident taxpayers receiving domestic pension income; the tax credit must also be open to residents receiving a pension from other Member States.²⁷

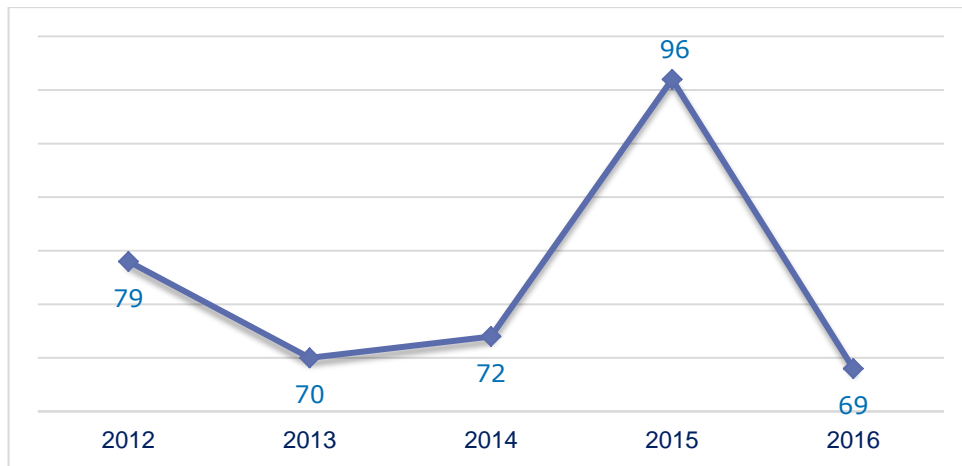
²⁷ Kohll and Kohll-Schlesser, [C-300/15](#).

Hungary

New complaints against Hungary fell sharply in 2016, as did the number of new EU Pilot files. Both figures reached a five-year low. By contrast, the number of open infringement cases at the end of 2016 rose to a five-year high. This correlates with the increase in new infringement cases for late transposition, which doubled from the previous year.

I. COMPLAINTS

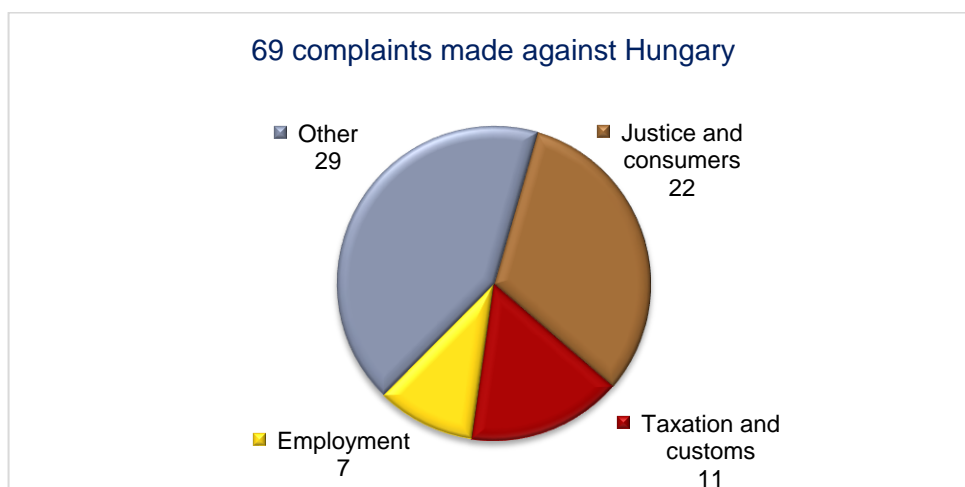
1. New complaints made against Hungary by members of the public (2012-2016)



1. Public complaints against Hungary open at year-end

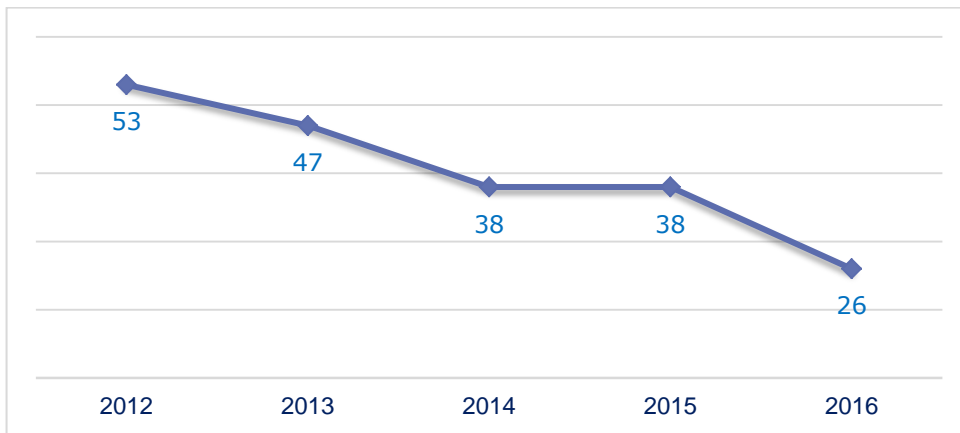
73	>	Complaints open at end-2015
69	>	New complaints registered in 2016
77	>	Complaints handled in 2016
= 65	>	Complaints open at end-2016

2. New complaints registered in 2016: main policy areas

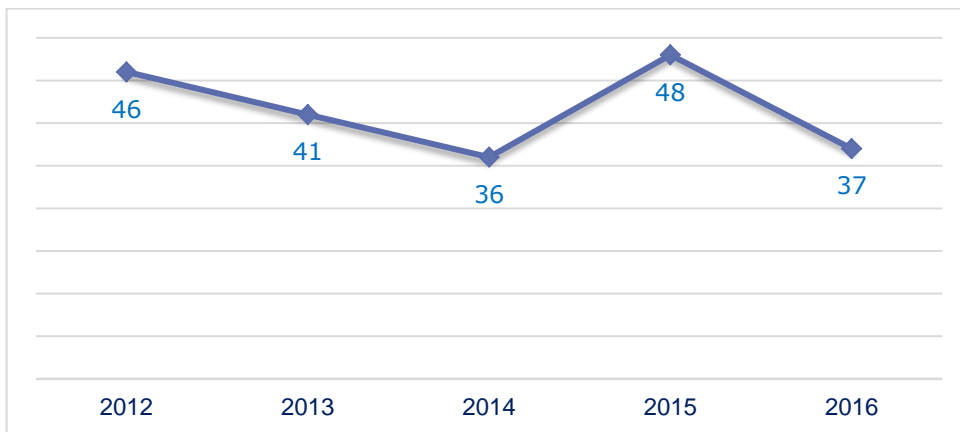


II. EU PILOT

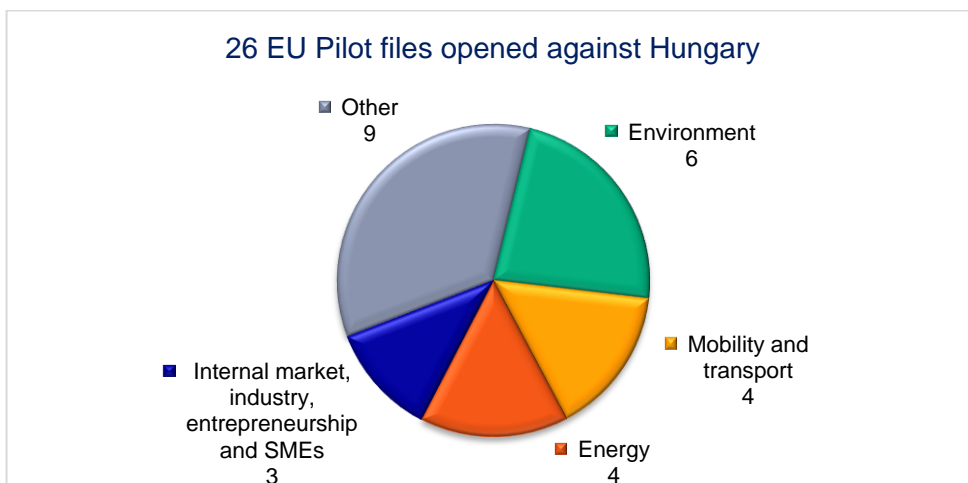
1. New EU Pilot files opened against Hungary (2012-2016)



2. Files relating to Hungary open in EU Pilot at year-end

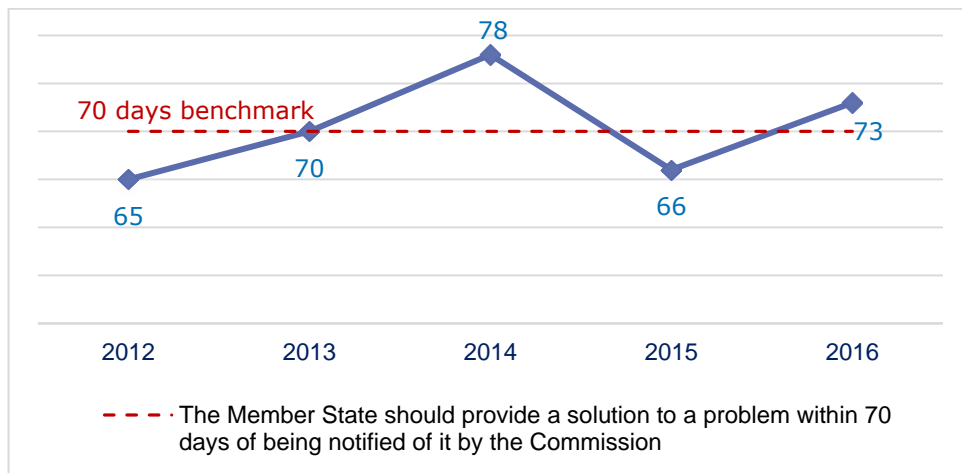


3. New EU Pilot files opened in 2016: main policy areas

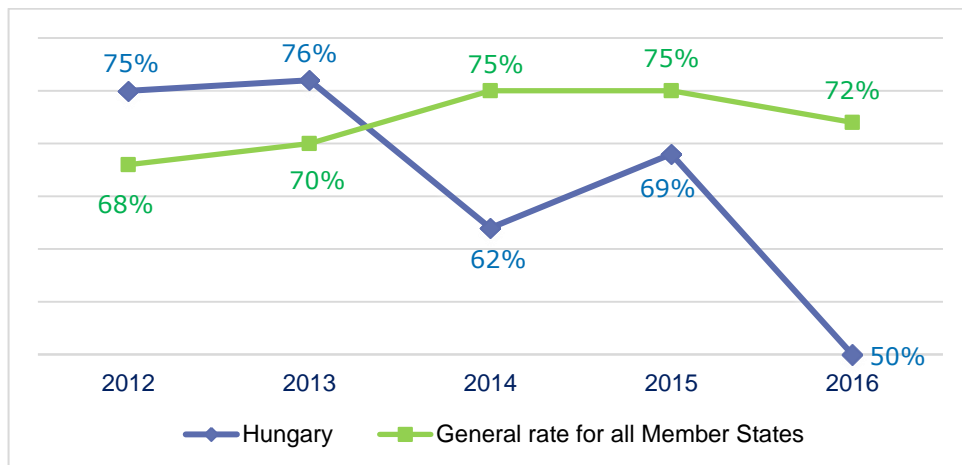


Hungary

4. EU Pilot files: Hungary's average response time in 2012-2016 (in days)

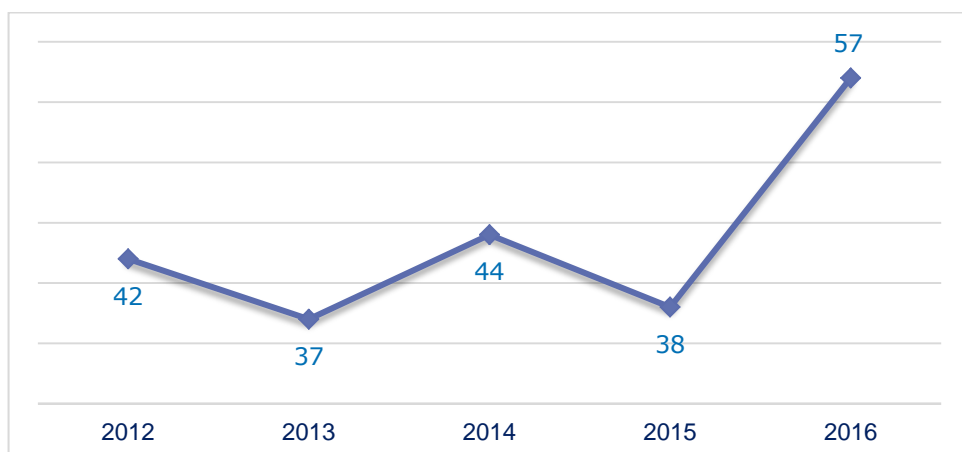


5. EU Pilot files: Hungary's resolution rate in 2012-2016

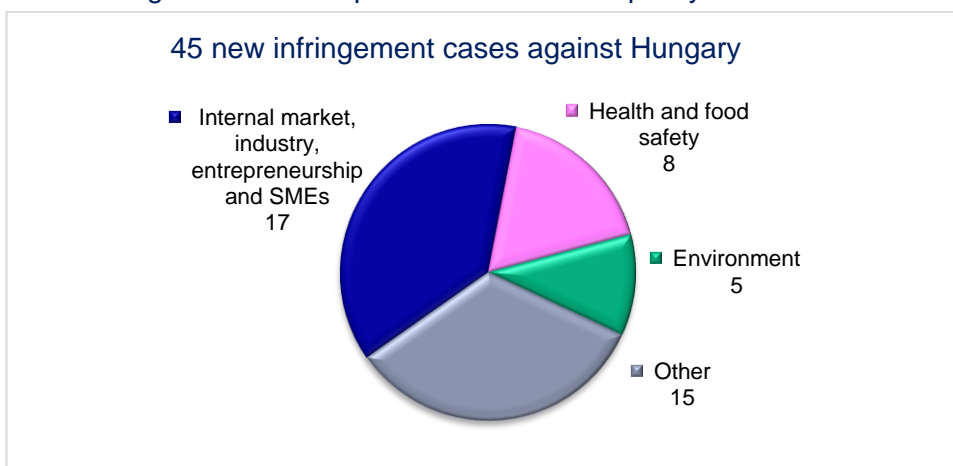


III. INFRINGEMENT CASES

1. Infringement cases against Hungary open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 45 new infringement cases against Hungary in 2016. These, and other major ongoing infringement cases, include:
- discrimination against Roma children in education;¹
 - non-respect of NO₂ limit values set by the Air Quality Directive;²
 - lack of strategic noise maps and/or action plans required by the Environmental Noise Directive;³
 - poor application of the Drinking Water Directive as regards non-respect of the EU parametric values for arsenic, boron and fluoride in several municipalities;⁴
 - failure to comply with the Third Internal Energy Market Package;⁵
 - national restrictions on the acquisition of agricultural land which limit the free movement of capital and freedom of establishment by being discriminatory and/or disproportionate;⁶
 - excessive and unjustified obstacles in the area of professional services that run counter to the Services Directive;⁷
 - a selective consumption tax on spirits exempting fruit distillates (mainly produced domestically) and herbal bitters, which may be inconsistent with the free movement of goods.
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

¹ [MEMO/16/1823](#).

² Directive [2008/50/EC](#).

³ Directive [2002/49/EC](#).

⁴ Directive [98/83/EC](#).

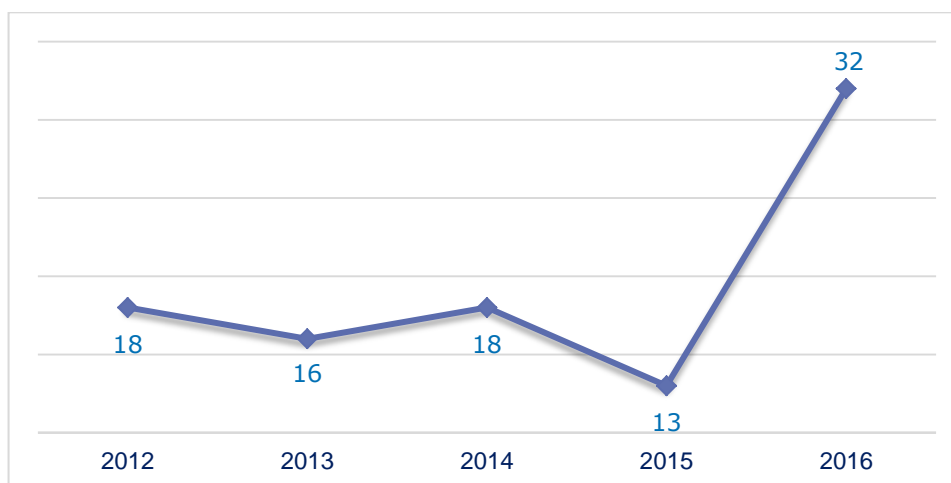
⁵ Directives [2009/72/EC](#) and [2009/73/EC](#), [MEMO/16/4211](#).

⁶ Press releases [IP/16/1827](#) and [MEMO/16/1823](#).

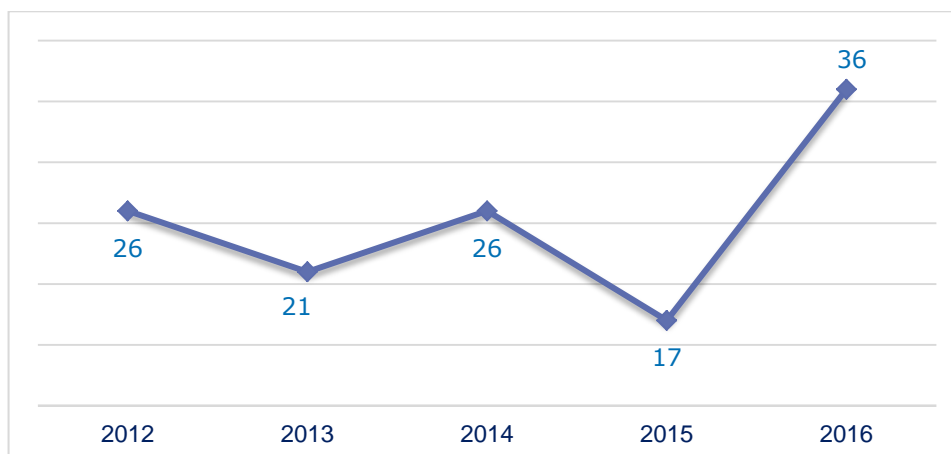
⁷ [Directive 2006/123/EC](#), [IP/16/3646](#), [MEMO/16/3644](#).

IV. TRANSPOSITION OF DIRECTIVES

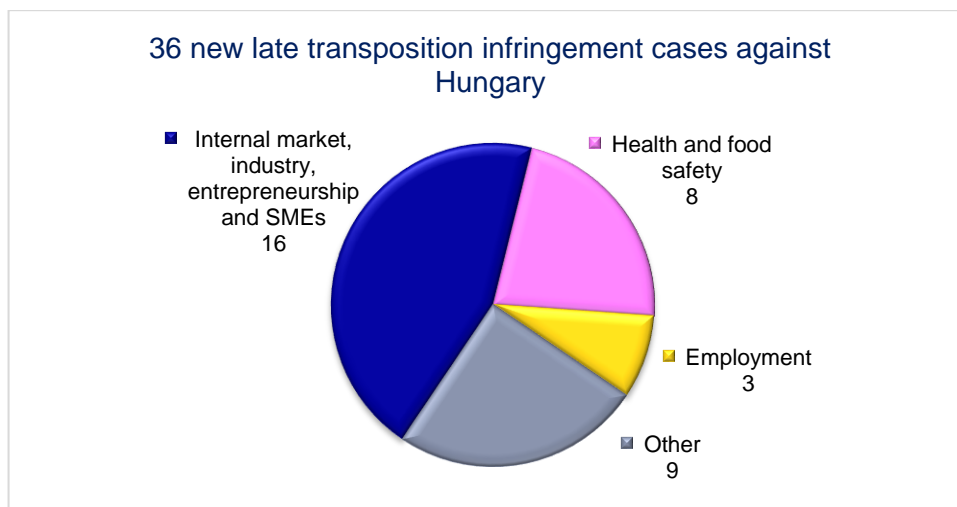
1. Late transposition infringement cases against Hungary open on 31 December (2012-2016)



2. New late transposition infringement cases against Hungary (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- paid annual leave granted to members of so-called school cooperatives;
- failure to implement the EU Timber Regulation and the Forest Law Enforcement, Governance and Trade Regulation;⁸
- completing the notification of all national measures necessary to transpose:
 - the Bank Resolution and Recovery Directive;⁹
 - the Directive on over-reliance on credit ratings;¹⁰
 - the Financial Conglomerates Directive;¹¹
- failure to meet the obligation to interconnect a national electronic register of road transport undertakings;¹²
- incorrect implementation of the Directive on a European electronic toll service.¹³

VI. IMPORTANT JUDGMENTS

1. Court rulings¹⁴

The Court ruled that:

- the fact that the revenue generated by the holder of a public or private monopoly providing services is the source of funding for social programmes does not justify a restriction on freedom of establishment and freedom to provide services. Member States are not free to establish a services monopoly in the context of their tax and wages policies, as Member States must exercise their competence in the area of direct taxation consistently with EU law and, in particular, with the fundamental freedoms. National legislation reserving the activity of issuing leisure cards only to banks or financial institutions infringes the Services Directive,¹⁵ unless the measure satisfies the cumulative conditions of non-discrimination, necessity and proportionality.¹⁶

2. Preliminary rulings

In preliminary rulings addressed to the Hungarian judiciary, the Court held that:

- a Member State has the right to send an applicant for international protection to a safe third country, if that Member State was responsible for examining an application for international protection submitted by the applicant who left that Member State before a decision on the substance of his first application for international protection was taken;¹⁷
- both the driver and/or the transport undertaking employing the driver can be held liable for infringements of the Regulation on the harmonisation of certain social legislation relating to road transport;¹⁸
- the customs authorities may disregard the declared price of imported goods and use secondary methods (laid down in the Community Customs Code¹⁹) to determine the transaction value, if they still doubt the accuracy of the declared value after asking for additional information or documents and providing the person concerned with a reasonable opportunity to clarify those doubts;²⁰

⁸ Regulation (EU) No [995/2010](#) and Regulation (EC) No [2173/2005](#).

⁹ Directive [2014/59/EU](#).

¹⁰ Directive [2013/14/EU](#).

¹¹ Directive [2011/89/EU](#).

¹² Regulation (EC) No [1071/2009](#).

¹³ Directive [2004/52/EC](#).

¹⁴ These rulings are almost exclusively handed down in infringement procedures.

¹⁵ Directive [2006/123/EC](#).

¹⁶ Commission v Hungary, [C-179/14](#).

¹⁷ PPU - Mirza, [C-695/15](#).

¹⁸ Regulation (EC) No [561/2006](#), Eurospeed Ltd v Szegedi Törvényszék, [C-287/14](#).

¹⁹ Regulation (EEC) No [2913/92](#).

²⁰ EURO 2004, Case [C-291/15](#).

Hungary

- the requirements of the principle of proportionality are not met when a vehicle of a transport undertaking is immobilised if the driver, employed by the undertaking, drove in breach of the EU law on recording equipment²¹ and if the competent national authority did not establish the liability of that undertaking.²²
- shipments of waste intended for recovery must be considered illegal, under the Waste Shipment Regulation, when the shipment document contains incorrect or inconsistent information about the importer/consignee, the recovery facility and the countries/states concerned. This is the case irrespective of whether the error is made intentionally, that information is correct in other documents available to the competent authorities or procedures for taking back illegal shipments are being implemented. The fine for such an illegal shipment may, in principle, be the same as that imposed for infringements of the obligation to complete the respective document. However, in reviewing the proportionality of the penalty, account must be taken of the potential risks to the protection of the environment and human health.²³

²¹ Regulation [No 3821/85](#).

²² EL-EM-2001, [C-501/14](#).

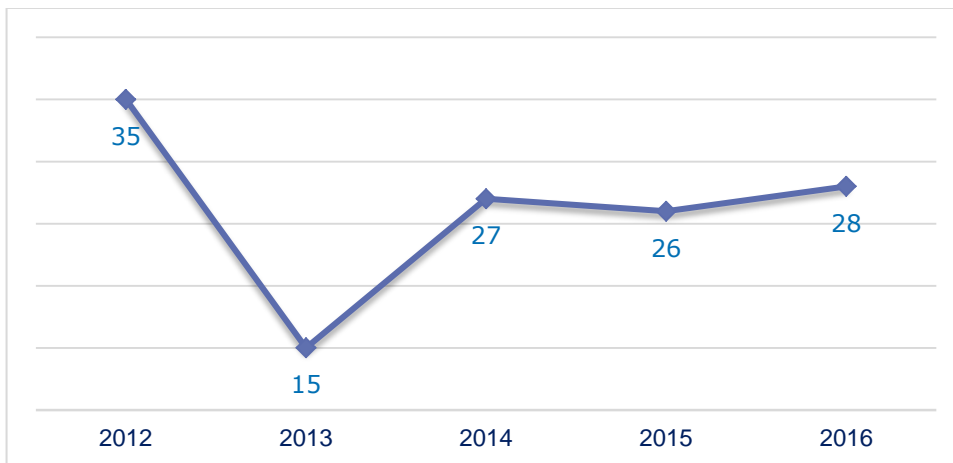
²³ Regulation (EC) No [1013/2006](#), Nutrivet, [C-69/15](#).

Malta

New complaints against Malta have been relatively stable since 2014. The number of new EU Pilot files continued to drop in 2016, reaching its lowest level ever. Infringement cases open at the end of 2016 rose for the second year running. The number of new late transposition infringement cases was slightly lower than in 2015.

I. COMPLAINTS

1. New complaints made against Malta by members of the public (2012-2016)



2. Public complaints against Malta open at year-end

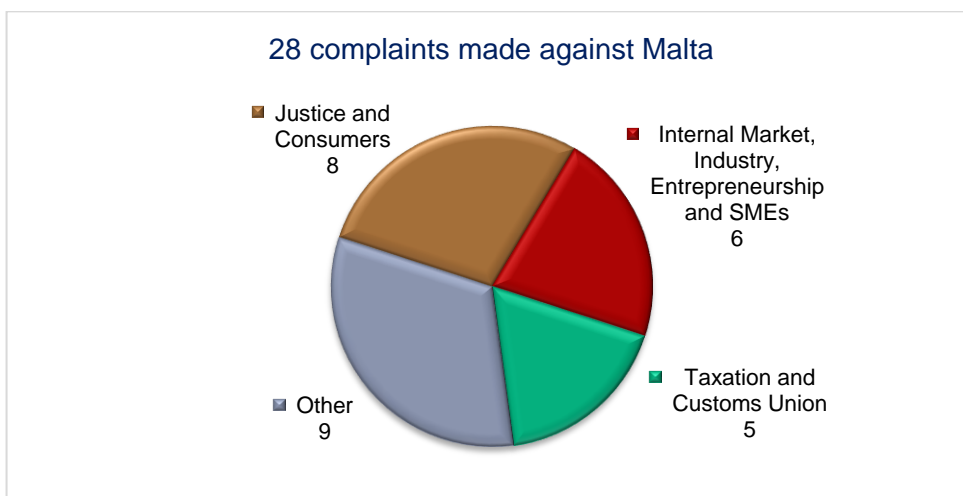
22 > Complaints open at end-2015

28 > New complaints registered in 2016

25 > Complaints handled in 2016

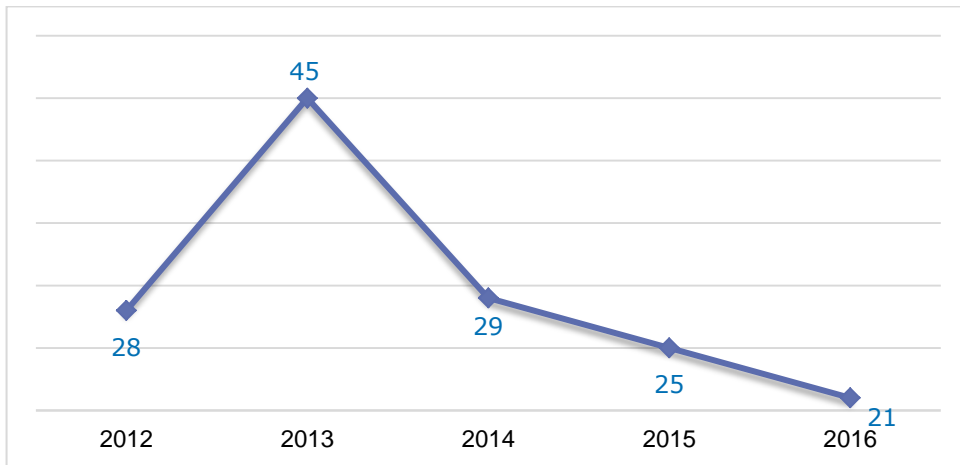
25 > Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

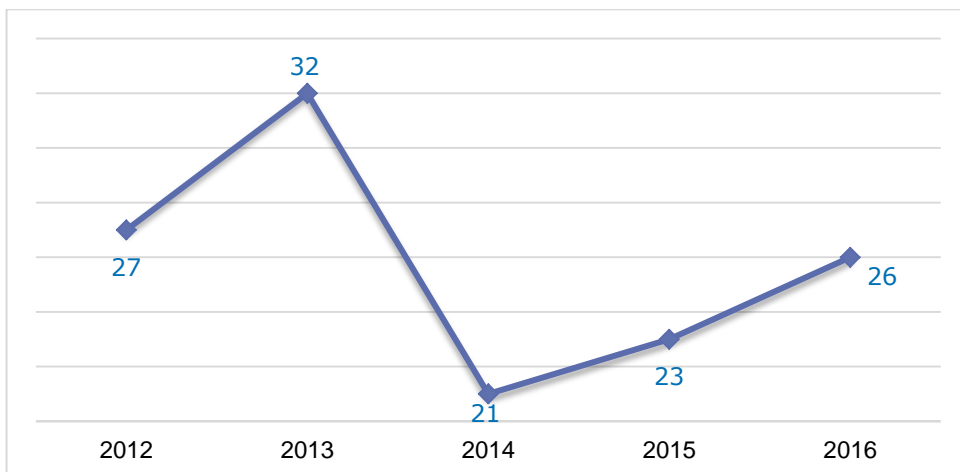


II. EU PILOT

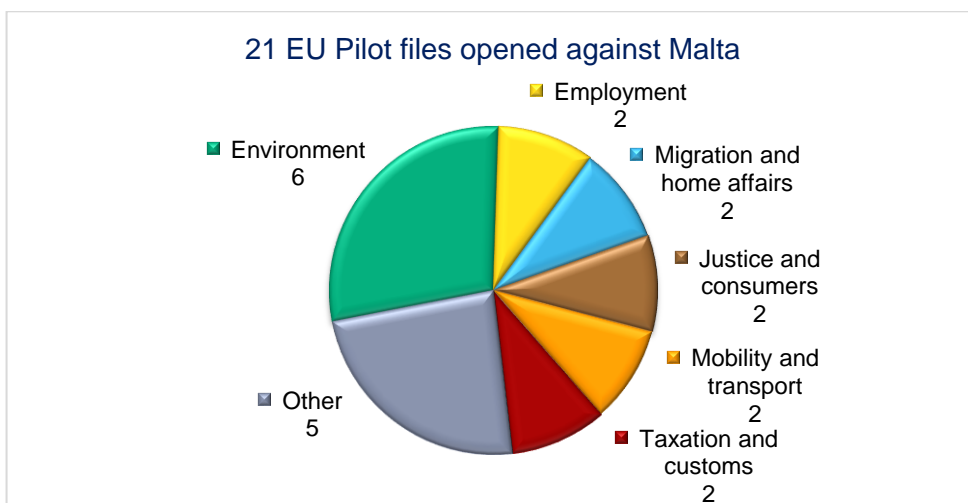
1. New EU Pilot files opened against Malta (2012-2016)¹



2. Files relating to Malta open in EU Pilot at year-end

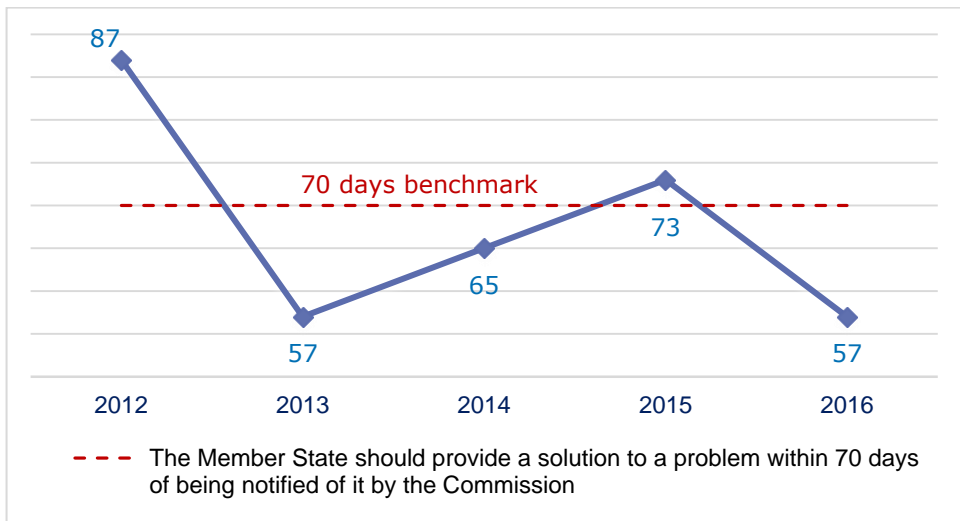


3. New EU Pilot files opened in 2016: main policy areas

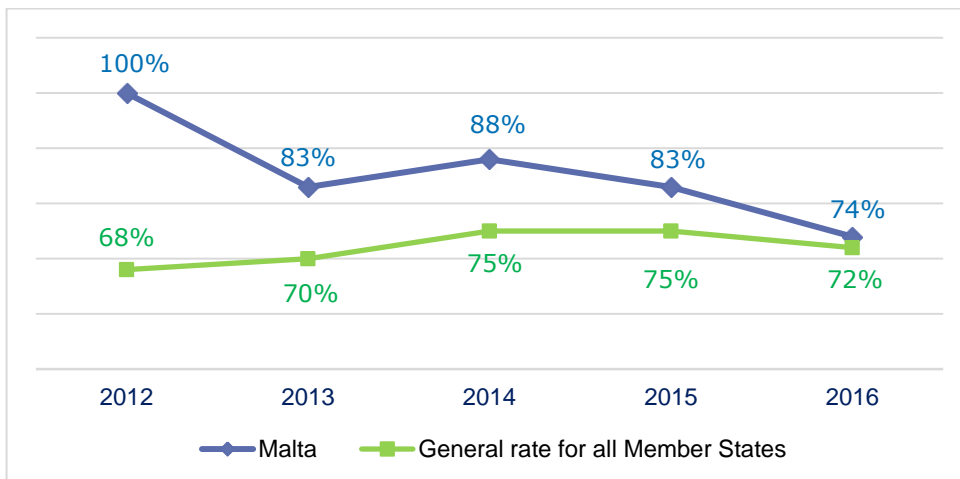


¹ Malta joined the EU Pilot system only in June 2012.

4. EU Pilot files: Malta's average response time in 2012-2016 (in days)²

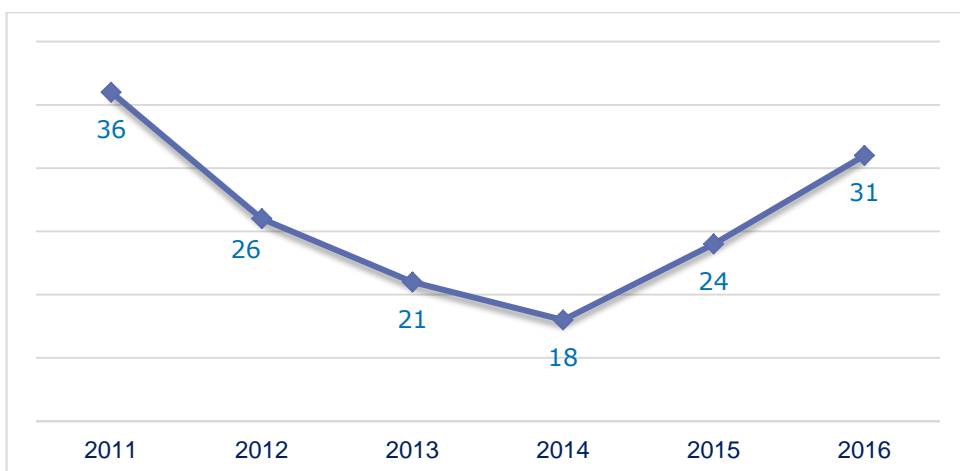


5. EU Pilot files: Malta's resolution rate in 2012-2016³



III. INFRINGEMENT CASES

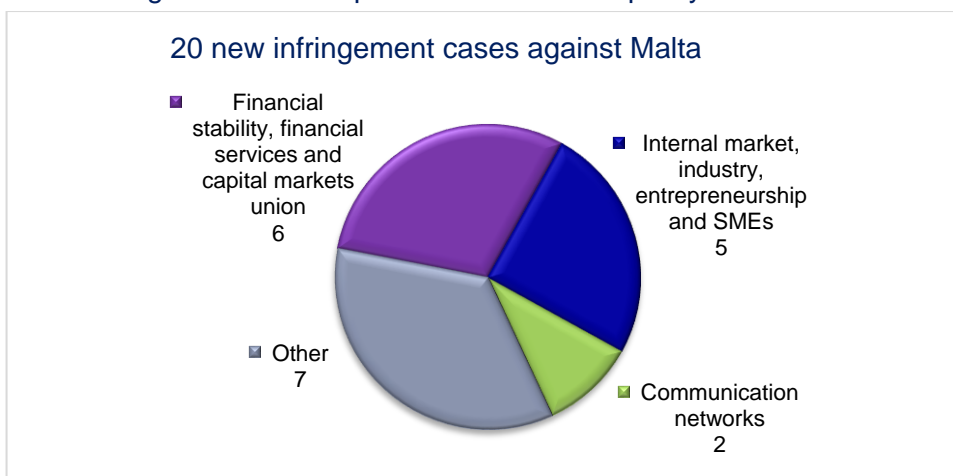
1. Infringement cases against Malta open on 31 December (2012-2016)



² See footnote 1.

³ See footnote 1.

2. New infringement cases opened in 2016: main policy areas

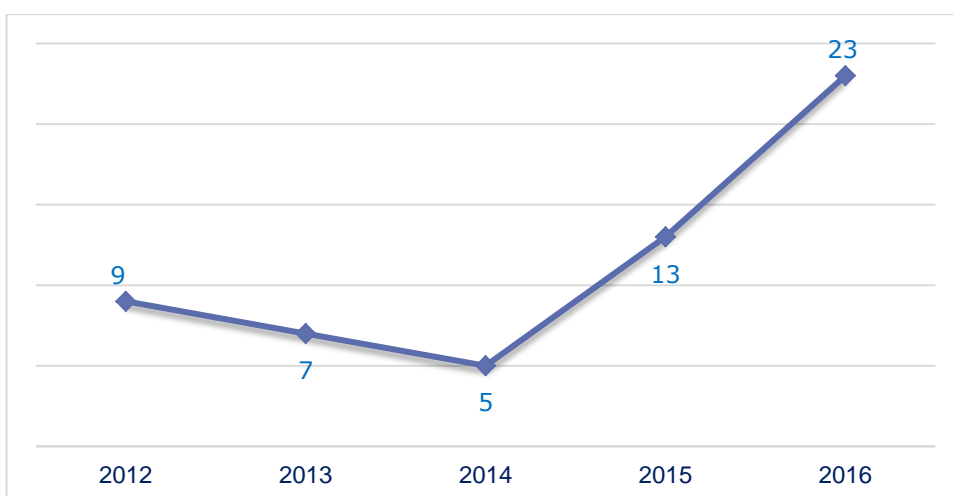


3. Key infringement cases and referrals to the Court

- a) The Commission opened 20 new infringement cases against Malta in 2016. These, and other major ongoing infringement cases, include:
 - inadequate urban waste water treatment;
 - failure to transpose in full the three Directives on public procurement and concessions;⁴
 - failure to transpose in full the Directive amending EU legislation on the recognition of professional qualifications and the Internal Market Information System.⁵
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

IV. TRANSPOSITION OF DIRECTIVES

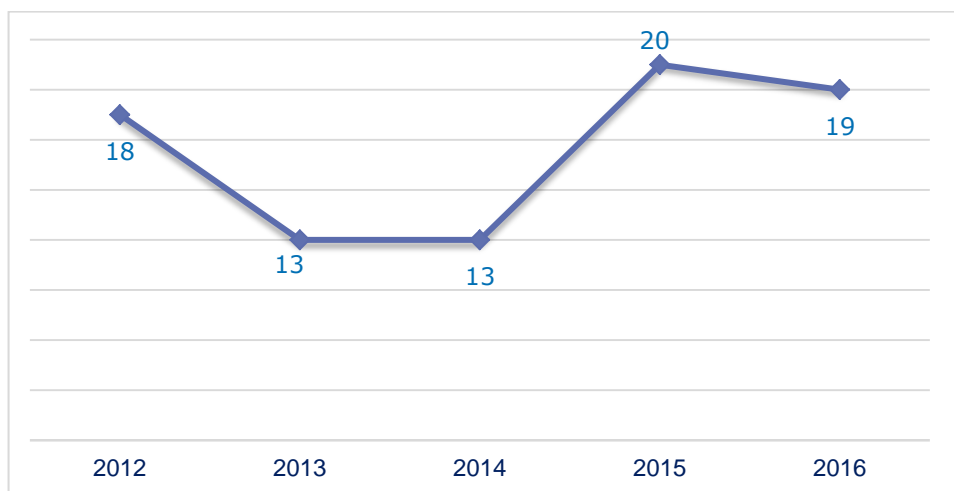
1. Late transposition infringement cases against Malta open on 31 December (2012-2016)



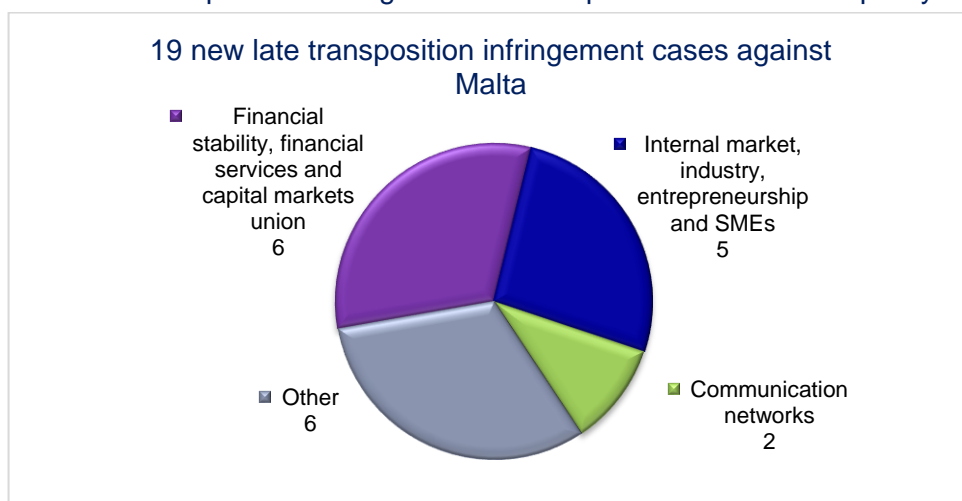
⁴ Directives [2014/23/EU](#), [2014/24/EU](#) and [2014/25/EU](#); [MEMO/16/1823](#).

⁵ Directive [2013/55/EU](#); [MEMO/16/3125](#).

2. New late transposition infringement cases against Malta (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- discriminatory application of water and energy tariffs;
- notification of all national measures necessary to transpose the Capital Requirements Directive⁶ and the Bank Resolution and Recovery Directive;⁷
- failure to fulfil obligations under the Directive on driving licences.⁸

⁶ Directive [2013/36/EU](#).

⁷ Directive [2014/59/EU](#).

⁸ Directive [2006/126/EC](#).

VI. IMPORTANT JUDGMENTS

1. Court rulings⁹

The Court ruled that:

- Malta did not violate EU social security rules when its laws deducted the value of civil-service old-age pensions from other Member States from Maltese old-age pensions.¹⁰

2. Preliminary rulings

No major preliminary rulings were addressed to the Maltese judiciary in 2016.

⁹ These rulings are almost exclusively handed down in infringement procedures.

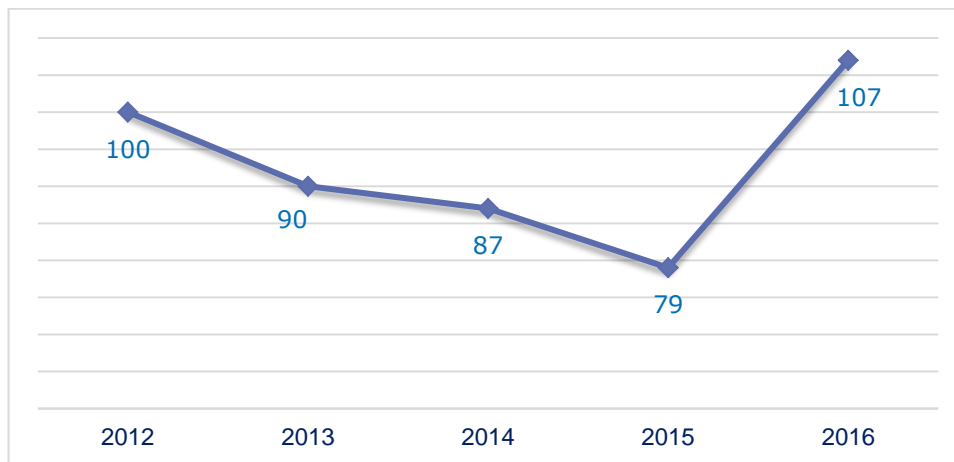
¹⁰ Commission v Malta, [C-12/14](#).

Netherlands

All the main indicators for the Netherlands worsened in 2016. After falling since 2012, new complaints jumped suddenly in 2016 to their highest level for 5 years. Open infringement cases also rose to a five-year peak, as did new infringement cases for late transposition. The number of new EU Pilot files was relatively stable, showing only a slight increase.

I. COMPLAINTS

1. New complaints made against the Netherlands by members of the public (2012-2016)



2. Public complaints against the Netherlands open at year-end

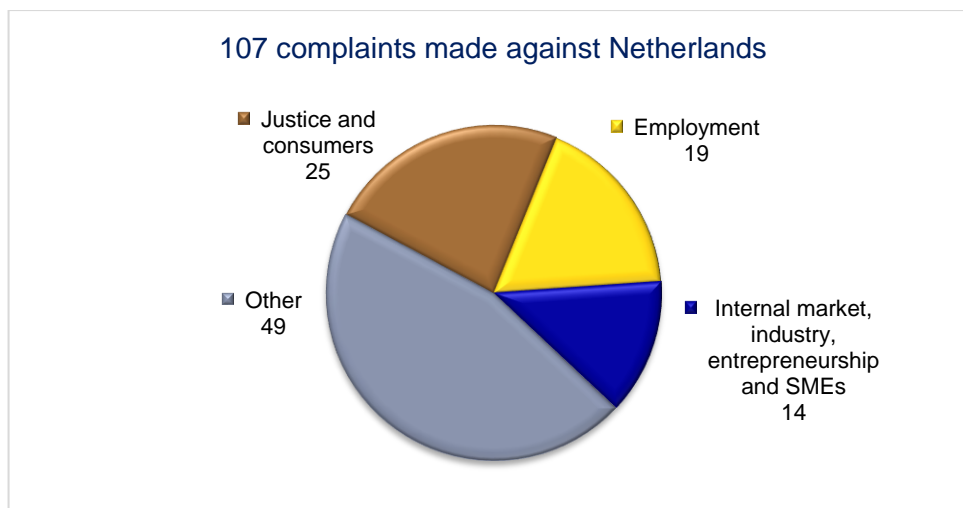
66 > Complaints open at end-2015

107 > New complaints registered in 2016

99 > Complaints handled in 2016

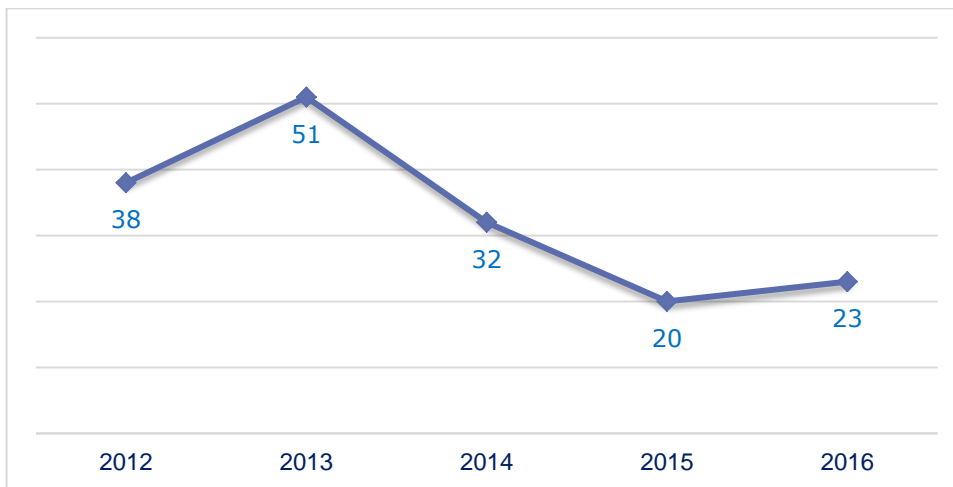
66
= 74 > Complaints open at end-2016

3. New complaints registered in 2016: main policy area

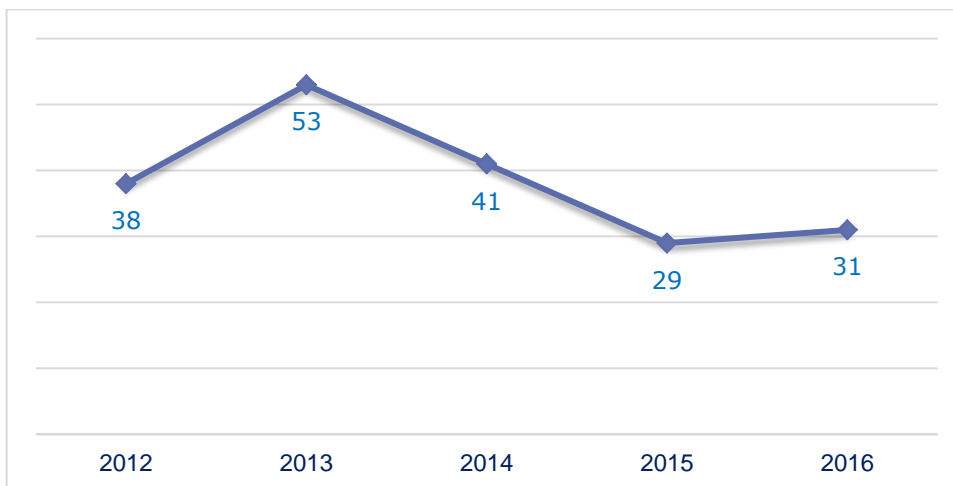


II. EU PILOT

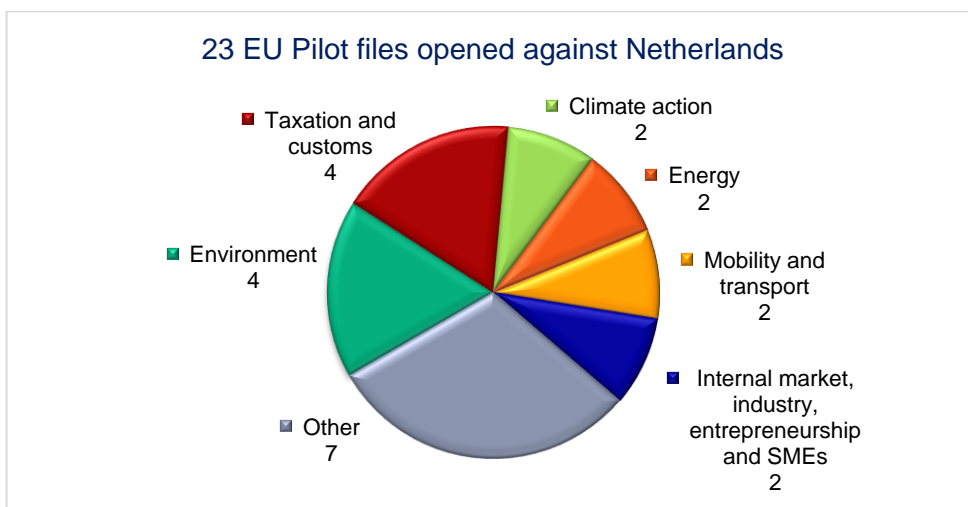
1. New EU Pilot files opened against the Netherlands (2012-2016)



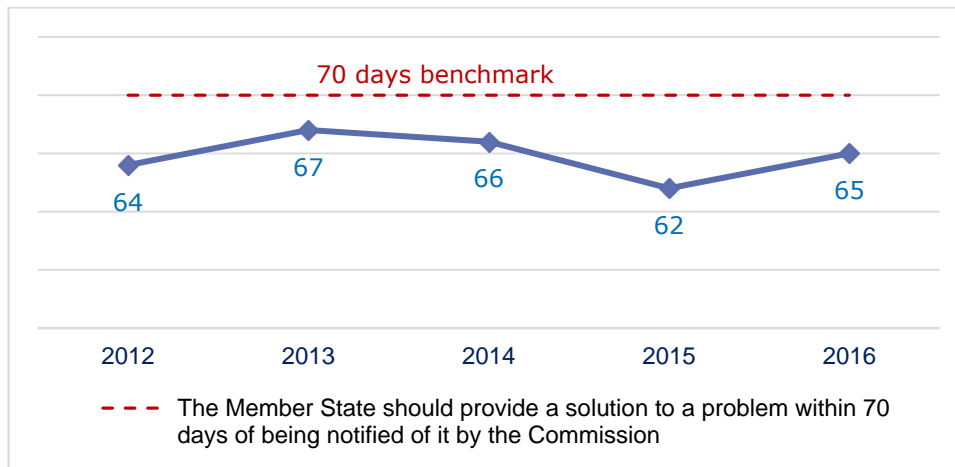
2. Files relating to the Netherlands open in EU Pilot at year-end



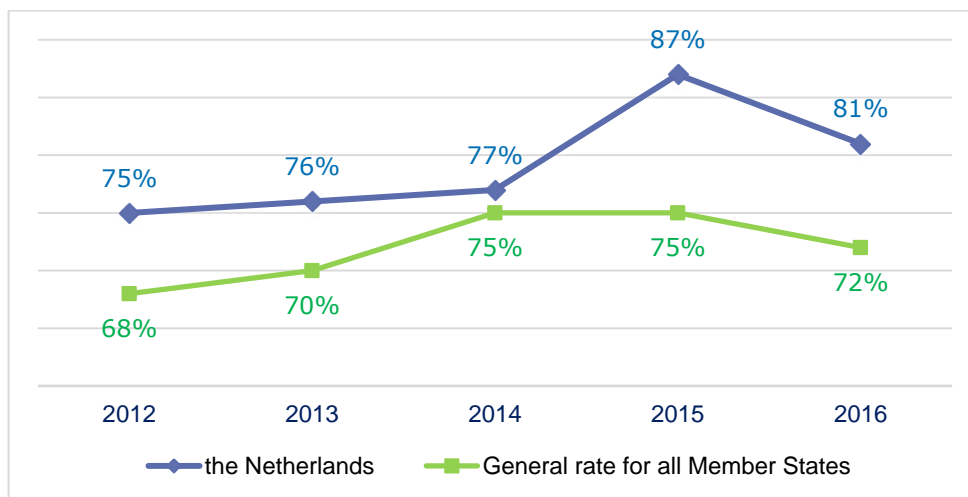
3. New EU Pilot files opened in 2016: main policy areas



4. EU Pilot files: Netherlands' average response time in 2012-2016 (in days)

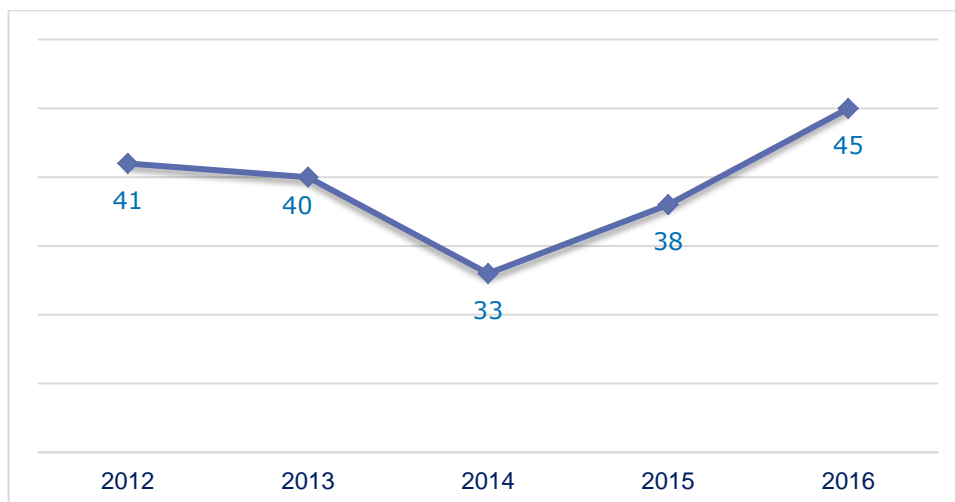


5. EU Pilot files: Netherlands' resolution rate in 2012-2016

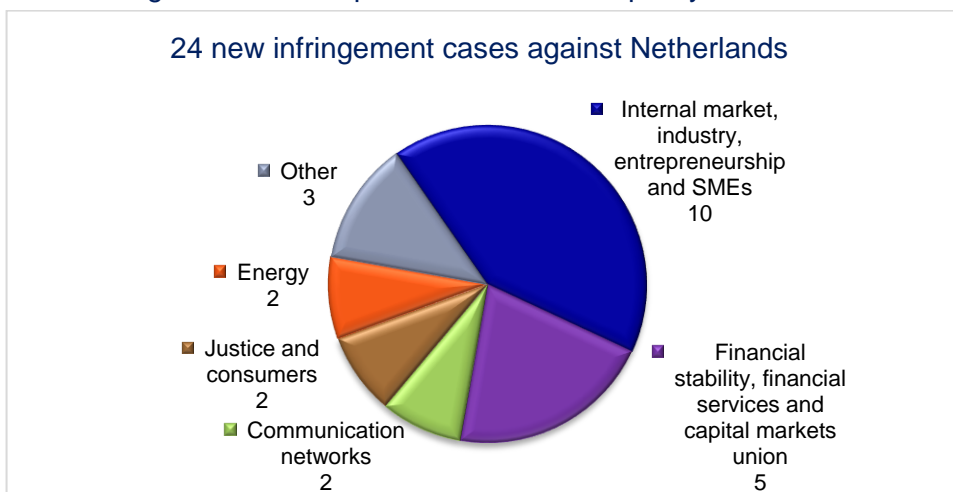


III. INFRINGEMENT CASES

1. Infringement cases against the Netherlands open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 24 new infringement cases against the Netherlands in 2016. These, and other major ongoing infringement cases, include:
- failure to fully transpose the Offshore Safety Directive;¹
 - failure to communicate all national measures transposing the Capital Requirements Directive;²
 - bilateral investment treaties signed before all state parties became members of the EU and which now overlap and conflict with the EU single market on cross-border investments;³
 - failure to correctly implement the Directive on the qualification and training of road drivers;⁴
 - bad application of the Habitats Directive;⁵
 - failure to fully transpose the Directive on driving licences;⁶
 - failure to transpose in full one or more of the three Directives on public procurement and concessions;⁷
 - failure to transpose in full the Directive amending EU legislation on the recognition of professional qualifications and the Internal Market Information System.⁸
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

¹ Directive [2013/30/EU](#); [MEMO/16/319](#).

² Directive [2013/36/EU](#); [MEMO/16/1452](#).

³ [MEMO/16/3125](#).

⁴ Directive [2003/59/EC](#).

⁵ Directive [92/43/EEC](#).

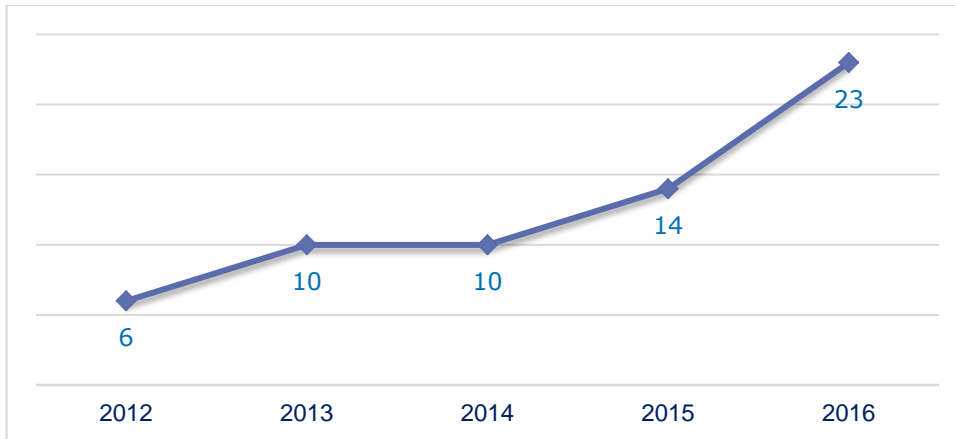
⁶ Directive [2006/126/EC](#); [MEMO/16/2097](#).

⁷ Directives [2014/23/EU](#), [2014/24/EU](#) and [2014/25/EU](#); [MEMO/16/1823](#).

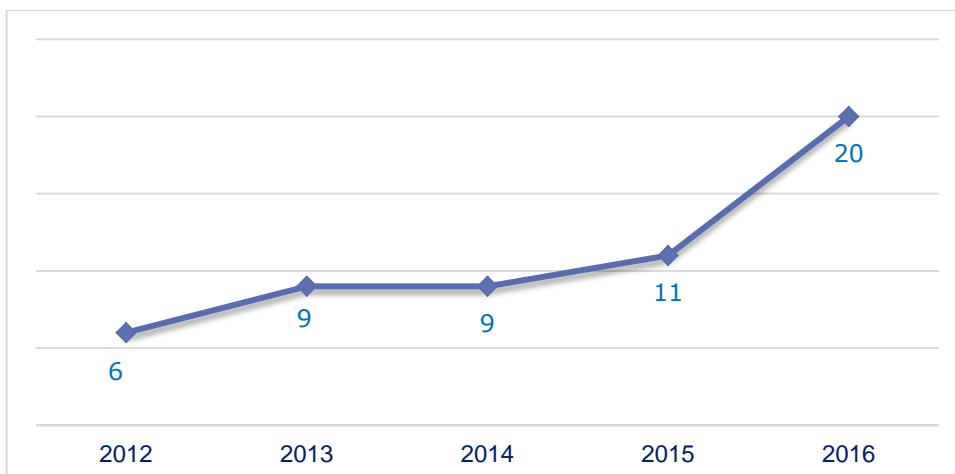
⁸ Directive [2013/55/EU](#); [MEMO/16/3125](#).

IV. TRANSPOSITION OF DIRECTIVES

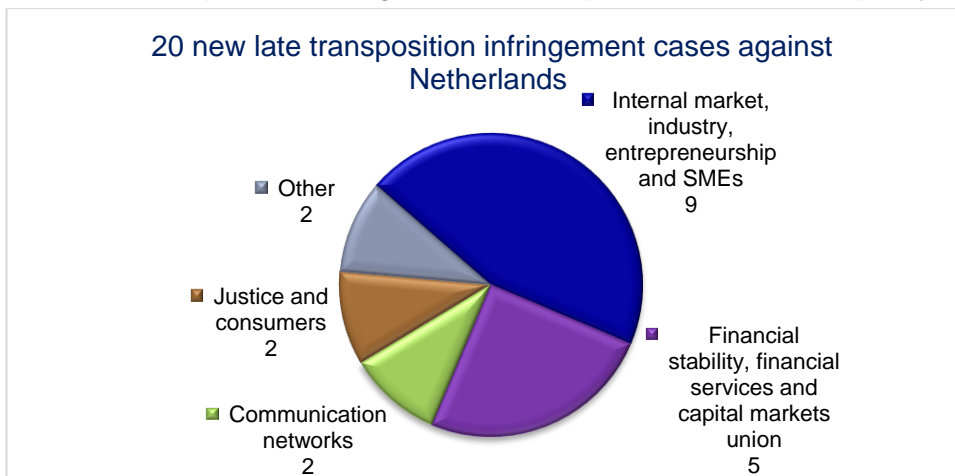
1. Late transposition infringement cases against the Netherlands open on 31 December (2012-2016)



2. New late transposition infringement cases against the Netherlands (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- completing the notification of all national measures necessary to transpose the Deposit Guarantee Schemes Directive;⁹
- non-compliance with the Directive on the common system of value added tax as regards dental prostheses.¹⁰

VI. IMPORTANT JUDGMENTS

1. Court rulings¹¹

The Court ruled that:

- financial support to students for travel costs (public transport for free or at a reduced rate), which is granted only to Dutch nationals and long-term residents, is not discriminatory as such support must be regarded as maintenance aid for studies consisting of student grants or student loans, which is covered by a derogation from equal treatment under the Citizens' Rights Directive;¹²
- the VAT Directive exempts from VAT the supply of sport or physical education services by non-profit-making organisations. However, the Netherlands granted this exemption only if such organisations employ volunteers, not employees, to supply these services. By contrast, the letting of berths and moorings for vessels (provided by non-profit water sport organisations) was exempted from VAT even when it was not linked to sports activities.¹³

2. Preliminary rulings

In preliminary rulings addressed to the Dutch judiciary, the Court held that:

- the Reception Conditions Directive¹⁴ allows for an asylum seeker to be detained when the protection of national security or public order so requires. The introduction of a fresh asylum application by a person who is subject to a return decision does not render that decision inoperative under the Return Directive;¹⁵
- when a hyperlink is posted by the manager of a website to copyright-protected works made available on another website without the authorisation of the right holder, and no profit is pursued by the person posting the hyperlink, such a person can be considered, as a general rule, as not knowing or unable to reasonably know that the work was published without the consent of the right holder. However, when it is established that a person knew or ought to have known that the hyperlink provides access to a work illegally placed on the internet, the provision of the link constitutes a communication to the public. Such knowledge is presumed when the posting of hyperlinks is carried out for profit;¹⁶
- under the Directive on rental and lending rights,¹⁷ the term 'lending' covers the lending of a digital copy of a book, where the lending is carried out by placing that copy on the server of a public library and allowing a user to reproduce that copy by downloading it onto his own computer. Only one copy may be downloaded and it can only be used during the lending period;¹⁸

⁹ Directive [2014/49/EU](#).

¹⁰ Directive [2006/112/EC](#).

¹¹ These rulings are almost exclusively handed down in infringement procedures.

¹² Directive [2004/38/EC](#) and Commission v the Netherlands, [C-233/14](#).

¹³ Commission v Netherlands, [C-22/15](#); [IP/14/1040](#).

¹⁴ Directive [2013/33/EU](#).

¹⁵ Directive [2008/115/EC](#); J.N., [C-601/15](#).

¹⁶ GS Media BV v Sanoma Media Netherlands BV and Others, [C-160/15](#).

¹⁷ Directive [2006/115/EC](#).

¹⁸ Vereniging Openbare Bibliotheken v Stichting Leenrecht, [C-174/15](#), Court press release [No 123/16](#).

- an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in the Dublin Regulation,¹⁹ in particular the criterion relating to the grant of a visa;²⁰
- the European arrest warrant issued by the Swedish National Police Board is invalid as such body is not covered by the term 'issuing judicial authority' and acts issued by police service cannot be regarded as a 'judicial decision';²¹
- the national authorities carrying out general monitoring tasks with regard to air passengers' rights²² are not required to take enforcement action in each individual case with a view to compelling air carriers to pay compensation. However, Member States have discretion in the allocation of the powers they give to such authorities and can nevertheless empower them to act on individual complaints;²³
- the concept of 'emissions into the environment' includes the release into the environment of products or substances, such as plant protection products or biocides or active substances contained in those products, to the extent that the release is actual or foreseeable under normal or realistic conditions of use of the product or substance. The concept of 'information on emissions into the environment' covers not only emissions as such (the nature, composition, quantity, date and place of those emissions), but also information enabling the public to check whether the assessment of actual or foreseeable emissions is correct, as well as data relating to the medium- or long-term effects of those emissions on the environment. The confidentiality of commercial and industrial information may not be invoked to preclude the disclosure of 'information on emissions into the environment'.²⁴

¹⁹ Regulation [No 604/2013](#).

²⁰ Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie, [C-63/15](#).

²¹ Poltorak, [C-452/16 PPU](#).

²² Steef Mennens v Emirates Direktion für Deutschland, [C-255/15](#).

²³ K. Ruijsenaars and Others v Staatssecretaris van Infrastructuur en Milieu, Joined Cases [C-145/15](#) and [C-146/15](#), Court press release [No 31/2016](#).

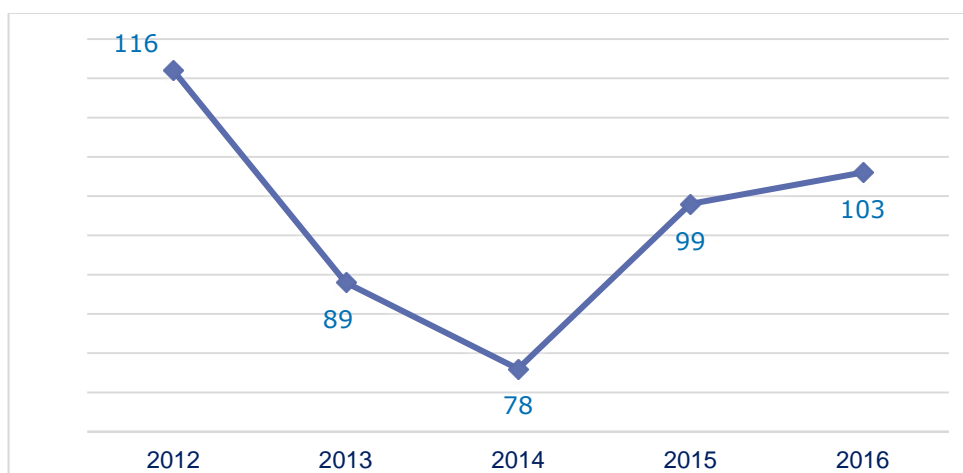
²⁴ Bayer CropScience and Stichting De Bijenstichting, [C-442/14](#) and Court press release [No 128/16](#).

Austria

New complaints against Austria continued to rise in 2016 from the low point reached in 2014. The number of new EU Pilot files went up only slightly, while open infringement cases at the end of the year saw a sharp increase. New infringement cases for late transposition also rose, to almost triple the number of 2015.

I. COMPLAINTS

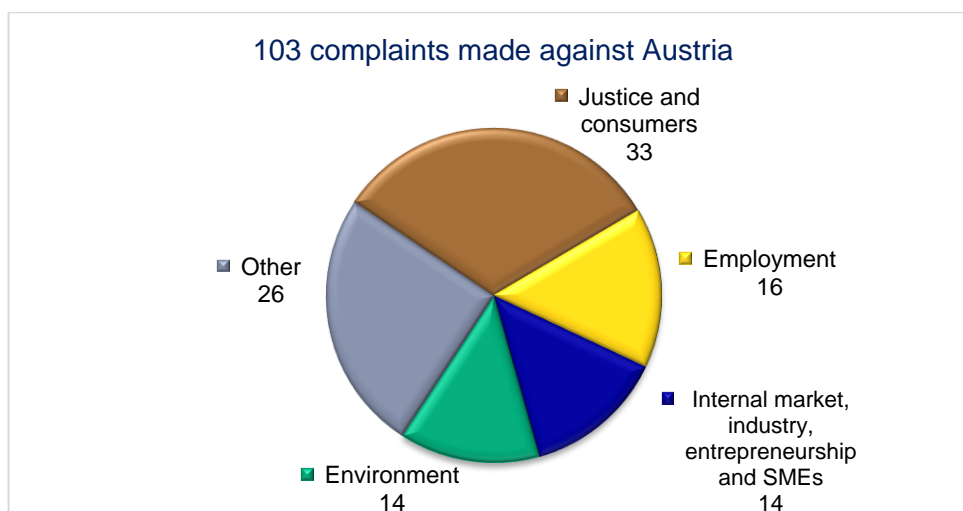
1. New complaints made against Austria by members of the public (2012-2016)



2. Public complaints against Austria open at year-end

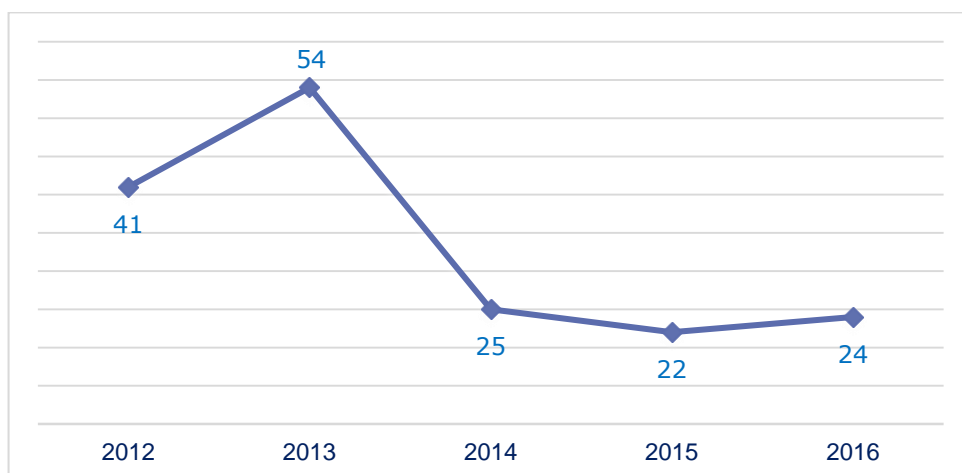
75	>	Complaints open at end-2016
103	>	New complaints registered in 2016
74	>	Complaints handled in 2016
<hr/>		
= 104	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

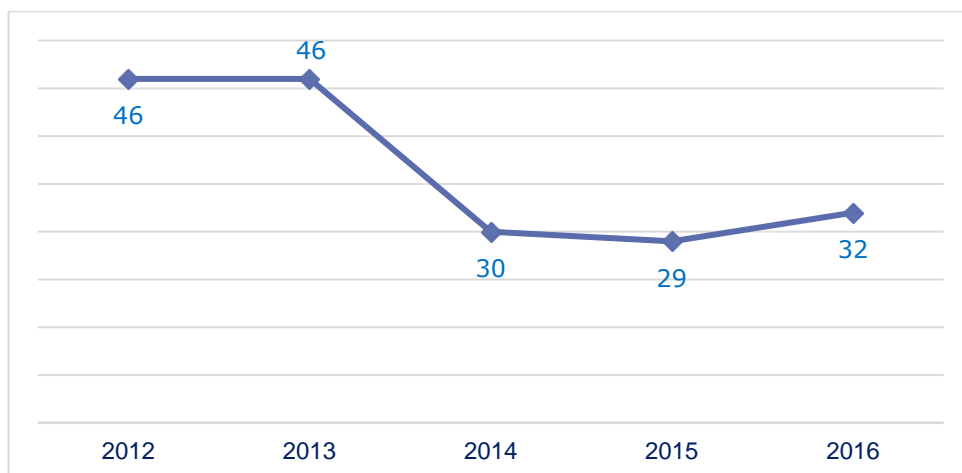


II. EU PILOT

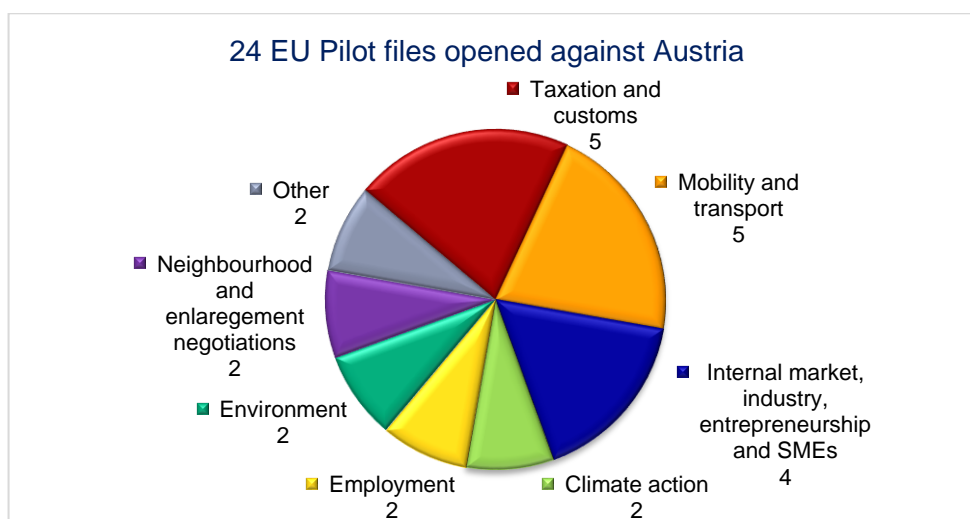
1. New EU Pilot files opened against Austria (2012-2016)



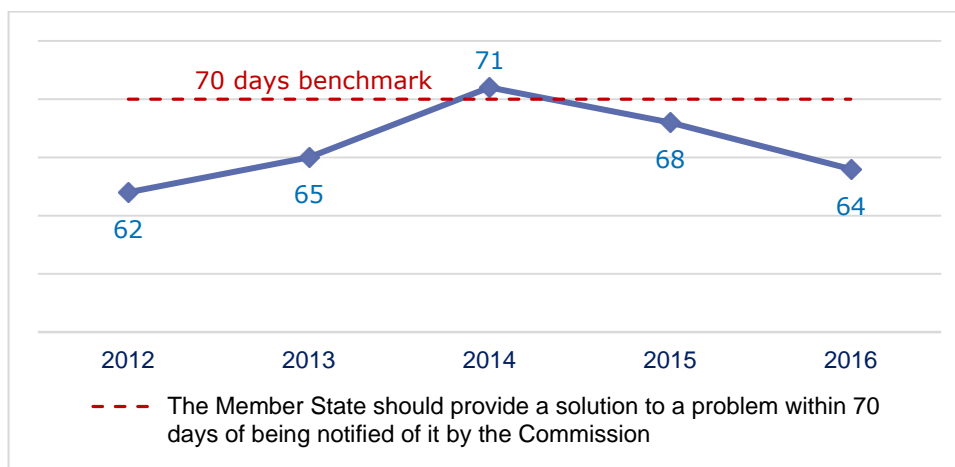
2. Files relating to Austria open in EU Pilot at year-end



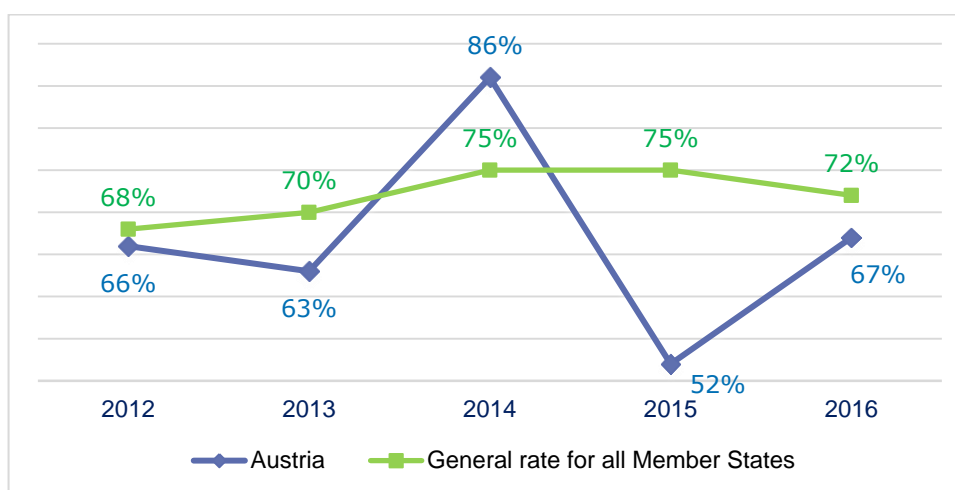
3. New EU Pilot files opened in 2016: main policy areas



4. EU Pilot files: Austria's average response time in 2012-2016 (in days)

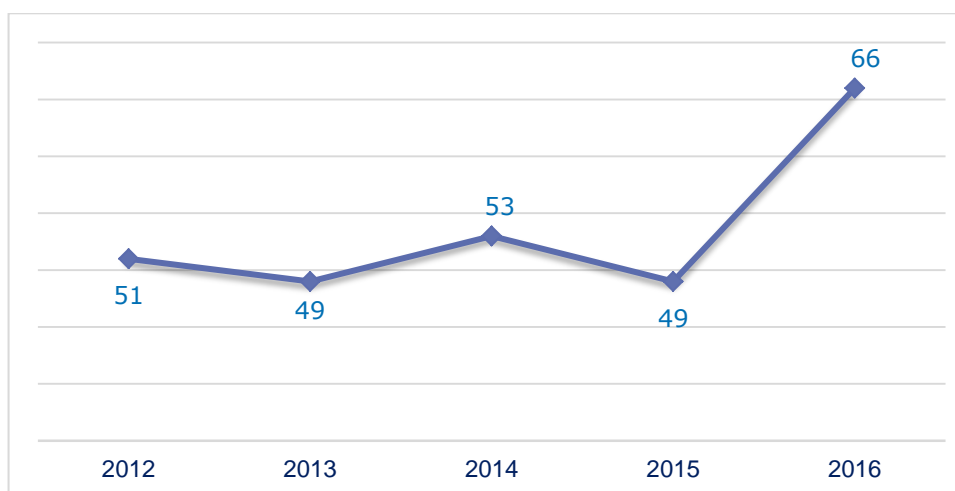


5. EU Pilot files: Austria's resolution rate in 2012-2016

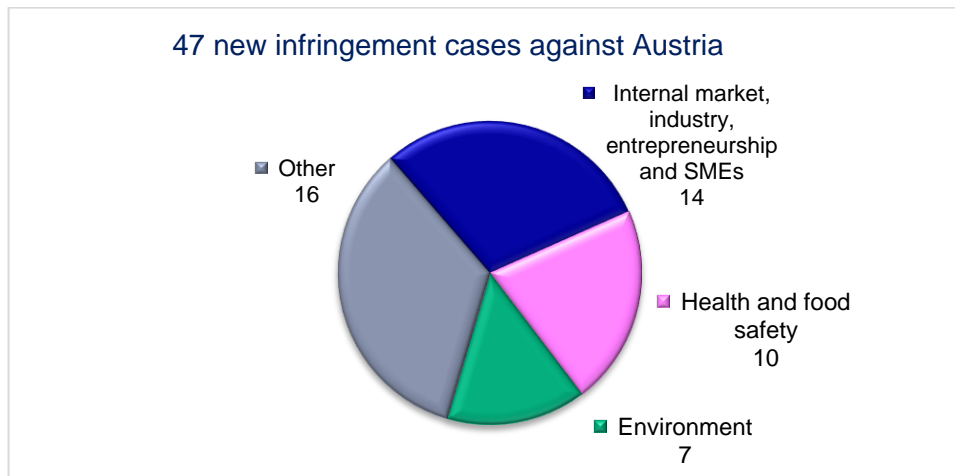


III. INFRINGEMENT CASES

1. Infringement cases against Austria open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

a) The Commission opened 47 new infringement cases against Austria in 2016. These, and other major ongoing infringement cases, include:

- non-respect of NO₂ limit values set by the Air Quality Directive;¹
- failure to communicate measures transposing the Directive on priority substances in the field of water policy;²
- failure to comply with the Third Internal Energy Market Package;³
- bilateral investment treaties signed before all state parties became members of the EU and which now overlap and conflict with the EU single market on cross-border investments;⁴
- non-conformity with the Directive on structures of excise duties on alcohol and alcoholic beverages;⁵
- non-compliance with the VAT Directive;⁶
- excessive and unjustified obstacles in the area of professional services that run counter to the Services Directive;⁷
- failure to transpose in full one or more of the three Directives on public procurement and concessions;⁸
- failure to transpose in full the Directive amending EU legislation on the recognition of professional qualifications and the Internal Market Information System;⁹
- failure to fully transpose the Capital Requirements Directive¹⁰ and the Bank Recovery and Resolution Directive;¹¹
- charging VAT on the resale rights of works of art, which may violate the VAT Directive¹² due to the lack of a contractual relationship between the resale buyer and the artist.¹³

¹ Directive [2008/50/EC](#).

² Directive [2013/39/EU](#); [MEMO/16/2097](#).

³ Directives [2009/72/EC](#) and [2009/73/EC](#); [MEMO/16/319](#).

⁴ [MEMO/16/3125](#).

⁵ Directive [92/83/EC](#).

⁶ Directive [2006/112/EC](#); [MEMO/16/2490](#).

⁷ Directive [2006/123/EC](#); [IP/16/323](#); [MEMO/16/319](#), [IP/16/3646](#) and [MEMO/16/3644](#).

⁸ Directives [2014/23/EU](#), [2014/24/EU](#) and [2014/25/EU](#); [MEMO/16/1823](#).

⁹ Directive [2013/55/EU](#); [MEMO/16/3125](#).

¹⁰ Directive [2013/36/EU](#).

¹¹ Directive [2014/59/EU](#).

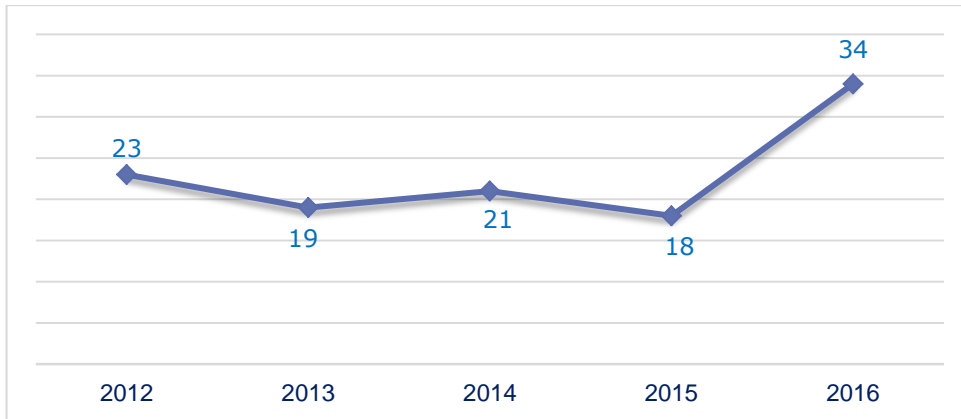
¹² Directive [2006/112/EC](#).

¹³ [MEMO/16/2490](#).

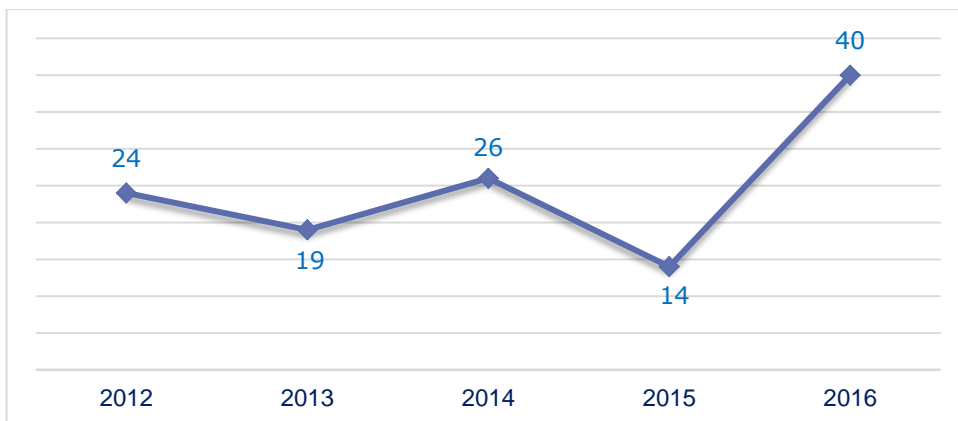
- b) The Commission referred one case to the Court under Article 258 TFEU. It concerns:
- direct award of the security printing of official documents (such as passports, ID-cards, residence permits, driving licences) to the Austrian State Printing Office. This is in breach of public procurement legislation.¹⁴
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

IV. TRANSPOSITION OF DIRECTIVES

1. Late transposition infringement cases against Austria open on 31 December (2012-2016)

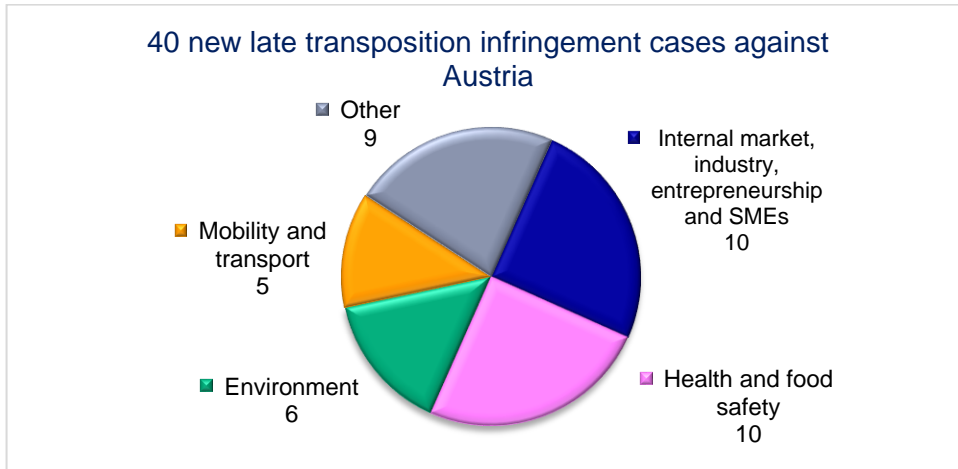


2. New late transposition infringement cases against Austria (2012-2016)



¹⁴ Directives [92/50/EC](#) and [2004/18/EC](#), Commission v Austria [C-187/16](#) [IP/15/6226](#).

3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- non-communication of national measures transposing the Industrial Emissions Directive;¹⁵
- failure to fulfil obligations under the Directive on driving licences;¹⁶
- failure to meet the obligation to interconnect a national electronic register of road transport undertakings;¹⁷
- breach of the EU-Turkey association law by the introduction of new restrictions on access to the Austrian labour market and on family reunification of Turkish nationals;¹⁸
- restrictions of resort homes in the Vorarlberg region contrary to the free movement of capital.

VI. IMPORTANT JUDGMENTS

1. Court rulings¹⁹

The Court ruled that:

- Austria's failure to fulfil obligations under the Water Framework Directive in relation to the authorisation for the construction of a hydropower plant on the Schwarze Sulm River was unfounded.²⁰

2. Preliminary rulings

In preliminary rulings addressed to the Austrian judiciary, the Court held that:

- processing of personal data carried out by an undertaking engaged in electronic commerce is governed by the law of the Member State to which that undertaking directs its activities, if it is shown that the undertaking carries out the data processing in

¹⁵ Directive [2010/75/EU](#).

¹⁶ Directive [2006/126/EC](#); [IP/15/6229](#) and [MEMO/15/6223](#).

¹⁷ Regulation (EC) No [1071/2009](#).

¹⁸ Commission v Austria, [C-1/15](#).

¹⁹ These rulings are almost exclusively handed down on infringement procedures.

²⁰ Directive [2000/60/EC](#); Commission v Austria, [C-346/14](#).

question in the context of the activities of an establishment situated in that Member State. It is for the national court to ascertain whether that is the case;²¹

- old-age benefits provided under an occupational pension scheme of one Member State and those provided under a statutory pension scheme of another Member State are equivalent benefits, where both have the same aim of ensuring that their recipients maintain a standard of living commensurate with that which they enjoyed before retirement;²²
- the Environmental Impact Assessment Directive does not apply to a project covered by a legislative provision according to which a project which has been the subject of a decision taken in breach of the obligation to assess its effects on the environment, for which the time limit for an action for annulment has expired, must be regarded as lawfully authorised. However, EU law precludes such a legislative provision insofar as it provides that a prior impact assessment is deemed to have been carried out for the project;²³
- all postal operators may have imposed on them a number of obligations, ranging from a contribution to the financing of the national regulatory authority to compliance with working conditions and requirements on quality, availability and performance.²⁴

²¹ Verein für Konsumenteninformation v Amazon EU Sàrl, [C-191/15](#).

²² Knauer, [C-453/14](#).

²³ Directive [85/337/EEC](#) amended by Directive [97/11/EC](#), Stadt Wiener Neustadt, [C-348/15](#).

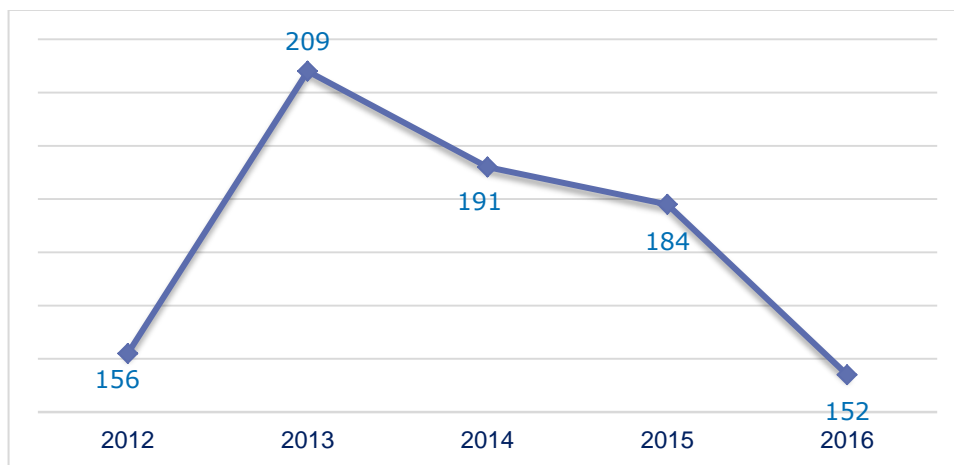
²⁴ Directive [97/67/EC](#); case [C-2/15](#), DHL Express Austria v. PCK.

Poland

New complaints against Poland in 2016 continued to fall from 2013's peak while EU Pilot files held steady. The number of open infringement cases continued the gentle downward trend seen since the previous year. New infringement cases for late transposition continued to rise, reaching a peak of twice their 2012 level.

I. COMPLAINTS

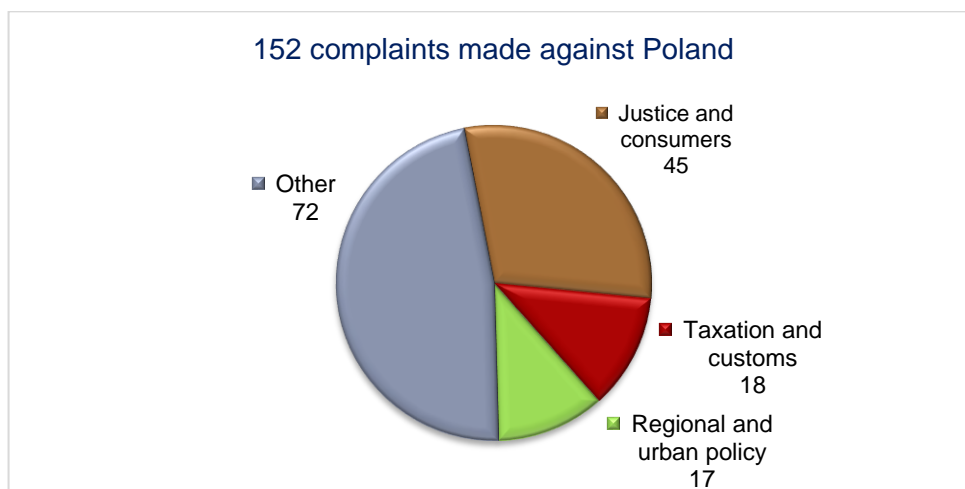
1. New complaints made against Poland by members of the public (2012-2016)



2. Public complaints against Poland open at year-end

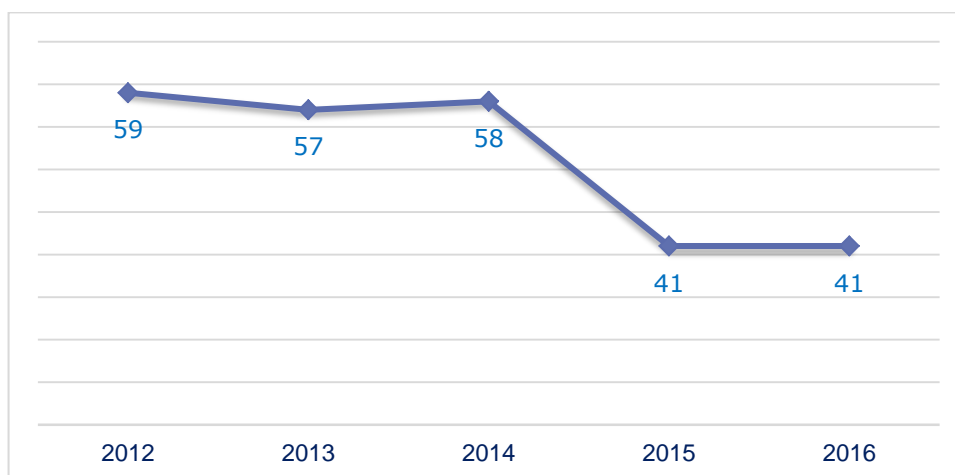
167	>	Complaints open at end-2015
152	>	New complaints registered in 2016
186	>	Complaints handled in 2016
<hr/>		
= 133	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

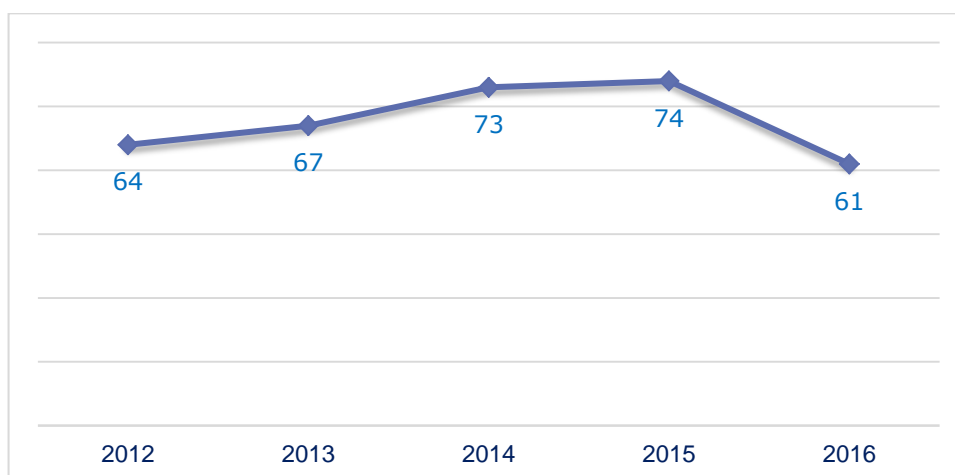


II. EU PILOT

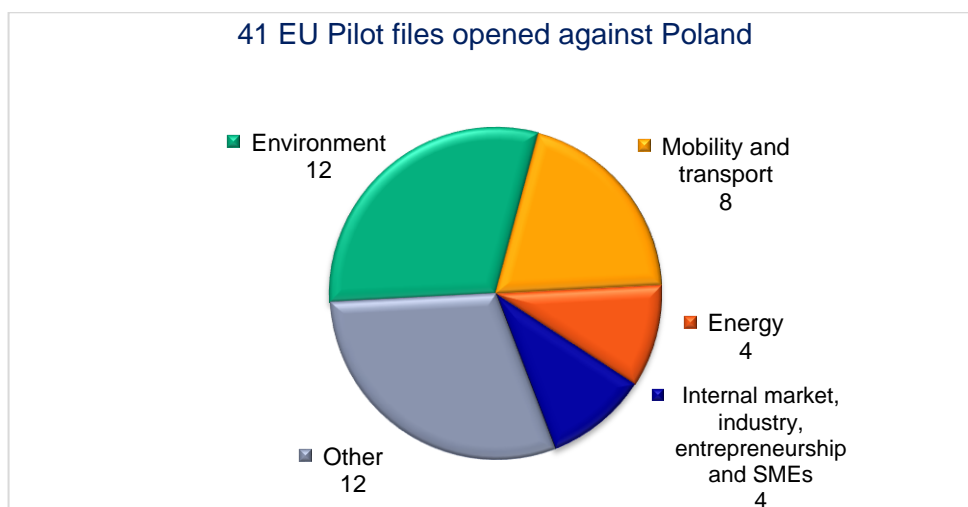
1. New EU Pilot files opened against Poland (2012-2016)



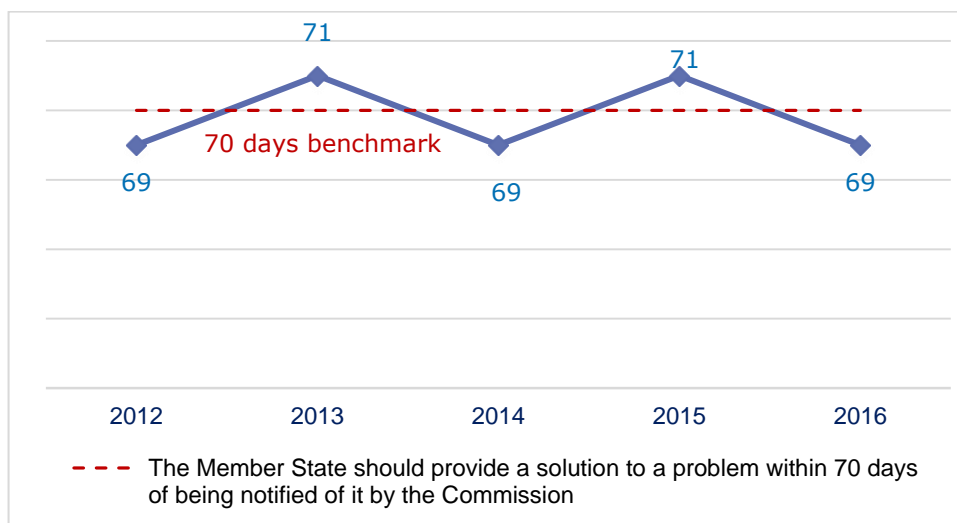
2. Files relating to Poland open in EU Pilot at year-end



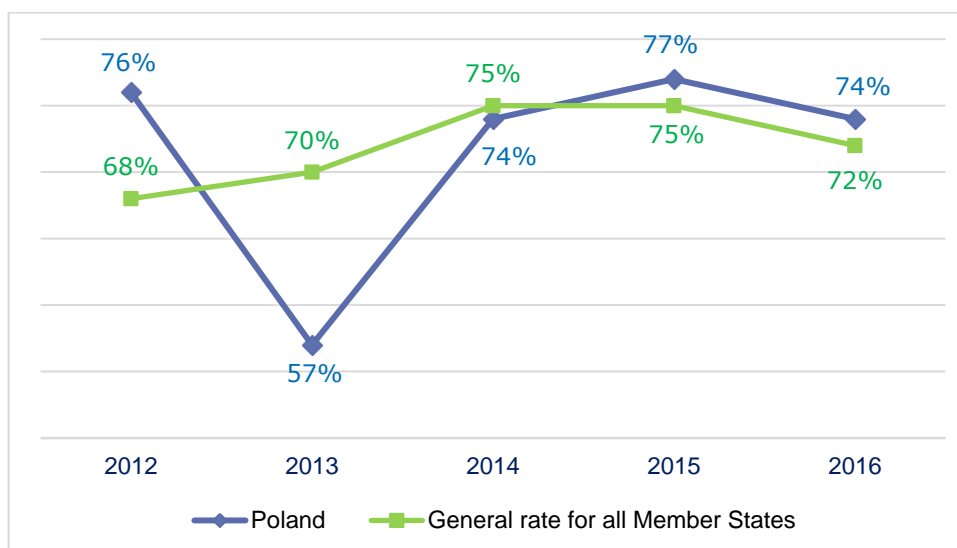
3. New EU Pilot files opened in 2016: main policy areas



4. EU Pilot files: Poland's average response time in 2012-2016 (in days)

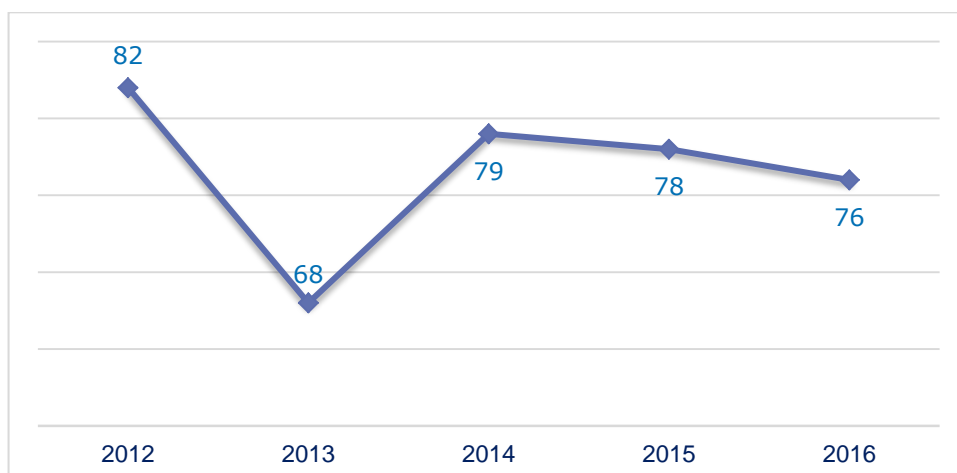


5. EU Pilot files: Poland's resolution rate in 2012-2016

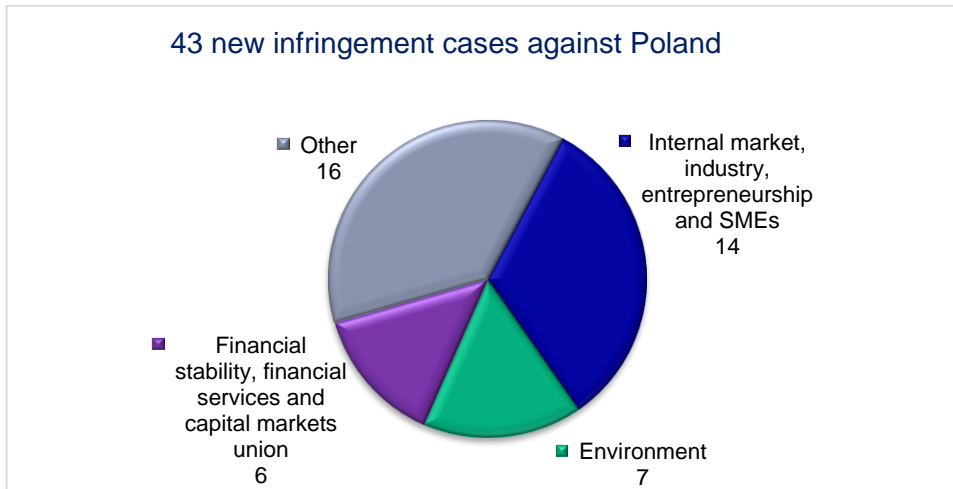


III. INFRINGEMENT CASES

1. Infringement cases against Poland open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 43 new infringement cases against Poland in 2016. These, and other major ongoing infringement cases, include:
- non-compliance with the rules under the Authorisation Directive, the Framework Directive and the Directive on competition in the market for communications networks and services as regards the spectrum assignment to a specific company without an open procedure;¹
 - non-respect of NO₂ limit values set by the Air Quality Directive;²
 - increased logging in Białowieża Forest;
 - failure to communicate measures transposing the Seveso III Directive;³
 - failure to fully transpose the Energy Efficiency Directive and the Directive on safety of offshore oil and gas operations;⁴
 - failure to comply with the requirements of the Renewable Energy Directive;⁵
 - failure to communicate all national measures transposing the Mortgage Credit Directive;⁶
 - failure to correctly implement the Airport Charges Directive;⁷
 - excessive and unjustified obstacles in the area of professional services that run counter to the Services Directive;⁸
 - failure to transpose in full one or more of the three Directives on public procurement and concessions.⁹
- b) The Commission referred four cases to the Court under Article 258 TFEU. They concern:
- widespread non-respect of the PM₁₀ limit values set by the Air Quality Directive;¹⁰
 - failure to ensure that the environmental impacts of exploratory mining drillings are properly assessed;¹¹

¹ Directives [2002/20/EC](#), [2002/21/EC](#) and [2002/77/EC](#).

² Directive [2008/50/EC](#).

³ Directive [2012/18/EU](#) and [MEMO/16/1452](#).

⁴ Directives [2012/27/EU](#) and [2013/30/EU](#), [MEMO/16/3125](#) and [MEMO/16/3644](#).

⁵ Directive [2009/28/EC](#), [MEMO/16/1823](#) and [MEMO/16/1452](#).

⁶ Directive [2014/17/EU](#), and press releases [MEMO/16/3644](#) and [MEMO/16/4211](#).

⁷ Directive [2009/12/EC](#), [MEMO/16/319](#).

⁸ Directive [2006/123/EC](#), [IP/16/323](#) and [MEMO/16/319](#).

⁹ Directives [2014/23/EU](#), [2014/24/EU](#), [2014/25/EU](#), [MEMO/16/1823](#).

¹⁰ Directive [2008/50/EC](#), Commission v Poland, [C-336/16](#); [IP/15/6225](#).

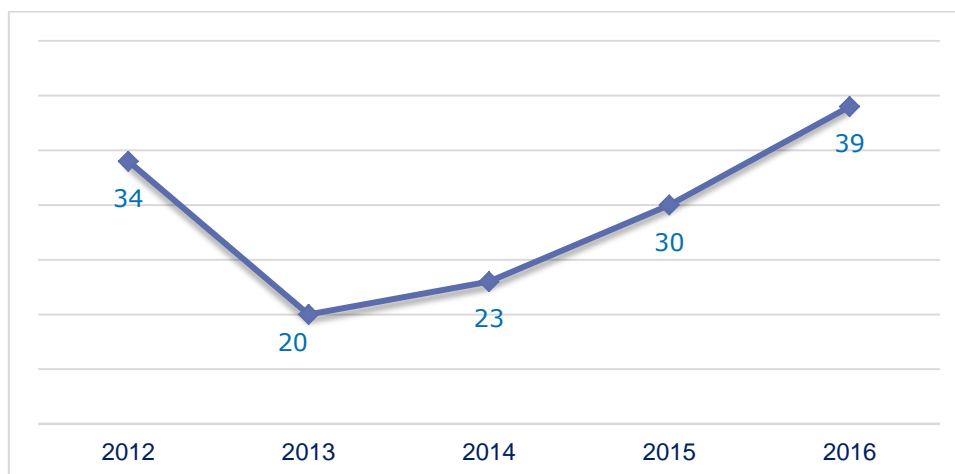
¹¹ Commission v Poland, [C-526/16](#); [IP/16/1454](#).

- failure to meet the obligation of establishing a national electronic register of road transport undertakings;¹²
- failure to correctly transpose and implement EU rules on rail safety.¹³

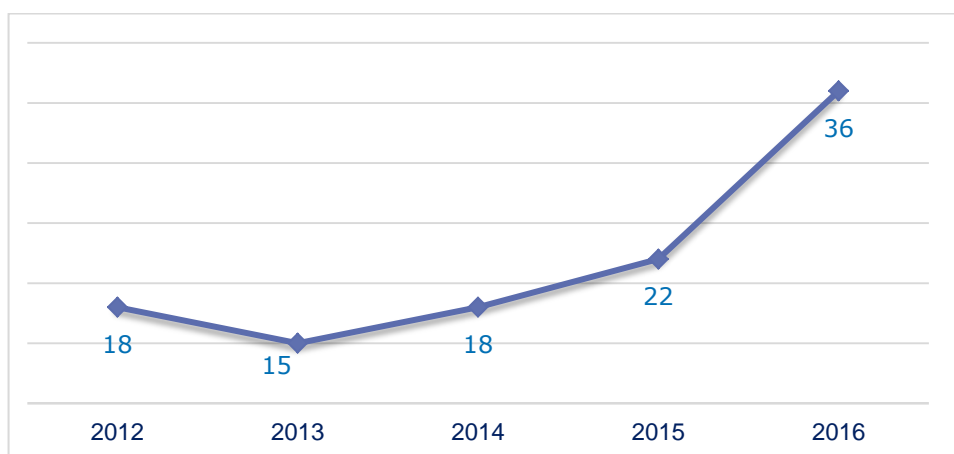
c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

IV. TRANSPOSITION OF DIRECTIVES

1. Late transposition infringement cases against Poland open on 31 December (2012-2016)



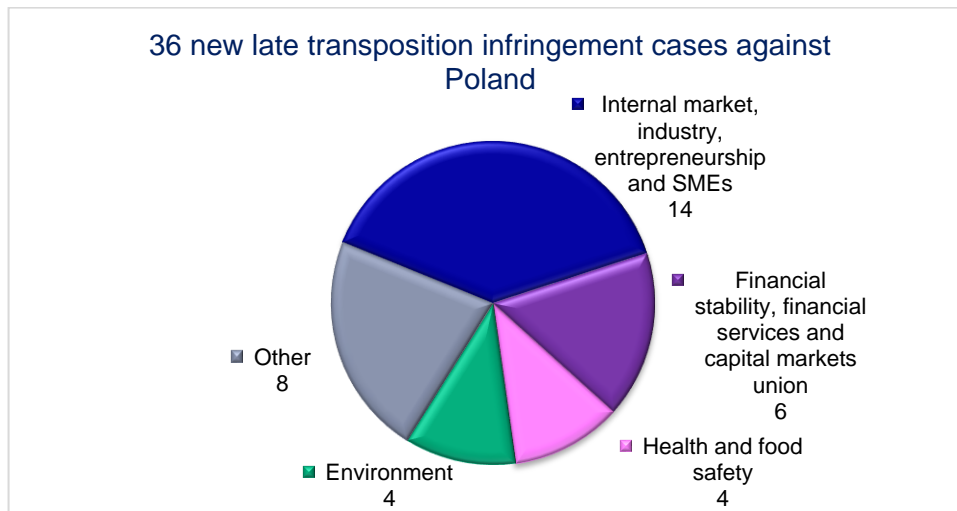
2. New late transposition infringement cases against Poland (2012-2016)



¹² Commission v Poland, [C-23/16](#), [IP/15/6012](#), [MEMO/15/6006](#).

¹³ Commission v Poland, [C-530/16](#), [IP/16/324](#), [MEMO/16/319](#).

3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- non-conformity of national legislation with the Directive on quality and safety of blood and blood components;¹⁴
- incorrect transposition of the Environmental Impact Assessment Directive and the Habitats Directive in relation to maintenance works on rivers;¹⁵
- non-communication of national measures transposing the Directive on waste electrical and electronic equipment;¹⁶
- failure to fulfil obligations under the Directive on driving licences;¹⁷
- incorrect implementation of the Directive on a European electronic toll service;¹⁸
- failure to correctly transpose and apply EU legislation on the separation of accounts in rail;¹⁹
- completing the transposition of the Directive on over-reliance on credit ratings;²⁰
- completing the notification of all national measures necessary to transpose the Financial Conglomerates Directive;²¹
- minimum amounts of cover in relation to the Motor Insurance Directive.²²

VI. IMPORTANT JUDGMENTS

1. Court rulings²³

The Court ruled that:

¹⁴ Directive [2002/98/EC](#).

¹⁵ Directives [2011/92/EU](#) and [92/43/EEC](#).

¹⁶ Directive [2012/19/EU](#).

¹⁷ Directive [2006/126/EC](#), IP/15/6229, [MEMO/15/6223](#).

¹⁸ Directive [2004/52/EC](#).

¹⁹ Directive [2012/34/EU](#).

²⁰ Directive [2013/14/EU](#).

²¹ Directive [2011/89/EU](#).

²² Directive [2005/14/EC](#).

²³ These rulings are almost exclusively handed down in infringement procedures.

- Poland has failed to transpose correctly into its national legal framework several provisions of the Water Framework Directive;²⁴
- Poland has failed to establish a national electronic register and to interconnect with the national electronic registers of other Member States.²⁵

2. Preliminary rulings

In a preliminary rulings addressed to the Polish judiciary, the Court held that:

- the use of standard contract terms with content identical to that of terms which have been declared unlawful by a judicial decision having the force of law and which have been entered in a national register of unlawful standard contract terms can be regarded, in relation to another seller or supplier which was not a party to the proceedings culminating in the entry in that register, as an unlawful act, provided that that seller or supplier has an effective judicial remedy against the decision declaring the terms to be equivalent, as well as against the decision fixing the amount of the fine imposed. Such a national register of unlawful standard contract terms must comply with the requirements of Directive 93/13/EEC and of EU law more generally. It must in that regard be managed in a transparent manner in the interest not only of consumers but also of sellers or suppliers and kept up to date;²⁶
- the Universal Services Directive²⁷ must be interpreted to mean that a Member State may provide that an operator of a public electronic communications network must ensure that all end users are able to access non-geographic numbers on its network in that State, and not only those of other Member States;²⁸
- a national court hearing an appeal against a decision of the national regulatory authority in the area of electronic communications networks and services²⁹ must be able to annul that decision with retroactive effect if it finds that to be necessary in order to provide effective protection for the rights of the undertaking which has brought the appeal;³⁰
- subjecting the organisation of games of chance and gaming on machines to the requirement to hold a licence to operate a gaming casino does not fall within the concept of 'technical regulation' under the Single Market Transparency Directive.³¹

²⁴ Directive [2000/60/EC](#), Commission v Poland, [C-648/13](#).

²⁵ Regulation (EC) [No 1071/2009](#), Commission v Poland, [C-23/16](#).

²⁶ Biuro podróży 'Partner', [C-119/15](#).

²⁷ Directive [2002/22/EC](#).

²⁸ Polkomtel, [C-397/14](#).

²⁹ Directive [2002/21/EC](#).

³⁰ Prezes Urzędu Komunikacji Elektronicznej and Petrotel, [C-231/15](#).

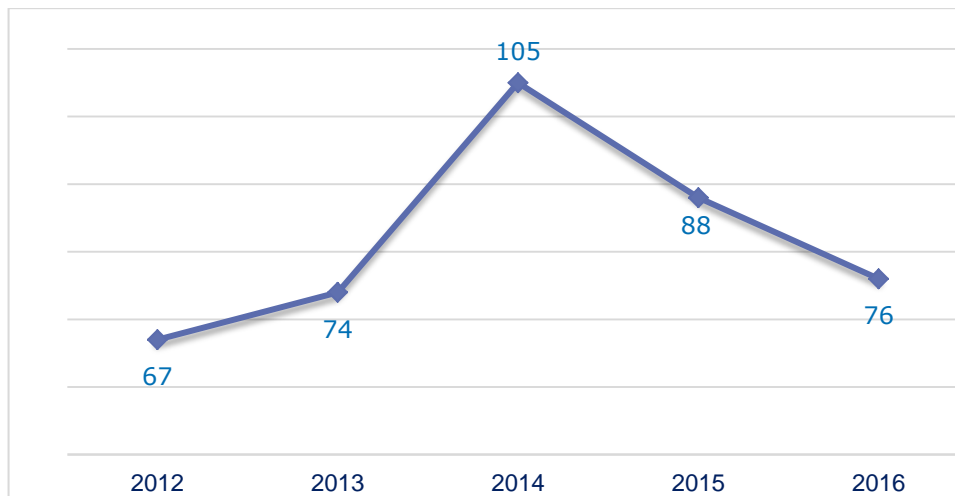
³¹ Directive [2015/1535/EU](#), M. and S. [C-303/15](#).

Portugal

New complaints against Portugal dropped further in 2016, almost equalling their 2013 level. The decreasing trend also continued for new EU Pilot files, which reached a five-year low. In contrast, the number of infringement cases against Portugal open at the end of the year increased sharply, equalling the 2012 peak. New infringement cases for late transposition also jumped, reaching a new five-year high.

I. COMPLAINTS

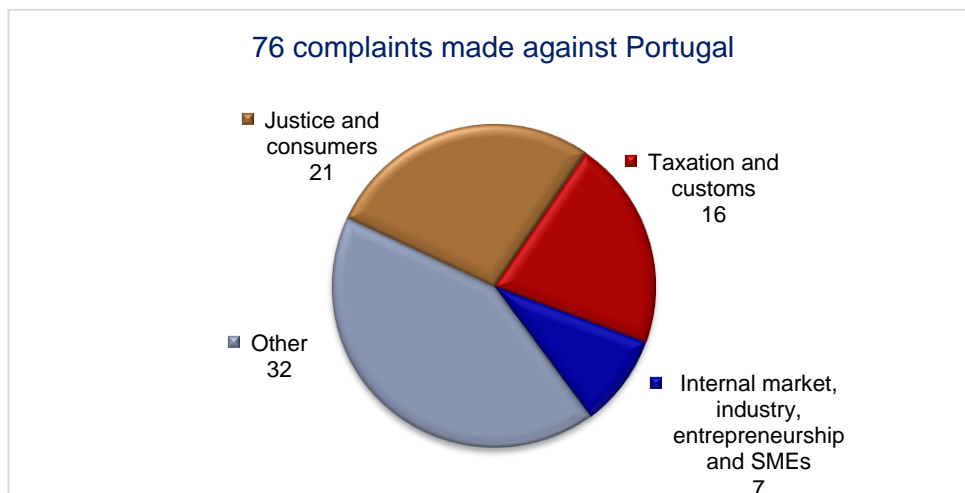
1. New complaints made against Portugal by members of the public (2012-2016)



2. Public complaints against Portugal open at year-end

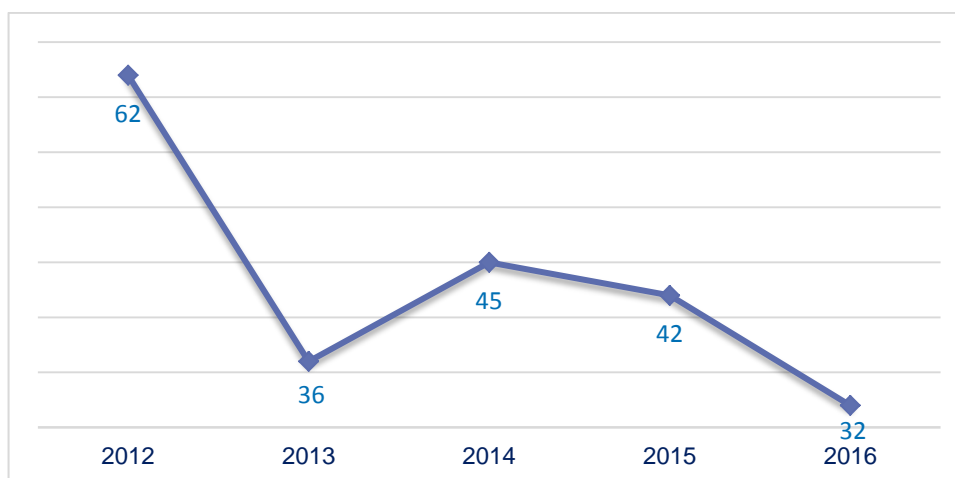
78	>	Complaints open at end-2015
76	>	New complaints registered in 2016
98	>	Complaints handled in 2016
<hr/>		
= 56	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

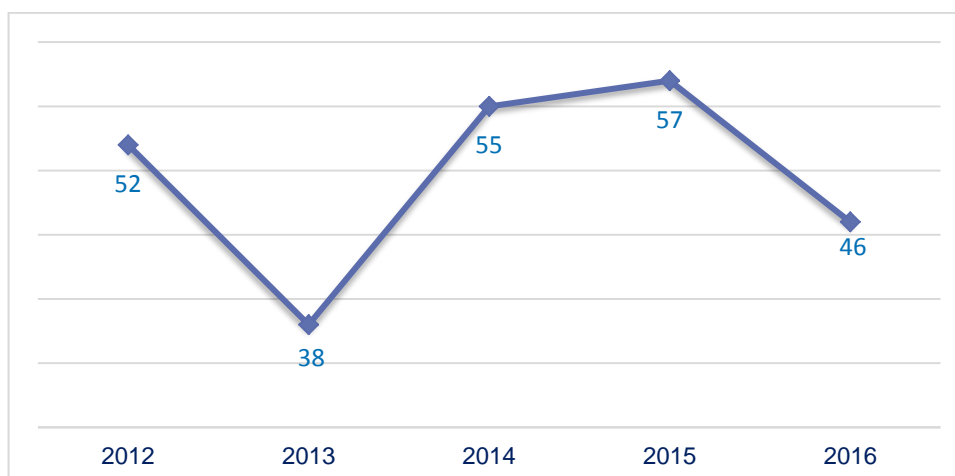


II. EU PILOT

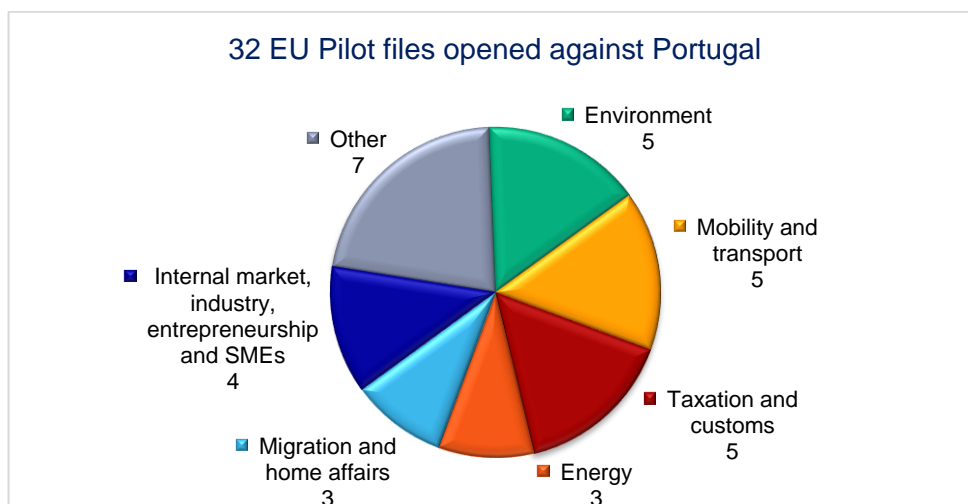
1. New EU Pilot files opened against Portugal (2012-2016)



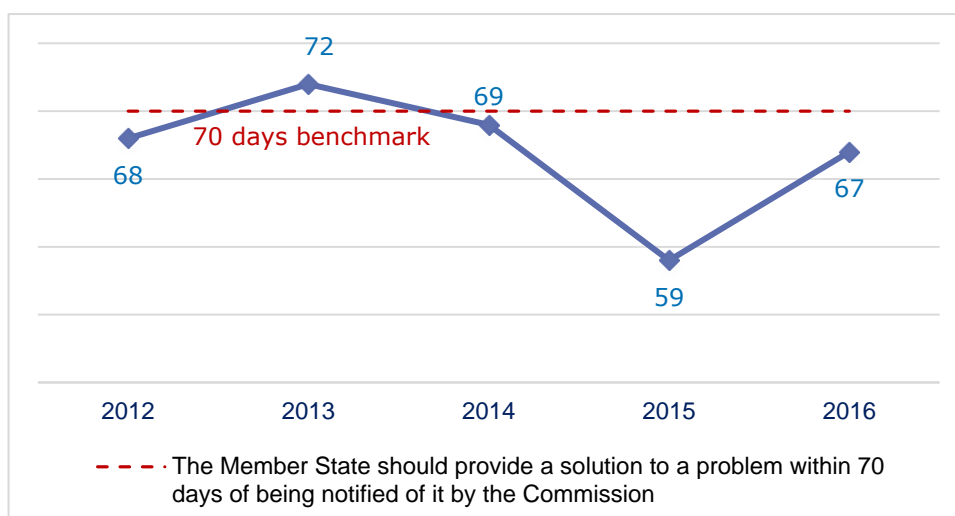
2. Files relating to Portugal open in EU Pilot at year-end



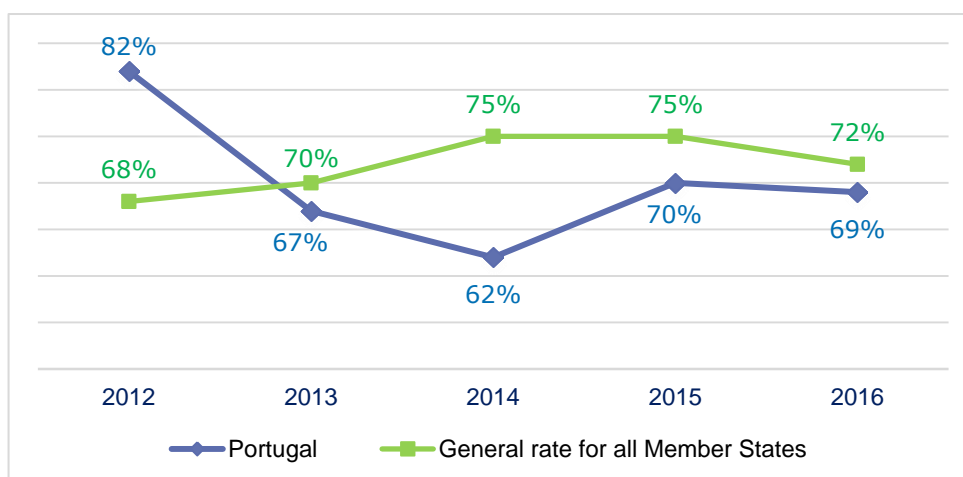
3. New EU Pilot files opened in 2016: main policy areas



4. EU Pilot files: Portugal's average response time in 2012-2016 (in days)

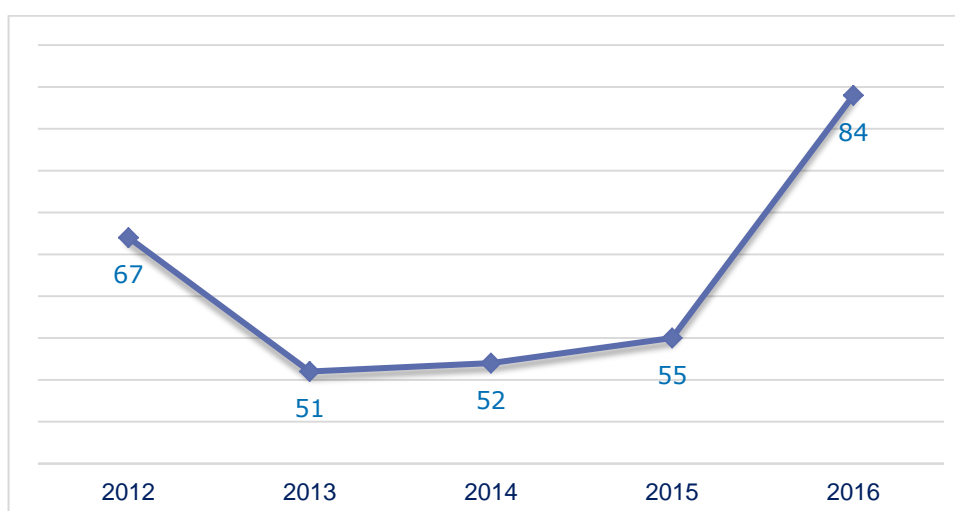


5. EU Pilot files: Portugal's resolution rate in 2012-2016

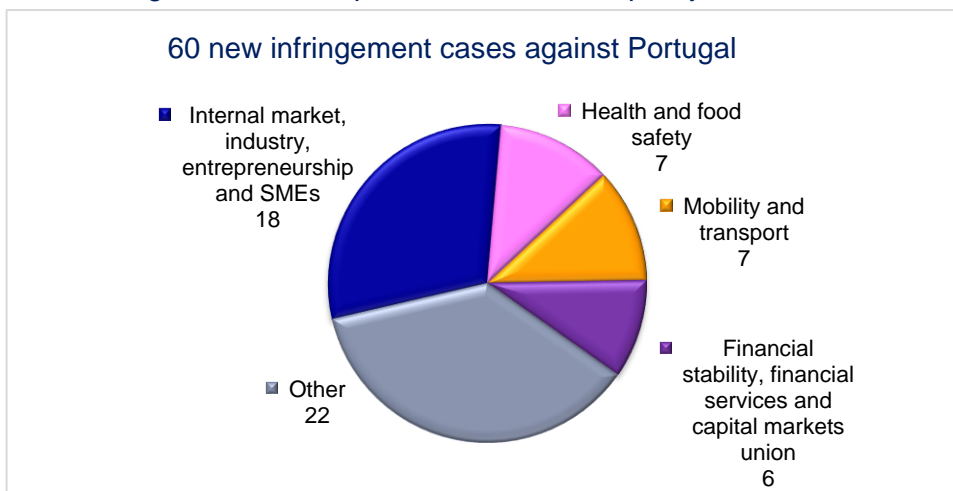


III. INFRINGEMENT CASES

1. Infringement cases against Portugal open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 60 new infringement cases against Portugal in 2016. These, and other major ongoing infringement cases, include:
- non-compliance with the Prüm Decisions on information-sharing to combat terrorism and serious crime;¹
 - bad application of the Habitats Directive as regards designation of special areas of conservation and establishment of the necessary conservation measures;²
 - inadequate urban waste water treatment;
 - failure to fully transpose the Offshore Safety Directive;³
 - failure to comply with the requirements of the Renewable Energy Directive;⁴
 - failure to communicate all national measures transposing the Mortgage Credit Directive;⁵
 - failure to communicate all national measures transposing the Transparency Directive;⁶
 - incorrect implementation of the Directive on accident investigations;⁷
 - incorrect implementation of the Directive on port State control;⁸
 - incorrect implementation of the Flag State Directive;⁹
 - failure to report on monitoring activities carried out by the maritime authority;¹⁰
 - failure to correctly transpose and implement EU rules on driving licences;¹¹
 - failure to transpose in full the three Directives on public procurement and concessions;¹²
 - failure to transpose in full the Directive amending EU legislation on the recognition of professional qualifications and the Internal Market Information System;¹³
 - the airport tax applied by the Lisbon municipality on passengers arriving at the Lisbon airport: as passengers with their domicile in Portugal are exempted from

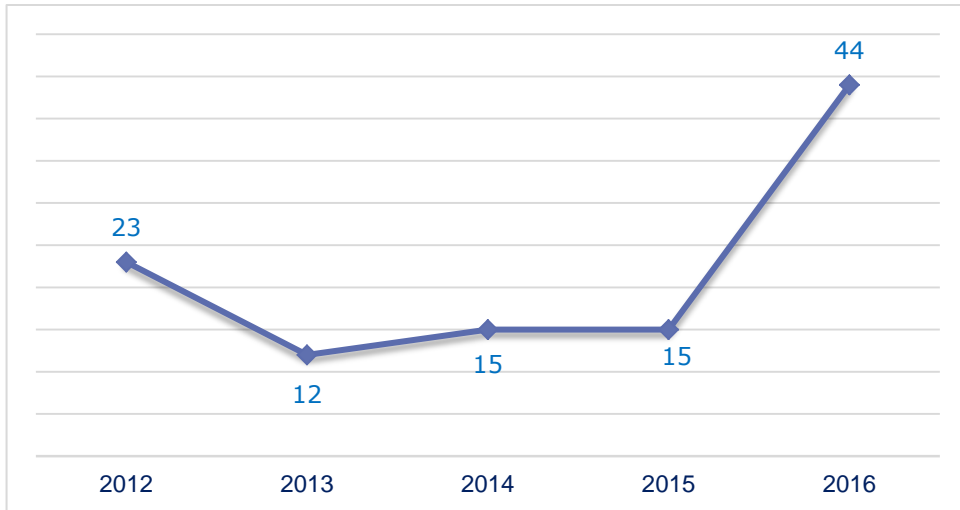
¹ Council Decisions [2008/615/JHA](#) and [2008/616/JHA](#); [MEMO/16/3125](#).
² Directive [92/43/EEC](#); [MEMO/16/1823](#).
³ Directive [2013/30/EU](#); [MEMO/16/319](#).
⁴ Directive [2009/28/EC](#); [MEMO/16/1452](#).
⁵ Directive [2014/17/EU](#); [MEMO/16/3644](#).
⁶ Directive [2013/50/EU](#); [MEMO/16/3644](#).
⁷ Directive [2009/18/EC](#).
⁸ Directive [2009/16/EC](#).
⁹ Directive [2009/21/EC](#); [MEMO/16/3125](#).
¹⁰ Directive [2009/15/EC](#); [MEMO/16/2490](#).
¹¹ Directive [2006/126/EC](#); [MEMO/16/2097](#).
¹² Directives [2014/23/EU](#), [2014/24/EU](#) and [2014/25/EU](#); [MEMO/16/4211](#).
¹³ Directive [2013/55/EU](#); [MEMO/16/3125](#).

the tax, it may constitute a covert discrimination by reason of nationality that infringes Article 18 TFEU.

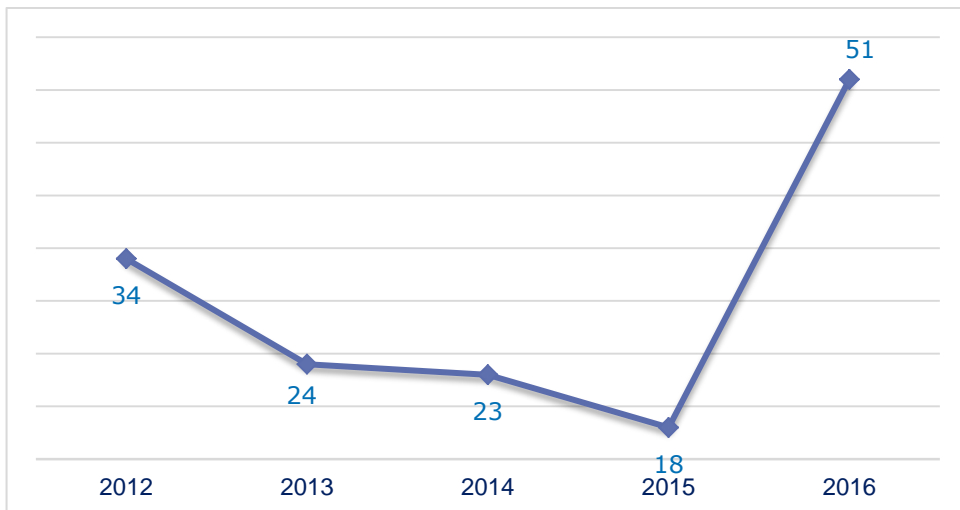
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

IV. TRANSPOSITION OF DIRECTIVES

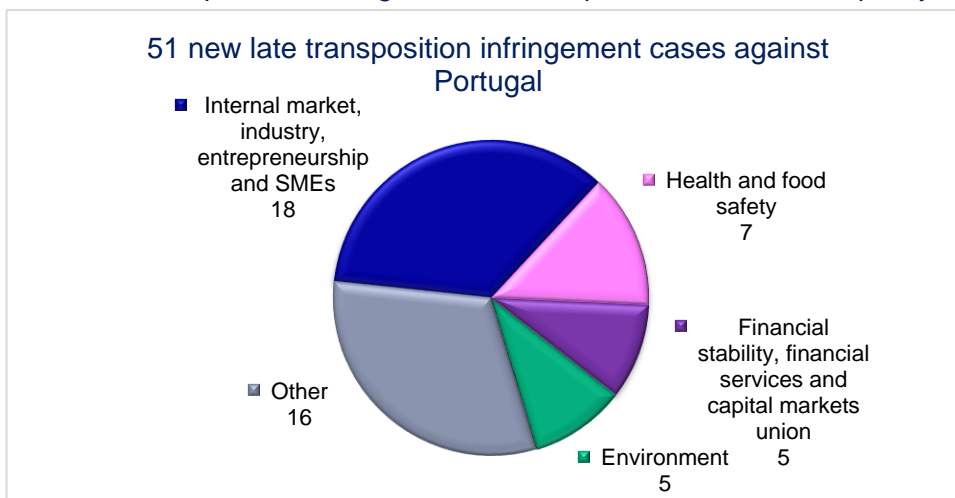
1. Late transposition infringement cases against Portugal open on 31 December (2012-2016)



2. New late transposition infringement cases against Portugal (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- failure to apply correctly the Directive on the protection of pigs as regards group housing of sows;¹⁴
- illegal landfills operated in breach of the Landfill Directive;¹⁵
- the notification of all national measures necessary to transpose the Capital Requirements Directive¹⁶ and the Bank Resolution and Recovery Directive;¹⁷
- transposition of the Directive on over-reliance on credit ratings;¹⁸
- incorrect implementation of the Directive on a European electronic toll service;¹⁹
- non-ratification of the Protocol of Accession to the Eurocontrol International Convention;
- unequal treatment in recognition of qualifications of fixed-term teachers.

VI. IMPORTANT JUDGMENTS

1. Court rulings²⁰

The Court ruled that:

- Portugal failed to execute in full the Court's 2009 judgment finding that Portugal was not ensuring adequate treatment of urban waste water in certain agglomerations discharging into normal areas. The Court ordered Portugal to pay a lump sum of EUR 3 million and a daily penalty payment of EUR 8 000;²¹
- Portugal failed to ensure adequate treatment of urban waste water in several smaller agglomerations;²²

¹⁴ Directive [2008/120/EC](#).

¹⁵ Directive [1999/31/EC](#).

¹⁶ Directive [2013/36/EU](#).

¹⁷ Directive [2014/59/EU](#).

¹⁸ Directive [2013/14/EU](#).

¹⁹ Directive [2004/52/EC](#).

²⁰ These rulings are almost exclusively handed down in infringement procedures.

²¹ Directive [91/271/EEC](#), Commission v Portugal, [C-557/14](#) and Court press release No [67/16](#).

²² Directive [91/271/EEC](#), Commission v Portugal, [C-398/14](#).

- Portugal failed to fulfil its obligations under the Regulation on common rules for allocating slots at Community airports. The Court also provided clarification on the notion of independence of the slot allocation body under the Regulation;²³
- Portugal failed to establish a national electronic register and to interconnect with the national electronic registers of other Member States;²⁴
- the depreciation rates applied in Portugal on used vehicles for vehicle registration tax purposes were not in compliance with Article 110 TFEU. This is because no depreciation is taken into account before the vehicle is 1 year old and no further depreciation is taken into account in the case of vehicles older than 5 years.²⁵

2. Preliminary rulings

In a preliminary ruling addressed to the Portuguese judiciary, the Court held that:

- the freedom to provide services under the TFEU allows Member States to apply a withholding tax at source to the income of non-resident banks without levying such a tax on resident banks, if such a tax is justified by an overriding reason in the general interest and necessary to achieve the objective. However, Member States may not tax non-resident banks by prohibiting them from deducting business expenses directly related to their activities while this opportunity is given to resident banks.²⁶

²³ Regulation (EEC) No [95/93](#), Commission v Portugal, [C-205/14](#).

²⁴ Regulation (EC) No [1071/2009](#), Commission v Portugal, [C-583/15](#).

²⁵ Commission v Portugal, [C-200/15](#).

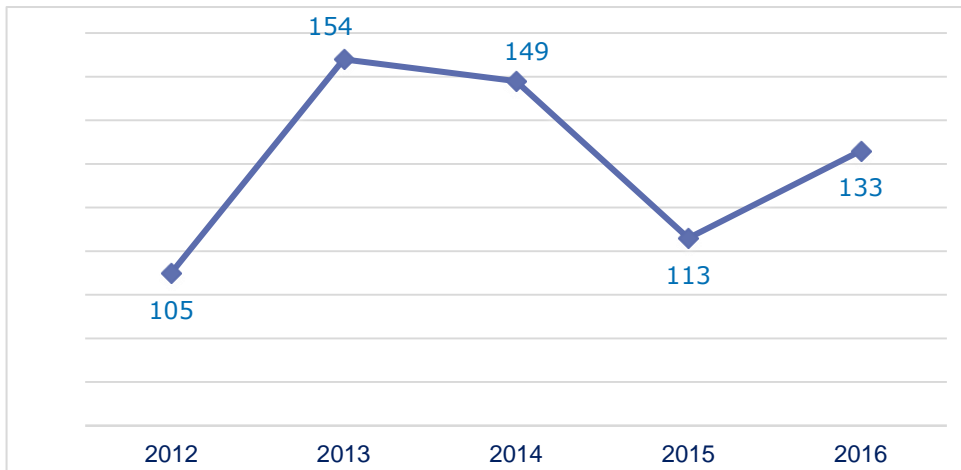
²⁶ *Brisal*, [C-18/15](#).

Romania

New complaints against Romania rose again in 2016 after falling for 2 years. Open infringement cases and new cases for late transposition also both increased, while remaining below their 2014 peaks. By contrast, new EU Pilot files continued their steady decline, falling to less than half their 2012 level.

I. COMPLAINTS

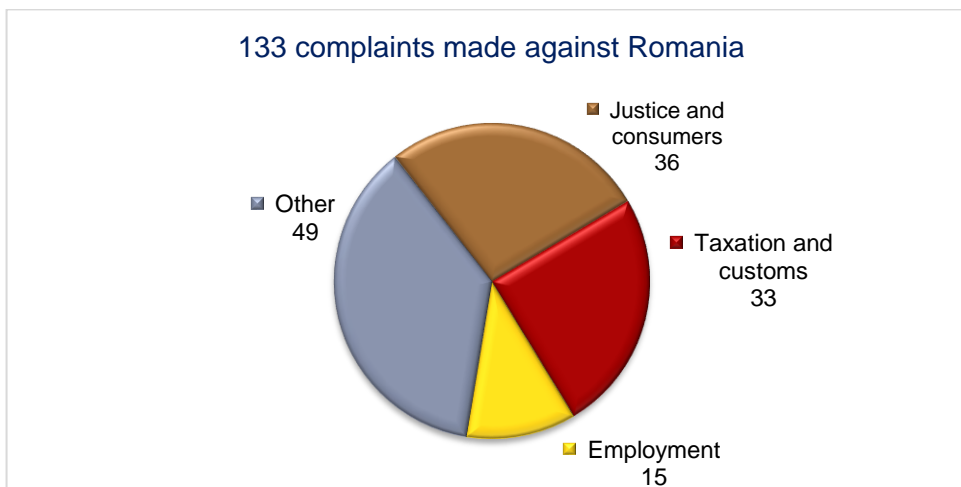
1. New complaints made against Romania by members of the public (2012-2016)



2. Public complaints against Romania open at year-end

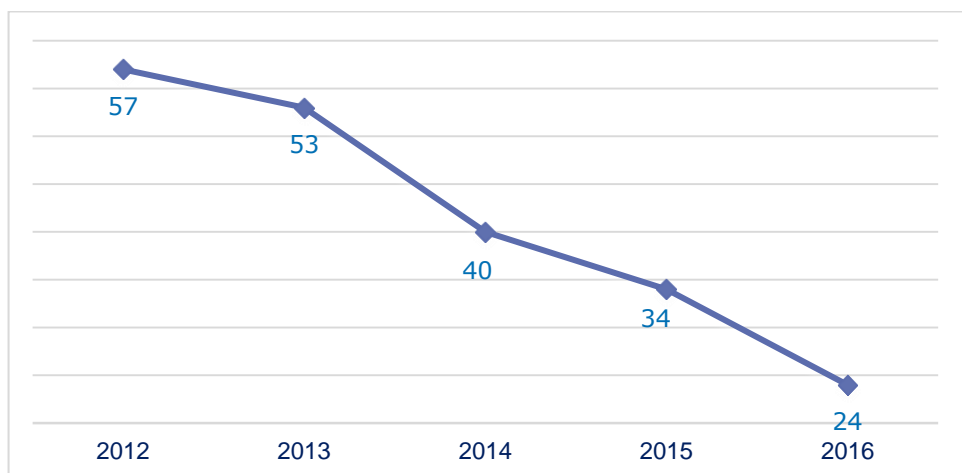
98	>	Complaints open at end-2015
133	>	New complaints registered in 2016
117	>	Complaints handled in 2016
<hr/>		
= 114	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

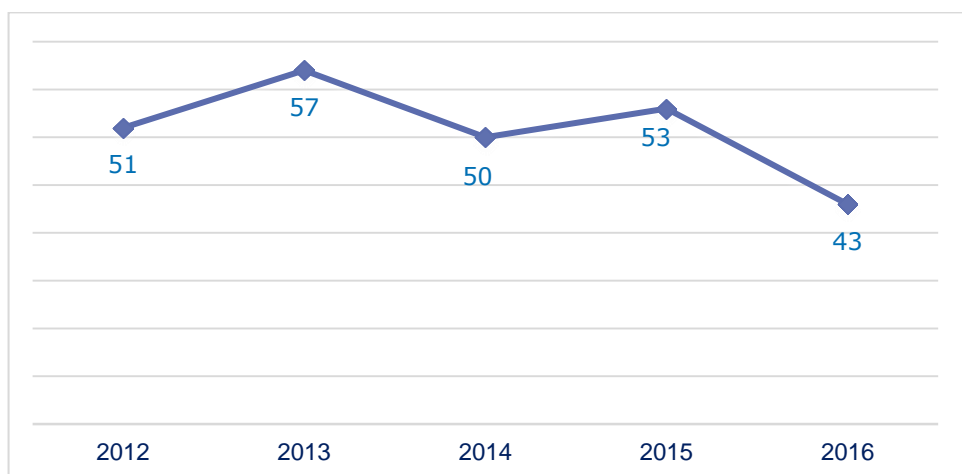


II. EU PILOT

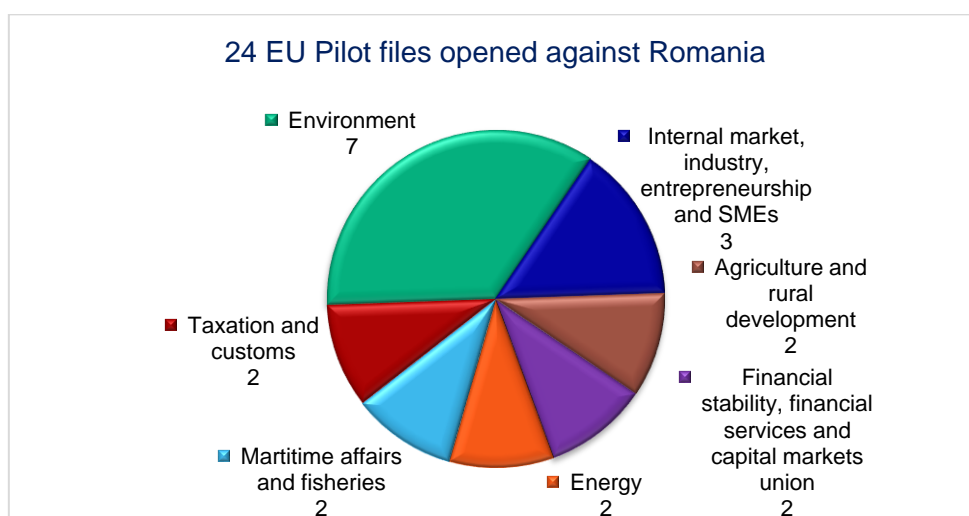
1. New EU Pilot files opened against Romania (2012-2016)



2. Files relating to Romania open in EU Pilot at year-end

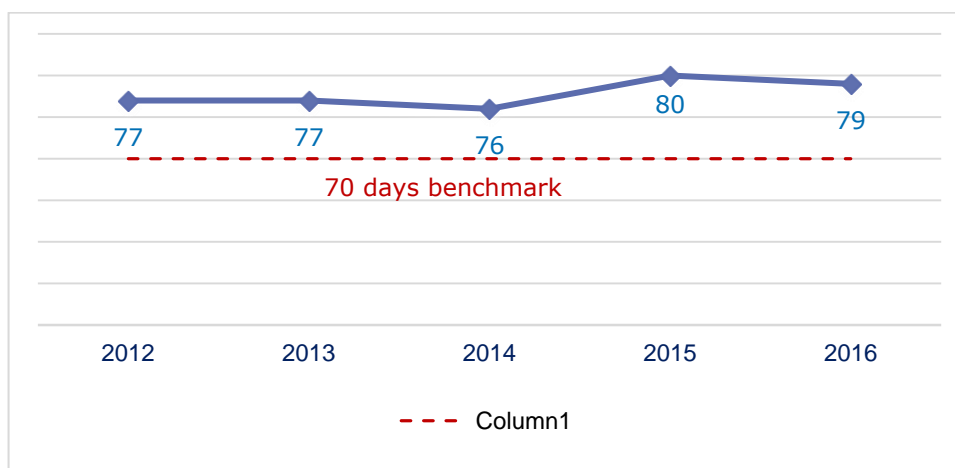


3. New EU Pilot files opened in 2016: main policy areas

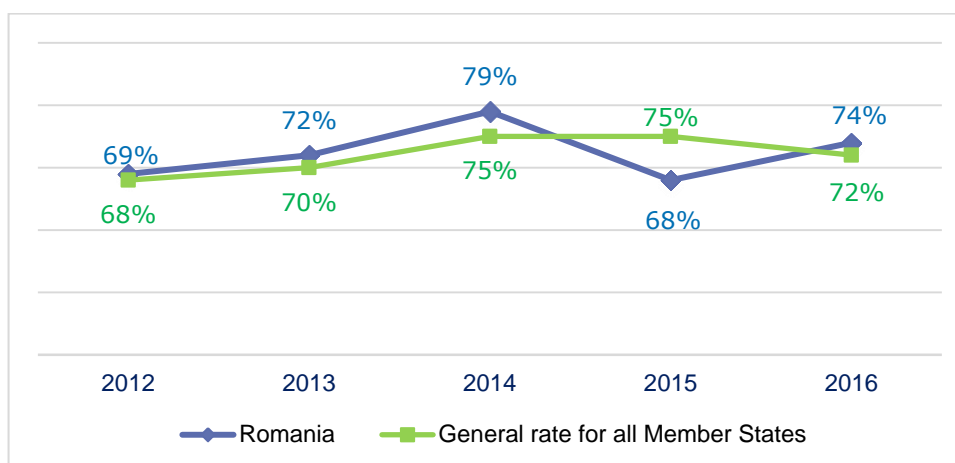


Romania

4. EU Pilot files: Romania's average response time in 2012-2016 (in days)

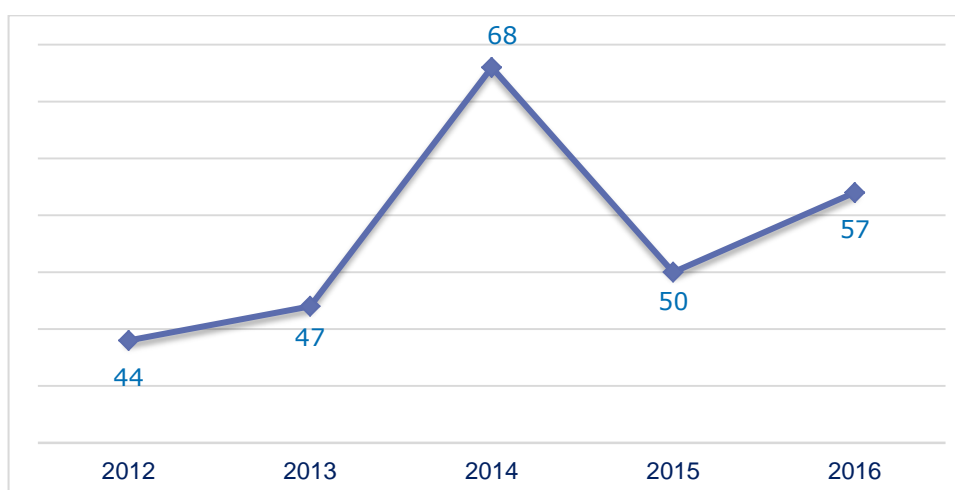


5. EU Pilot files: Romania's resolution rate in 2012-2016

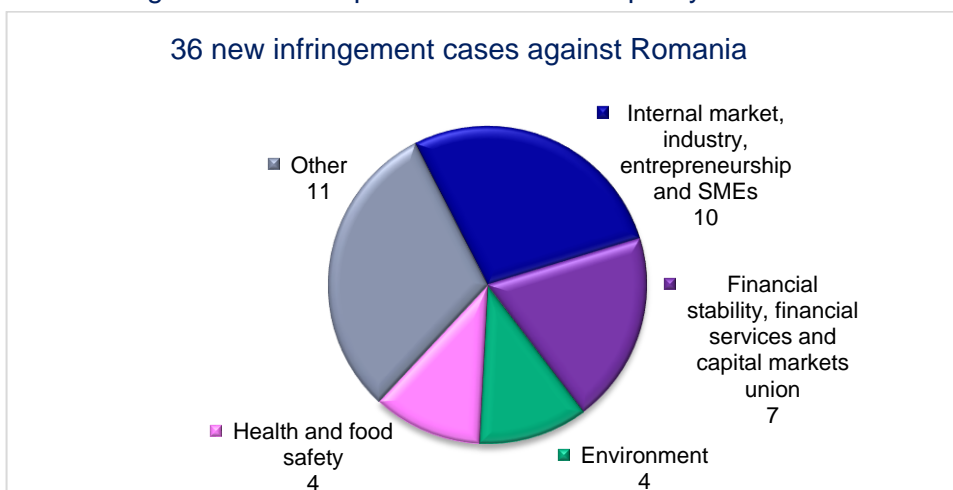


III. INFRINGEMENT CASES

1. Infringement cases against Romania open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 36 new infringement cases against Romania in 2016. These, and other major ongoing infringement cases, include:
- non-compliance with the Regulation on the marketing and use of explosives precursors;¹
 - lack of waste management plans and waste prevention programmes required under the Waste Framework Directive;²
 - failure to fully transpose the Offshore Safety Directive;³
 - failure to comply with the requirements of the Oil Stocks Directive;⁴
 - to communicate all national measures transposing the Directive amending the Transparency Directive;⁵
 - bilateral investment treaties signed before all state parties became members of the EU and which now overlap and conflict with the EU single market on cross-border investments;⁶
 - failure to transpose the establishing a single European railway area;⁷
 - failure to transpose in full one or more of the three Directives on public procurement and concessions;⁸
 - failure to transpose in full the Directive amending EU legislation on the recognition of professional qualifications and the Internal Market Information System.
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

¹ Regulation (EU) No [98/2013](#).

² Directive [2008/98/EC](#), [MEMO/16/1823](#).

³ Directive [2013/30/EU](#), [MEMO/16/319](#), [MEMO/16/1452](#) and [MEMO/16/3644](#).

⁴ Directive [2009/119/EC](#) and [MEMO/16/3644](#).

⁵ Directive [2013/50/EU](#); [MEMO/16/3644](#).

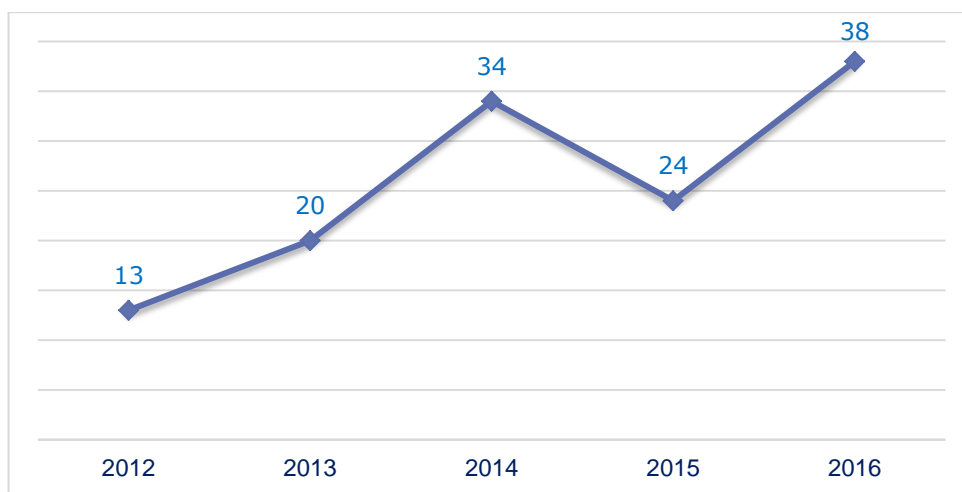
⁶ [MEMO/16/3125](#).

⁷ Directive [2012/34/EU](#), [MEMO/16/319](#).

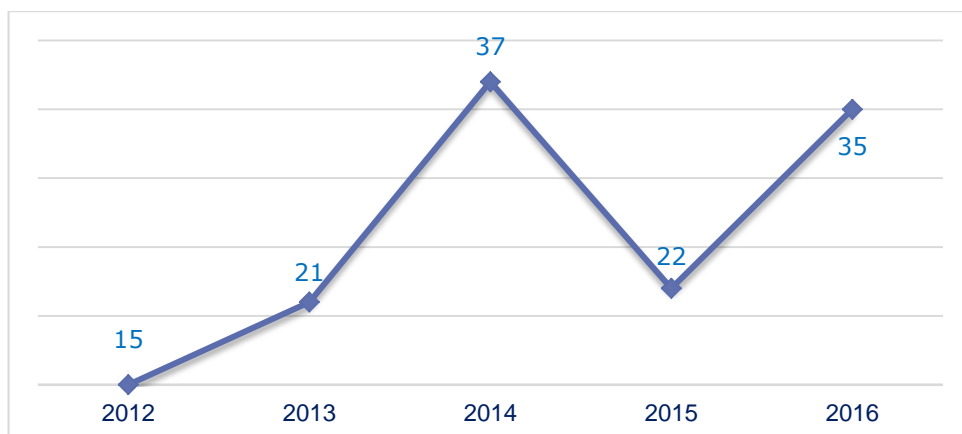
⁸ Directives [2014/23/EU](#), [2014/24/EU](#), [2014/25/EU](#), [MEMO/16/1823](#).

IV. TRANSPOSITION OF DIRECTIVES

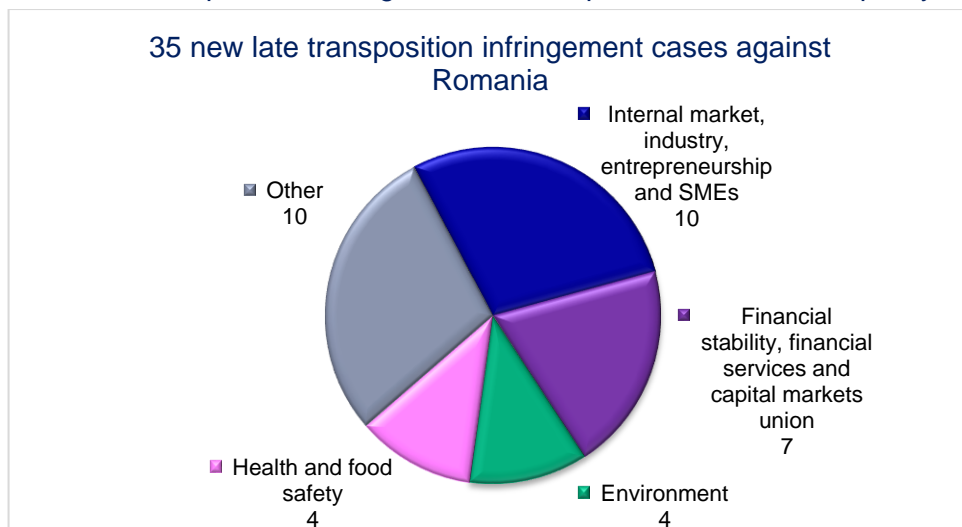
1. Late transposition infringement cases against Romania open on 31 December (2012-2016)



2. New late transposition infringement cases against Romania (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

The Commission referred one case to the Court under Articles 258 and 260(3) TFEU. It concerns:

- failure to communicate measures transposing the Directive on the sulphur content of marine fuels.⁹

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- incorrect application of the Environmental Impact Assessment Directive in relation to the operation of the FCN Pitesti nuclear power plant;¹⁰
- non-communication of national measures transposing the Seveso III Directive;¹¹
- failure to implement the EU Timber Regulation and the Forest Law Enforcement, Governance and Trade Regulation;¹²
- national laws on government employees. These were incompatible with the Working Time Directive as regards workers' right to acquire annual leave during sick leave and to carry over untaken annual leave due to sick leave;
- completing the notification of all national measures necessary to transpose the Bank Resolution and Recovery Directive¹³ and the Deposit Guarantee Schemes Directive;¹⁴
- the status of the RASDAQ market according to the requirements of the Markets in Financial Instruments Directive;¹⁵
- incorrect application of the Regulation on public passenger transport services by rail and road.¹⁶

VI. IMPORTANT JUDGMENTS

1. Court rulings¹⁷

The Court ruled that:

- Romania has failed to take the necessary measures to prevent pollution from dust particles coming from a copper mining operation, in breach of the Mining Waste Directive.¹⁸

2. Preliminary rulings

In preliminary rulings addressed to the Romanian judiciary, the Court held that:

- the execution of a European arrest warrant must be deferred if there is a real risk of inhuman or degrading treatment because of the conditions of detention of the person concerned in the issuing Member State. If the existence of that risk cannot be discounted within a reasonable period, the executing judicial authority must decide whether the surrender procedure should be brought to an end;¹⁹
- Member States may not repay taxes incompatible with EU law by instalments over 5 years.²⁰

⁹ Directive [2012/33/EU](#), Commission v Romania, [C-62/16](#); [IP/15/6008](#). Romania subsequently adopted the necessary legislative measures and the Commission has therefore withdrawn this case from the Court.

¹⁰ Directive [2011/92/EU](#).

¹¹ Directive [2012/18/EU](#).

¹² Regulation (EU) No [995/2010](#) and Regulation (EC) No [2173/2005](#).

¹³ Directive [2003/88/EC](#).

¹⁴ Directive [2014/49/EU](#).

¹⁵ Directive [2004/39/EC](#).

¹⁶ Regulation (EC) No [1370/2007](#).

¹⁷ These rulings are almost exclusively handed down in infringement procedures.

¹⁸ Directive [2006/21/EC](#), Commission v Romania, [C-104/15](#).

¹⁹ Aranyosi and Căldăraru, Joined Cases [C-404/15](#) and [C-659/15](#) PPU and Court press release No [36/16](#).

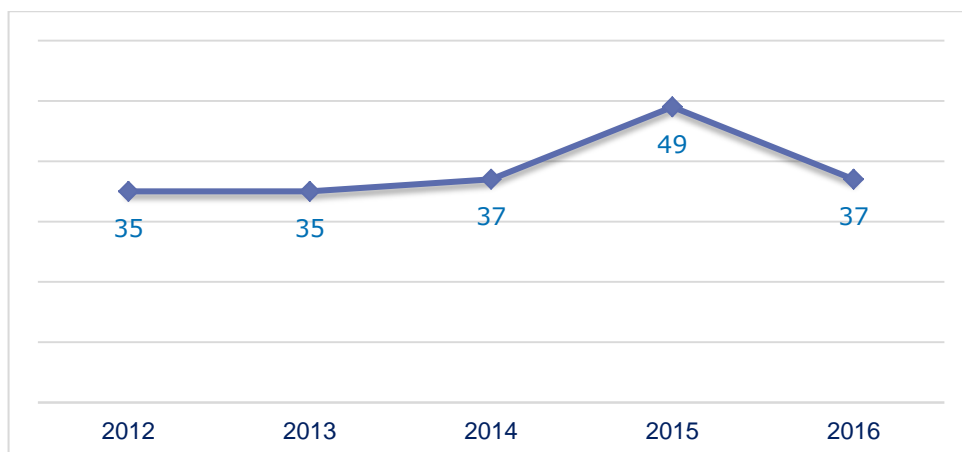
²⁰ Câmpean, [C-200/14](#) and Ciup, [C-288/14](#).

Slovenia

New complaints against Slovenia fell back to the 2014 level in 2016, and new EU Pilot files dropped to a five-year low. By contrast, the number of open infringement cases and of new infringement cases for late transposition both increased to five-year highs.

I. COMPLAINTS

1. New complaints made against Slovenia by members of the public (2012-2016)



2. Public complaints against Slovenia open at year-end

42 > Complaints open at end-2015

37 > New complaints registered in 2016

38 > Complaints handled in 2016

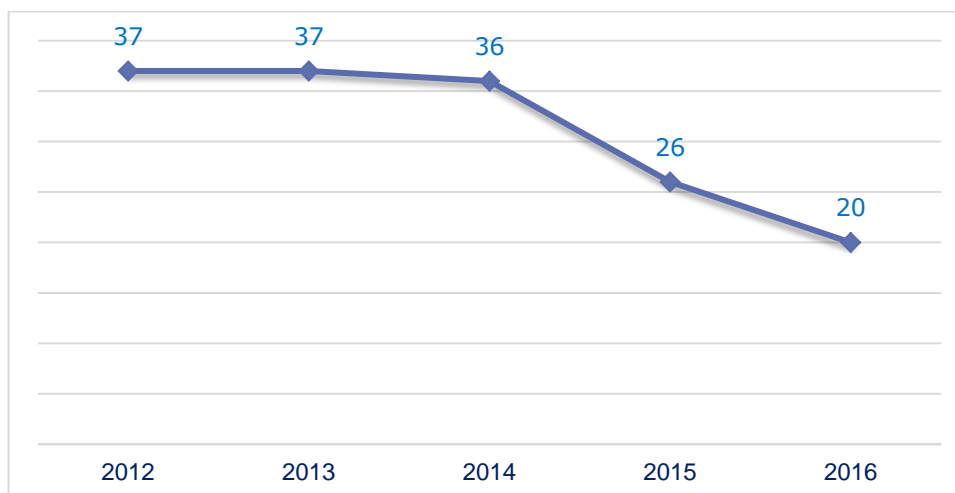
= 41 > Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

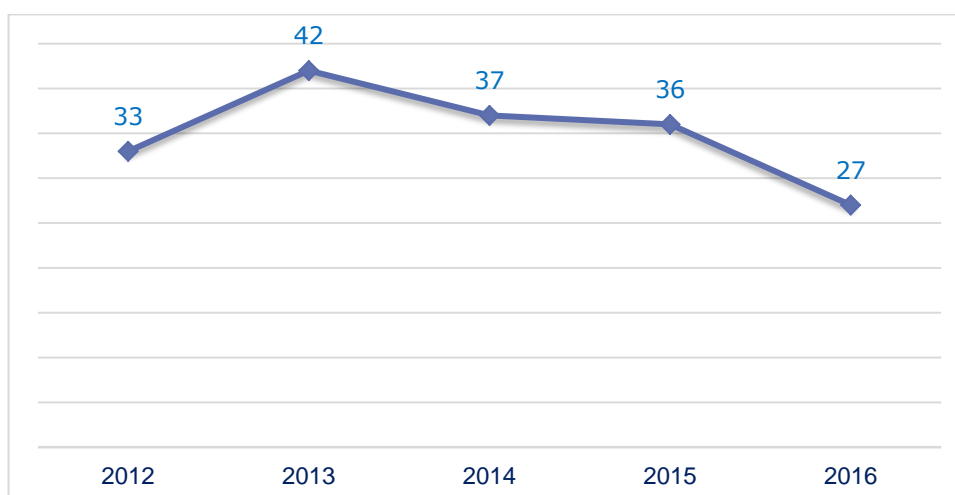


II. EU PILOT

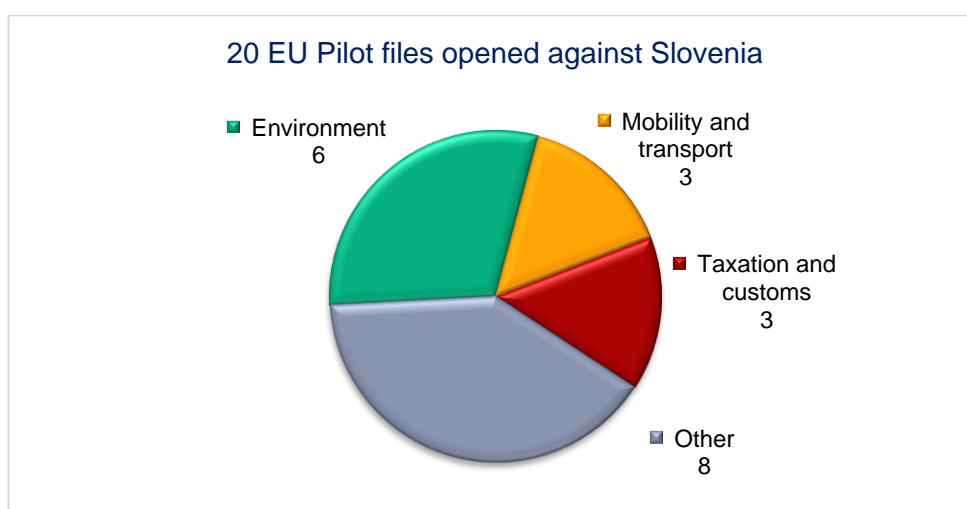
1. New EU Pilot files opened against Slovenia (2012-2016)



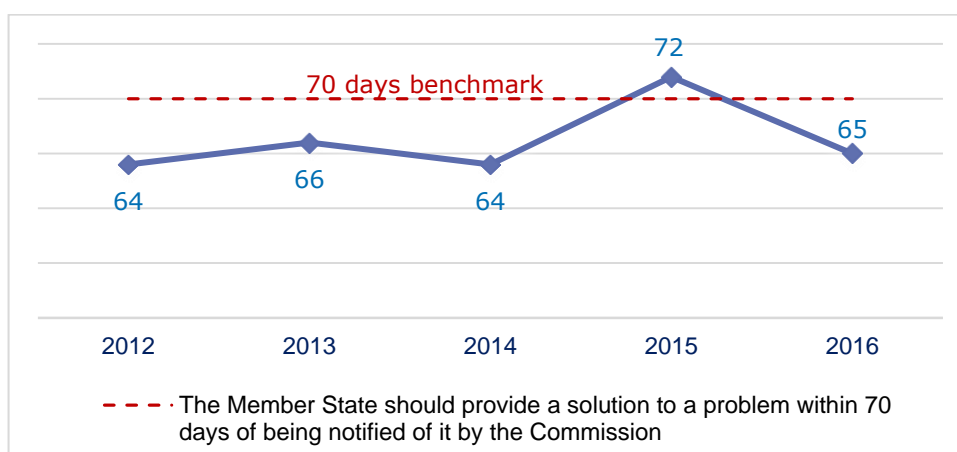
2. Files relating to Slovenia open in EU Pilot at year-end



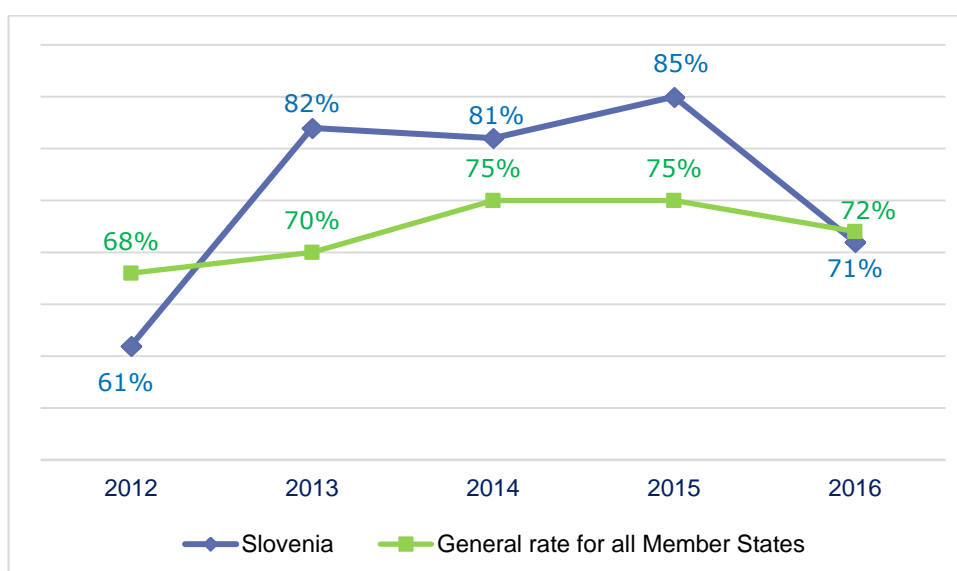
3. New EU Pilot files opened in 2016: main policy areas



4. EU Pilot files: Slovenia's average response time in 2012-2016 (in days)

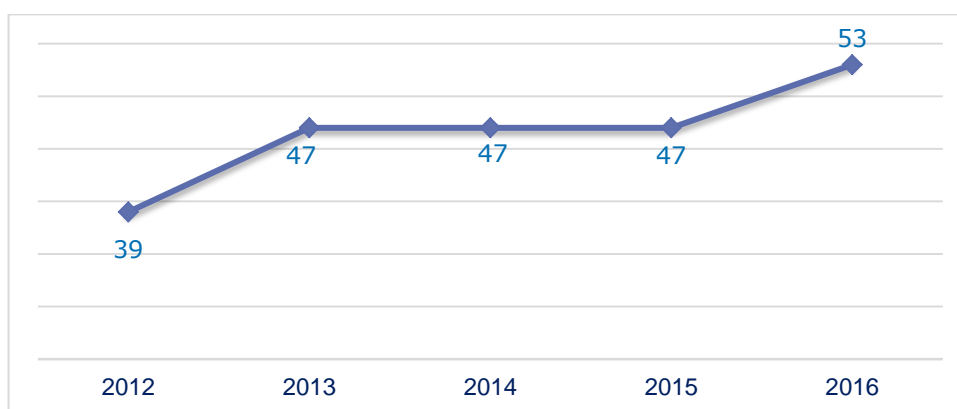


5. EU Pilot files: Slovenia's resolution rate in 2012-2016

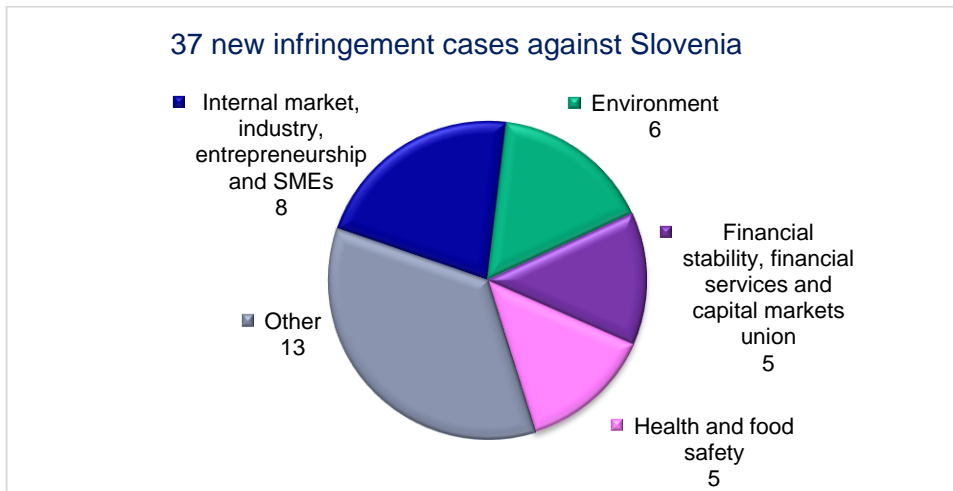


III. INFRINGEMENT CASES

1. Infringement cases against Slovenia open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 37 new infringement cases against Slovenia in 2016. These, and other major ongoing infringement cases, include:
- failure to notify measures transposing the Tobacco Directive;¹
 - failure to ensure that waste landfills operate in compliance with EU standards;²
 - lack of strategic noise maps and/or action plans required by the Environmental Noise Directive;³
 - lack of public participation and access to justice in relation to spatial planning;
 - failure to comply with the Energy Efficiency and Energy Performance of Buildings Directives;⁴
 - failure to communicate all national measures transposing the Mortgage Credit Directive⁵ and the Bank Recovery and Resolution Directive;⁶
 - failure to fulfil air safety oversight obligations regarding initial and continuous airworthiness;⁷
 - failure to transpose in full one or more of the three Directives on public procurement and concessions;⁸
 - failure to transpose in full the Directive amending EU legislation on the recognition of professional qualifications and the Internal Market Information System.⁹
- b) The Commission referred one case to the Court under Article 258 TFEU. It concerns:
- inappropriate treatment of waste tyres in Lovrenc na Dravskem polju.¹⁰
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

¹ Directive [2014/40/EU](#); [MEMO/16/4211](#).

² [MEMO/16/1452](#).

³ Directive [2002/49/EC](#).

⁴ Directive [2012/27/EU](#), and press releases [MEMO/16/3644](#), and [MEMO/16/4211](#).

⁵ Directive [2014/17/EU](#), and press releases [MEMO/16/3644](#) and [MEMO/16/4211](#).

⁶ Directive [2014/59/EU](#) and [MEMO/16/1452](#).

⁷ Regulation (EU) No 748/2012 and Regulation (EC) No 1321/2014.

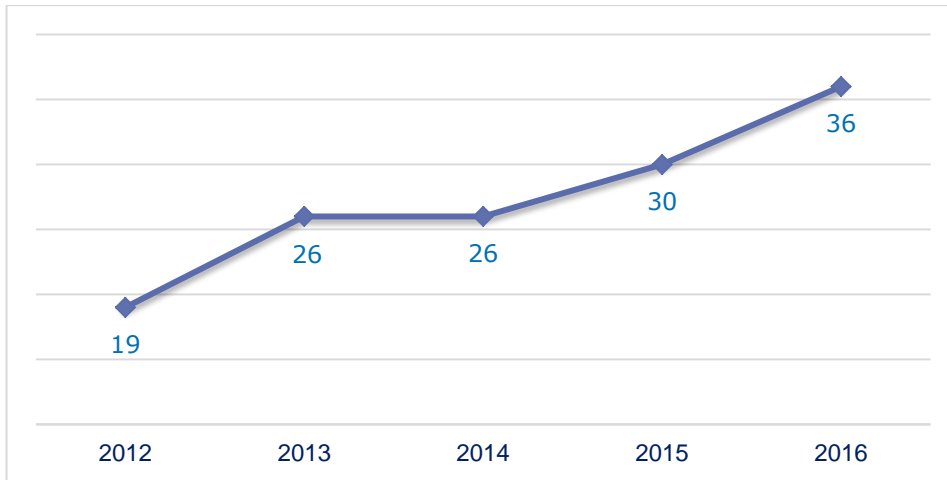
⁸ Directives [2014/23/EU](#), [2014/24/EU](#), [2014/25/EU](#), [MEMO/16/1823](#).

⁹ Directive [2013/55/EU](#), [MEMO/16/3125](#).

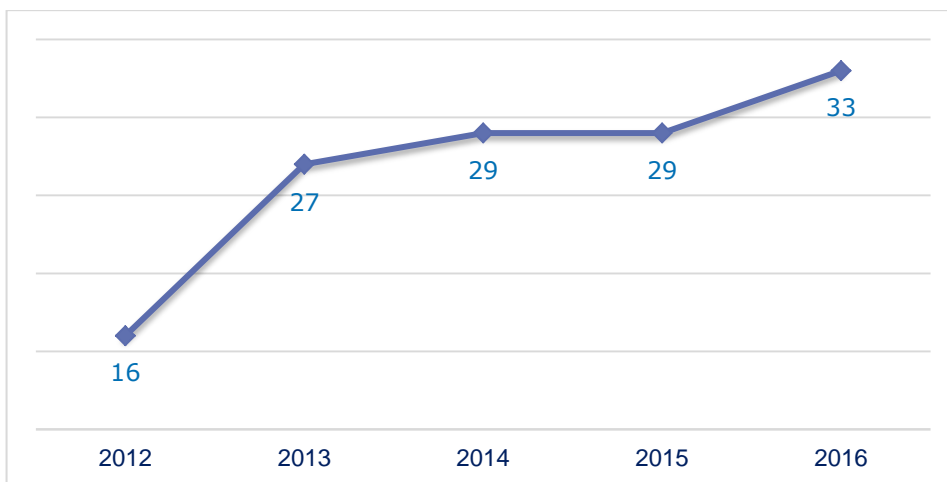
¹⁰ Commission v Slovenia, [C-153/16](#); [IP/15/4671](#).

IV. TRANSPOSITION OF DIRECTIVES

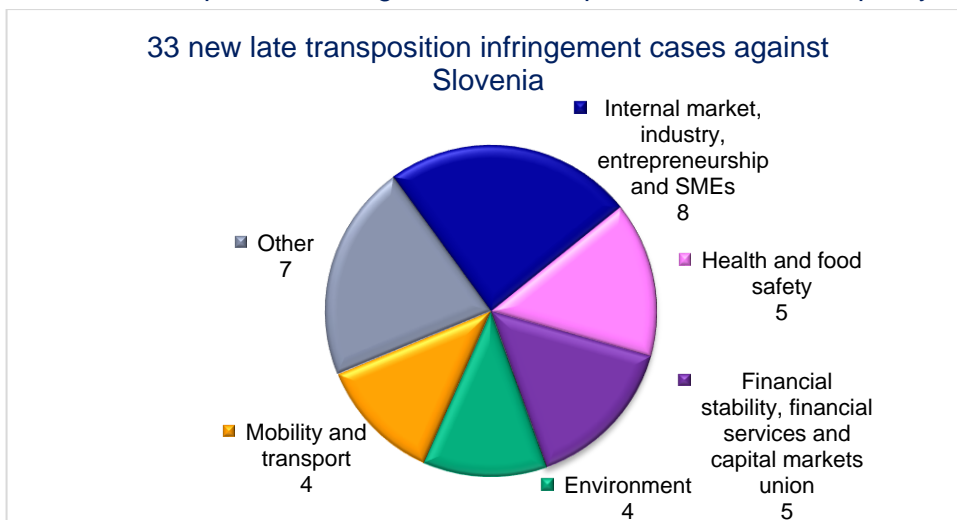
1. Late transposition infringement cases against Slovenia open on 31 December (2012-2016)



2. New late transposition infringement cases against Slovenia (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referral to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- the independence of the national equality body;¹¹
- non-communication of national measures transposing the Directive on attacks against information systems;¹²
- failure to adopt a national waste management plan and a waste prevention programme required under the Waste Framework Directive;¹³
- non-communication of national measures transposing the Industrial Emissions Directive;¹⁴
- non-communication of national measures transposing the Seveso III Directive;¹⁵
- completing the transposition of the Directive on over-reliance on credit ratings;¹⁶
- failure to fulfil obligations under the Directive on driving licences.¹⁷

VI. IMPORTANT JUDGMENTS

1. Court ruling¹⁸

There were no major Court rulings in 2016.

2. Preliminary rulings

In a preliminary ruling addressed to the Slovenian judiciary, the Court held that:

- when defining the concept 'undertaking' under the Late Payment Directive,¹⁹ all circumstances must be taken into account where a transaction forms part of the exercise of an independent economic or professional activity that is carried out in a structured and stable way. Therefore a natural person can be regarded as an undertaking and the transactions concluded are also to be considered as 'commercial transactions' according to the Directive. Also, as the Directive lays down only a 'minimum harmonisation framework', it is lawful for a Member State to introduce and maintain national provisions capping the accrual of interest.²⁰

¹¹ Directives [2000/43](#), [2004/113](#) and [2006/54](#).

¹² Directive [2013/40/EU](#); [MEMO/16/4211](#).

¹³ Directive [2008/98/EC](#).

¹⁴ Directive [2010/75/EU](#).

¹⁵ Directive [2012/18/EU](#).

¹⁶ Directive [2013/14/EU](#).

¹⁷ Directive [2006/126/EC](#).

¹⁸ These rulings are almost exclusively handed down in infringement procedures.

¹⁹ Directive [2000/35/EC](#).

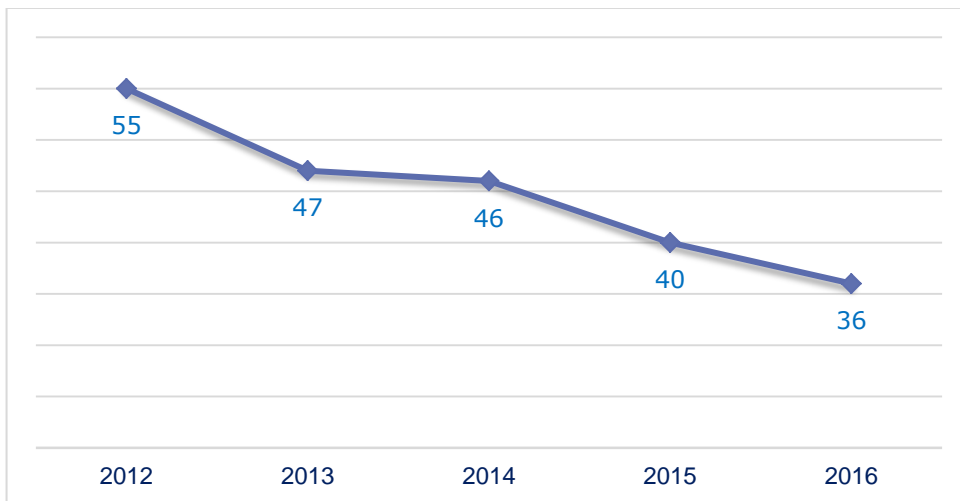
²⁰ [C-256/15](#), Drago Nemec vs Slovenia.

Slovakia

New complaints against Slovakia in 2016 continued the steady fall seen since 2012. New EU Pilot files have decreased since 2012 and are now at their lowest for 5 years. Open infringement cases also fell from their 2015 peak. New infringement cases for late transposition held steady.

I. COMPLAINTS

1. New complaints made against Slovakia by members of the public (2012-2016)



2. Public complaints against Slovakia open at year-end

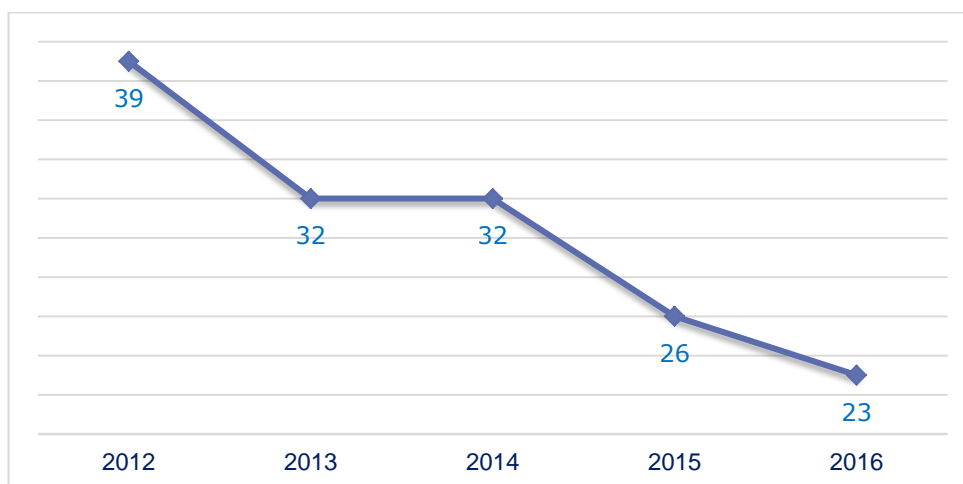
36	>	Complaints open at end-2015
36	>	New complaints registered in 2016
33	>	Complaints handled in 2016
= 39	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

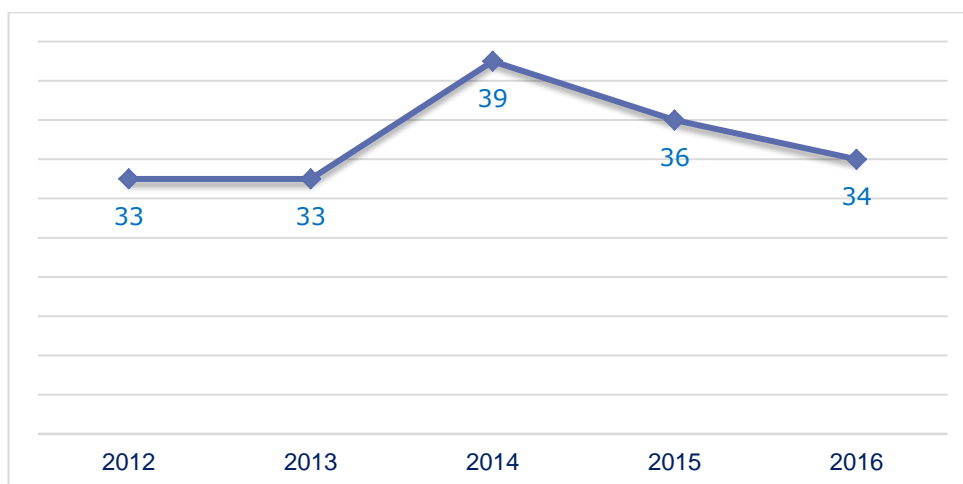


II. EU PILOT

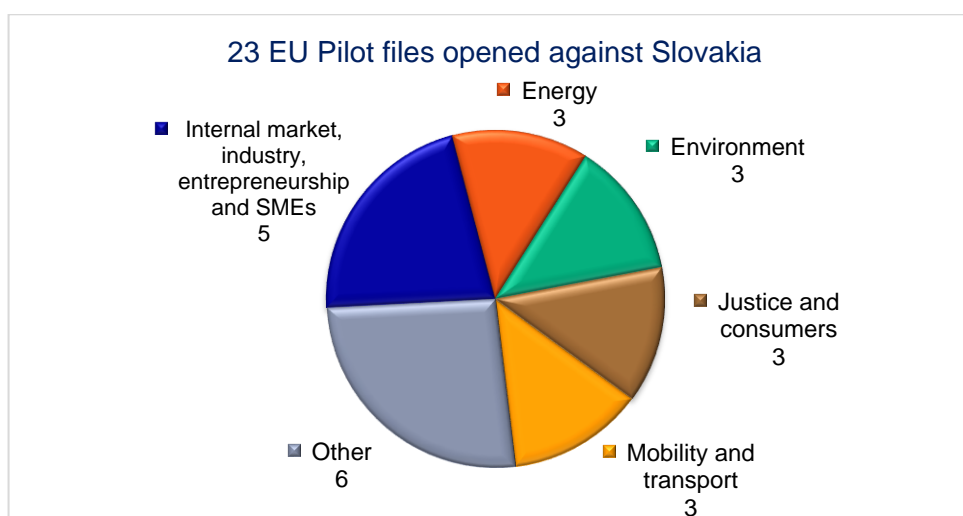
1. New EU Pilot files opened against Slovakia (2012-2016)



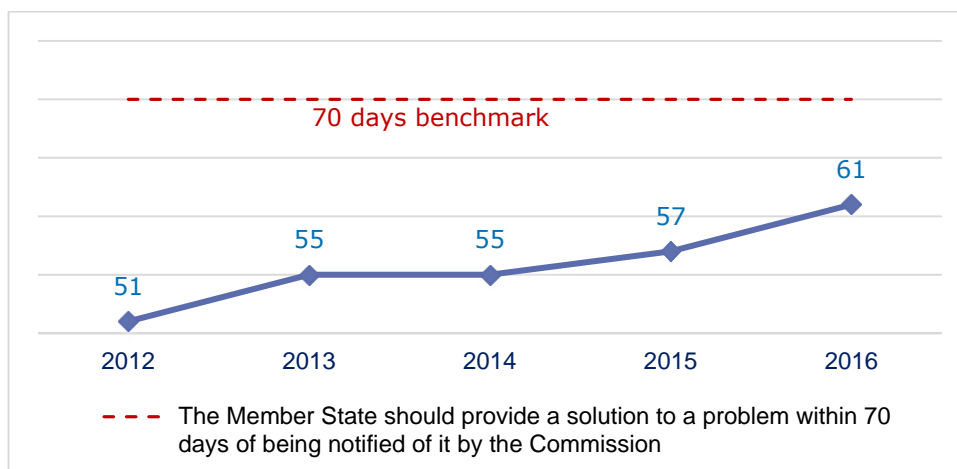
2. Files relating to Slovakia open in EU Pilot at year-end



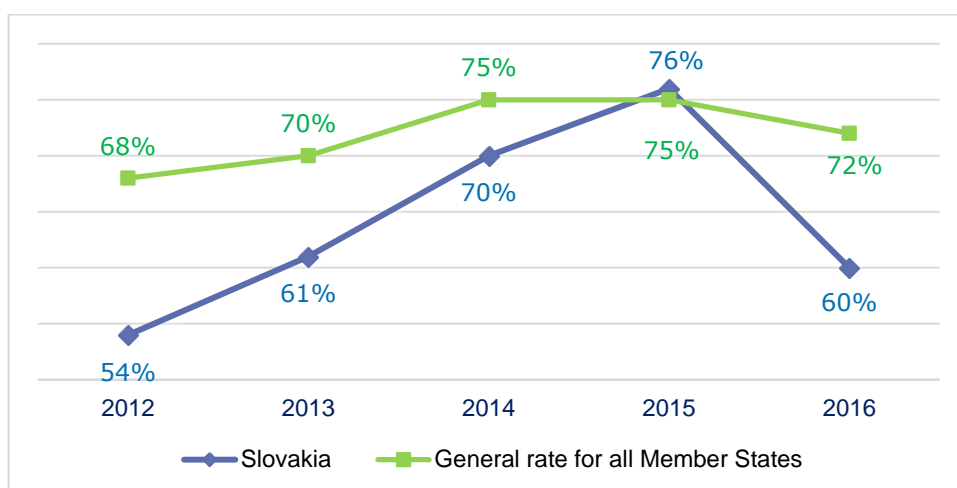
3. New EU Pilot files opened in 2016: main policy areas



4. EU Pilot files: Slovakia's average response time in 2012-2016 (in days)

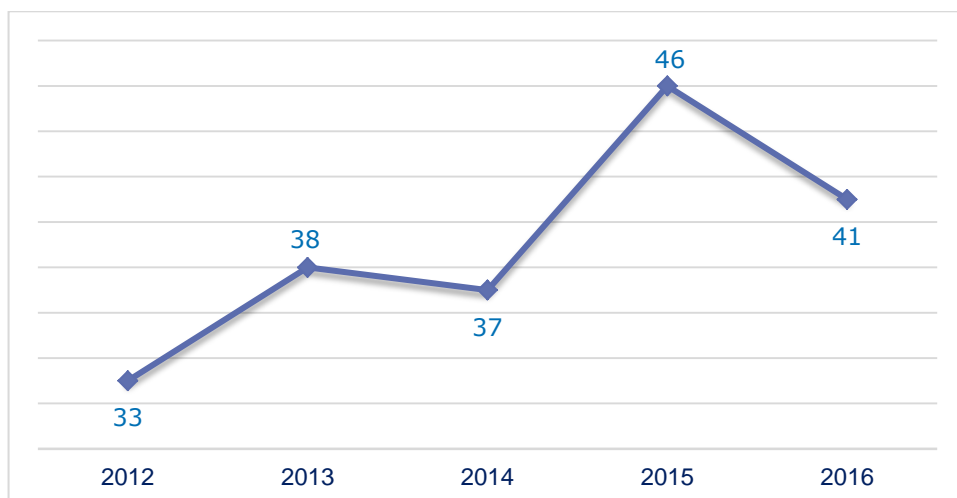


5. EU Pilot files: Slovakia's resolution rate in 2012-2016

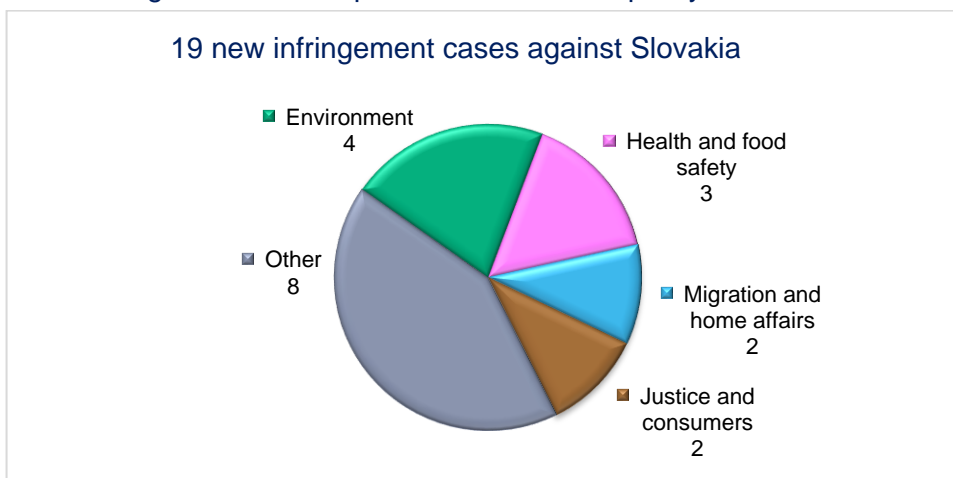


III. INFRINGEMENT CASES

1. Infringement cases against Slovakia open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

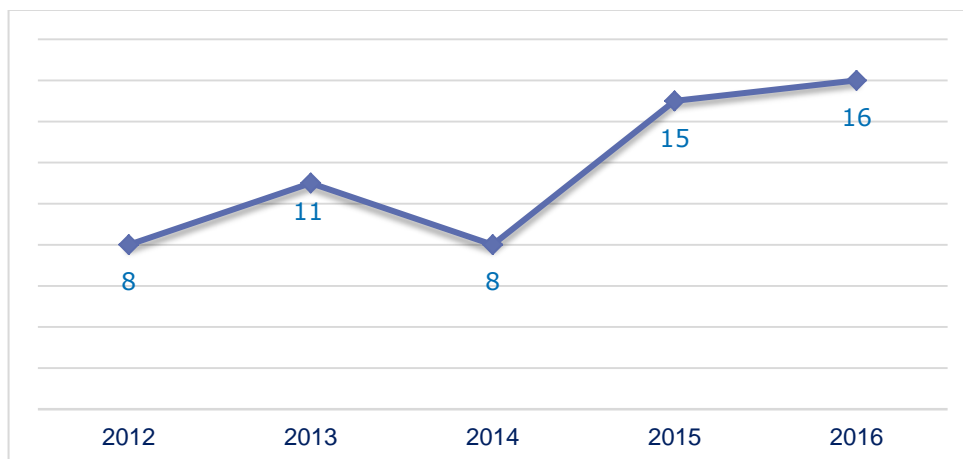
- a) The Commission opened 19 new infringement cases against Slovakia in 2016. These, and other major ongoing infringement cases, include:
- lack of strategic noise maps and/or action plans required by the Environmental Noise Directive;¹
 - non-compliance with the EU Timber Regulation;²
 - failure to communicate all national measures transposing the Capital Requirements Directive;³
 - bilateral investment treaties signed before all State parties became members of the EU and which now overlap and conflict with the EU single market on cross-border investments;⁴
 - national restrictions on the acquisition of agricultural land which limit the free movement of capital and freedom of establishment by being discriminatory and/or disproportionate;⁵
 - failure to fulfil air safety oversight obligations regarding initial and continuous airworthiness;⁶
 - failure to fulfil obligations under the Directive on the protection of waters against pollution caused by nitrates from agricultural sources;⁷
 - an incomplete Natura 2000 network;
 - incorrect implementation of the Remedies Directive.⁸
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission referred one case to the Court under Article 260(2) TFEU. It concerns:
- failure to implement a Court judgment that Slovakia was failing to ensure that decisions on the operation of the landfill in Žilina–Považský Chlmec were taken in line with EU rules on landfilling of waste. The Commission proposed to the Court

¹ Directive [2002/49/EC](#).
² Regulation (EU) No [995/2010](#).
³ Directive [2013/36/EU](#); [MEMO/16/1452](#).
⁴ [MEMO/16/3125](#).
⁵ [IP/16/1827](#) and [MEMO/16/1823](#).
⁶ Regulation (EU) No [748/2012](#) and Regulation (EC) No [1321/2014](#).
⁷ Directive [91/676/EEC](#); [MEMO/16/3125](#).
⁸ [Directive 92/13/EEC](#); [MEMO/16/3125](#).

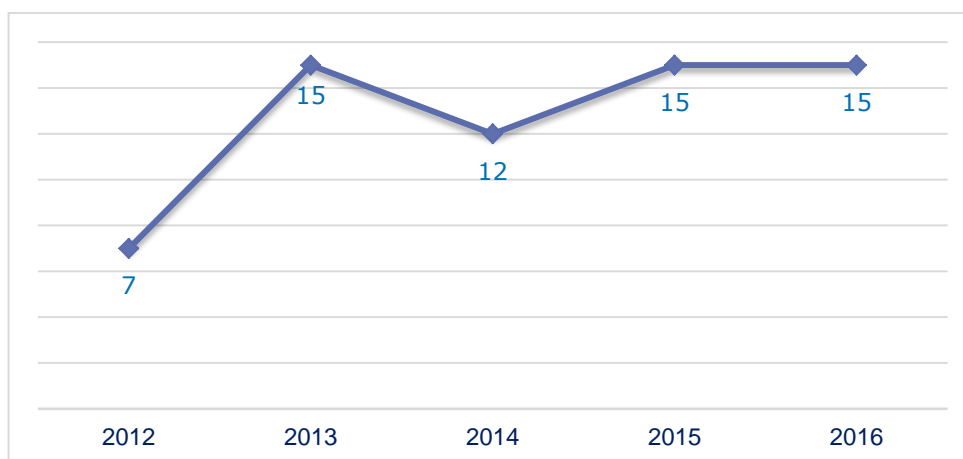
to impose a lump sum payment of EUR 939 000 and a daily penalty payment of EUR 6 793.80 until full compliance with EU law is ensured.⁹

IV. TRANSPOSITION OF DIRECTIVES

1. Late transposition infringement cases against Slovakia open on 31 December (2012-2016)

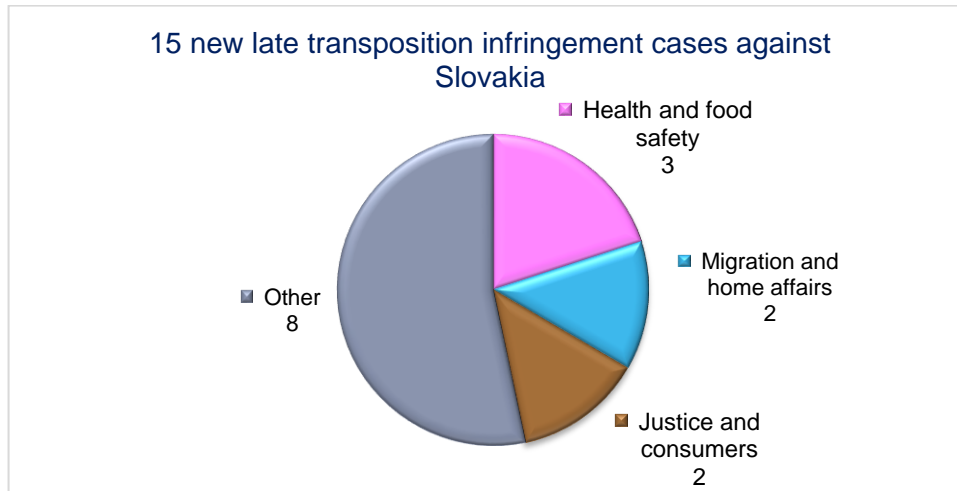


2. New late transposition infringement cases against Slovakia (2012-2016)



⁹ Commission v Slovakia, [C-626/16](#); [IP/16/2099](#).

3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- breach of EU citizens' right to stand as candidates in local and European elections in the Member State of residence due to restrictions on their involvement in political parties;
- failure to ensure adequate protection of wolves, in line with the Habitats Directive;¹⁰
- incorrect transposition of the Floods Directive;¹¹
- completing the notification of all national measures necessary to transpose:
 - the Capital Requirements Directive;¹²
 - the Bank Resolution and Recovery Directive;¹³
 - the Deposit Guarantee Schemes Directive;¹⁴
- failure to fulfil obligations under the Directive on driving licences;¹⁵
- non-compliance with the Directive on the interoperability of the rail system;¹⁶
- car registration tax, following a change in tax rates for second hand cars imported from other Member States.

VI. IMPORTANT JUDGMENTS

1. Court rulings¹⁷

There were no major Court rulings in 2016.

2. Preliminary rulings

In preliminary rulings addressed to the Slovak judiciary, the Court held that:

- a lender must include in a consumer credit agreement all the information required under the Directive on consumer credit.¹⁸ Failure to do so may be penalised by

¹⁰ Directive [92/43/EEC](#).

¹¹ Directive [2007/60/EC](#).

¹² Directive [2013/36/EU](#).

¹³ Directive [2014/59/EU](#).

¹⁴ Directive [2014/49/EU](#).

¹⁵ Directive [2006/126/EC](#).

¹⁶ Directive [2008/57/EC](#).

¹⁷ These rulings are almost exclusively handed down on infringement procedures.

¹⁸ Directive [2008/48/EC](#).

Member States by depriving the lender of an entitlement to interest and charges. Such a penalty is permitted where the information covers matters which, if not included may compromise the consumer's ability to assess the extent of his liability;¹⁹

- when an environmental organisation is refused the status of party to a procedure for the authorisation of a project to be carried out on a site protected under the Habitats Directive, EU law precludes national rules which do not request the examination in the course of the authorisation procedure of an action against that refusal decision, do not prevent the conclusion of the authorisation procedure in the absence of a definitive judicial decision on the status of party and consider the action automatically dismissed as soon as the project is authorised.²⁰

¹⁹ Home Credit Slovakia, [C-42/15](#) and Court press release No [119/16](#).

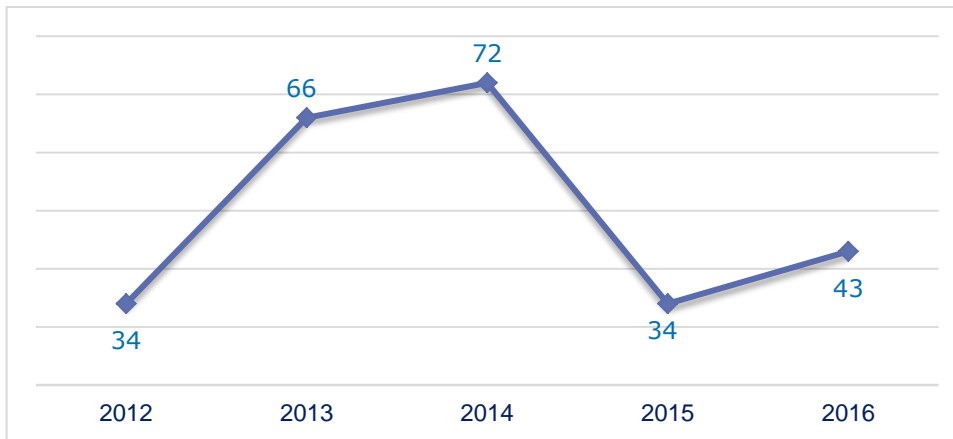
²⁰ Lesoochránárske zoskupenie VLK, [C-243/15](#).

Finland

New complaints against Finland rose again in 2016 after the previous year's sharp fall. The number of infringement cases open at the end of 2016 rose sharply to only slightly below its 2012 peak. New infringement cases for late transposition doubled. By contrast, the number of new EU Pilot files fell to its lowest level ever.

I. COMPLAINTS

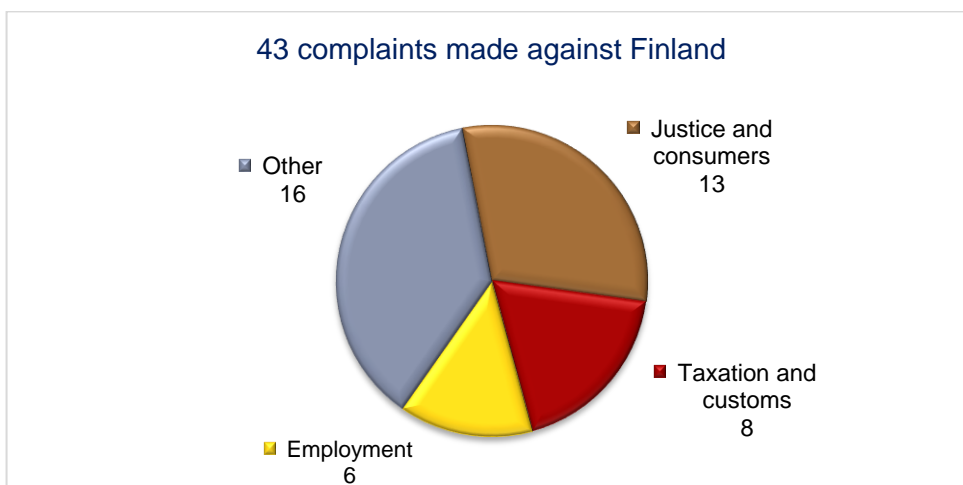
1. New complaints made against Finland by members of the public (2012-2016)



2. Public complaints against Finland open at year-end

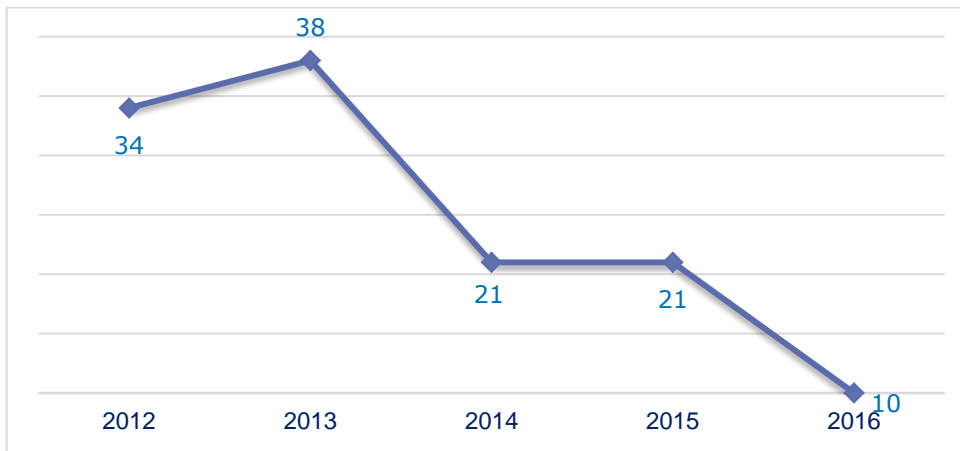
35	>	Complaints open at end-2015
43	>	New complaints registered in 2016
41	>	Complaints handled in 2016
<hr/>		
= 37	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

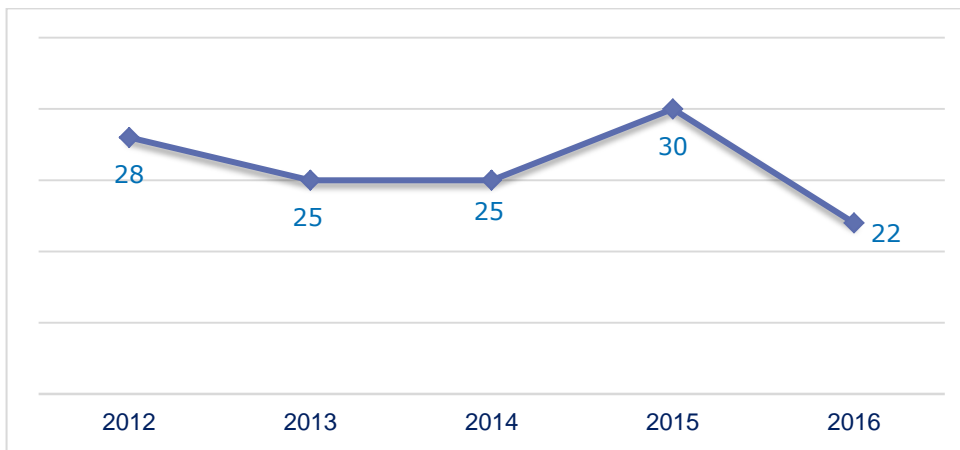


II. EU PILOT

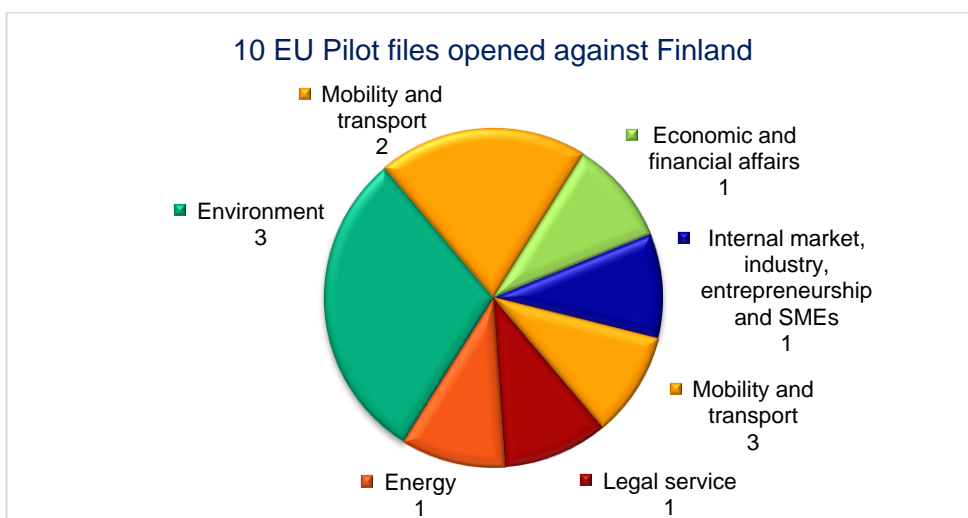
1. New EU Pilot files opened against Finland (2012-2016)



2. Files relating to Finland open in EU Pilot at year-end

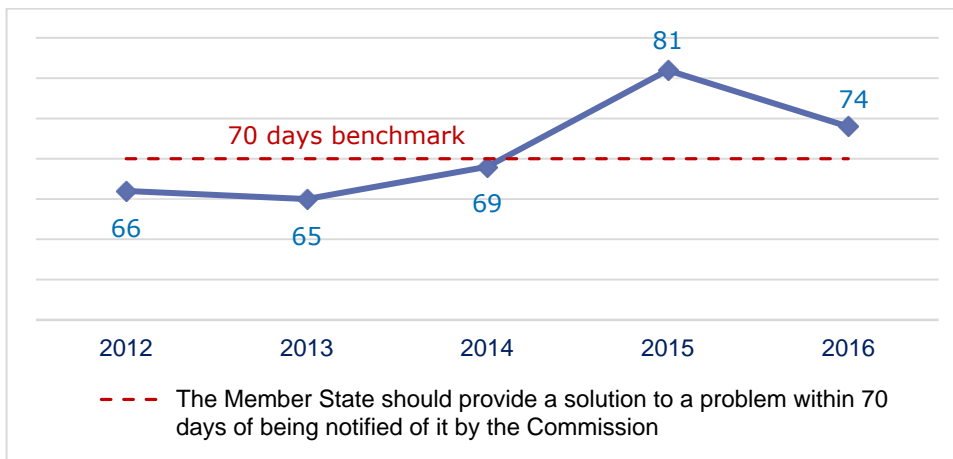


3. New EU Pilot files opened in 2016: main policy areas

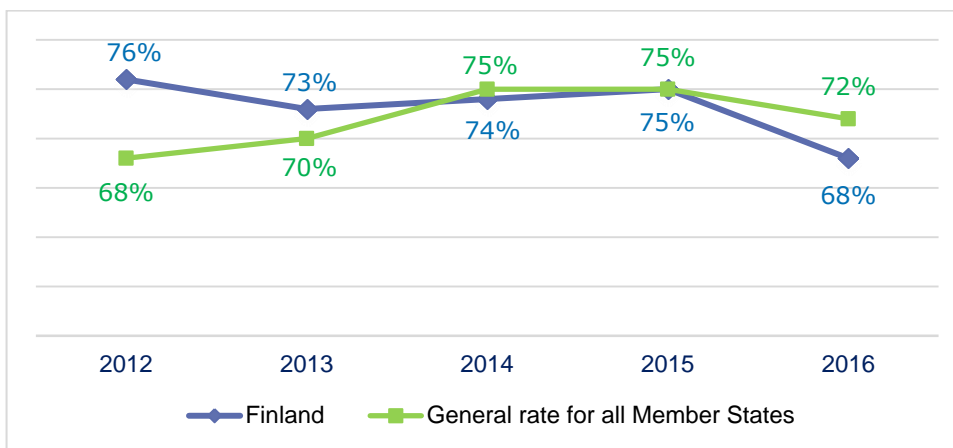


Finland

4. EU Pilot files: Finland's average response time in 2012-2016 (in days)

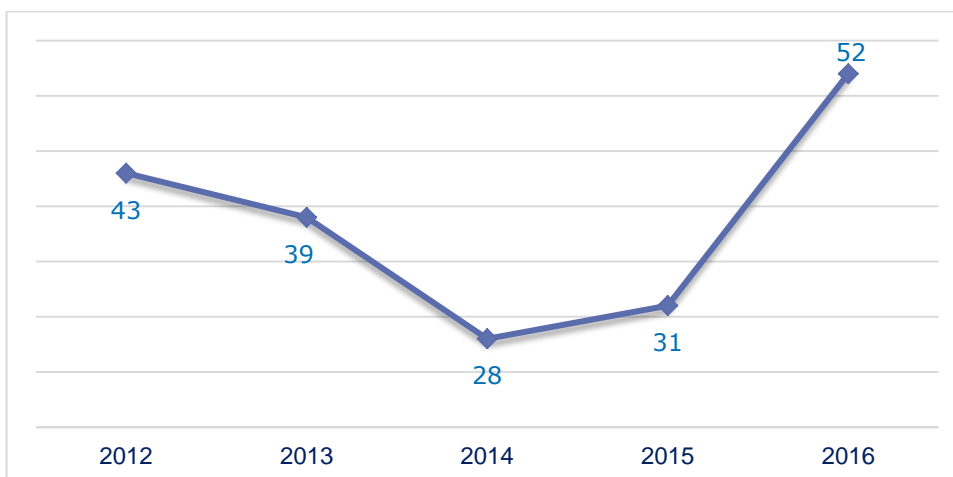


5. EU Pilot files: Finland's resolution rate in 2012-2016

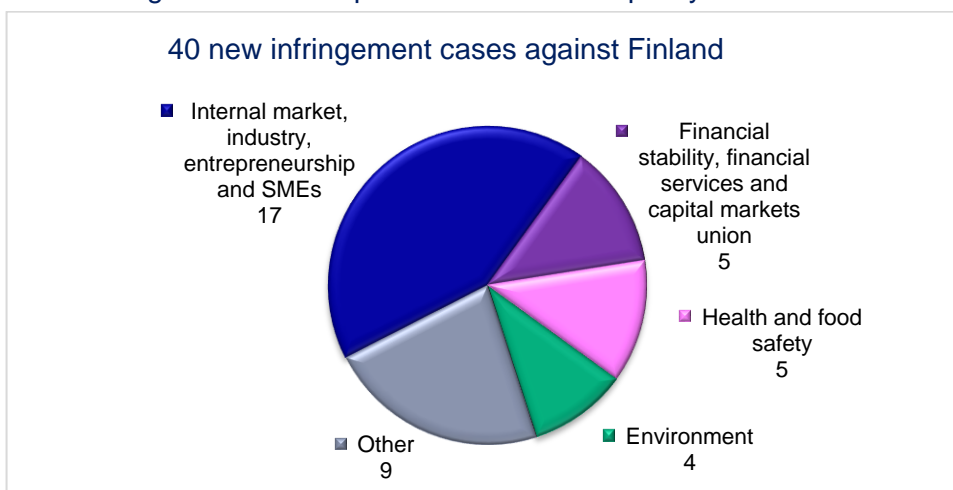


III. INFRINGEMENT CASES

1. Infringement cases against Finland open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 40 new infringement cases against Finland in 2016. These, and other major ongoing infringement cases, include:
- non-conformity of national legislation with the Directive on patients' rights in cross-border healthcare. The case relates to the level of costs reimbursed by the Member State of affiliation to an insured person who receives cross-border healthcare;¹
 - non-compliant transposition of the Waste Framework Directive;²
 - failure to communicate all national measures transposing the Mortgage Credit Directive;³
 - failure to correctly implement the Airport Charges Directive;⁴
 - failure to transpose amendments to EU legislation on ship inspection and survey organisations;⁵
 - non-communication of national measures transposing the Maritime Spatial Planning Directive;⁶
 - failure to transpose in full the three Directives on public procurement and concessions;⁷
 - illegal spring hunting of male eiders in the province of Åland, in breach of the Birds Directive;⁸
 - non-communication of national measures transposing the Seveso III Directive;⁹
 - non-compliant transposition of the Directive on public access to environmental information;¹⁰
 - failure to transpose in full the Directive amending EU legislation on the recognition of professional qualifications and the Internal Market Information System.¹¹
- b) The Commission referred one case to the Court under Article 258 TFEU. It concerns:
- failure to correctly transpose EU rules on driving licences.¹²

¹ Directive [2011/24/EU](#); [MEMO/16/1452](#).

² Directive [2008/98/EC](#).

³ Directive [2014/17/EU](#); [MEMO/16/3644](#).

⁴ Directive [2009/12/EC](#).

⁵ Directive [2014/111/EU](#); [MEMO/16/4211](#).

⁶ Directive [2014/89/EU](#).

⁷ Directives [2014/23/EU](#), [2014/24/EU](#) and [2014/25/EU](#); [MEMO/16/4211](#).

⁸ Directive [2009/147/EC](#); [MEMO/16/4211](#).

⁹ Directive [2012/18/EU](#); [MEMO/16/3644](#).

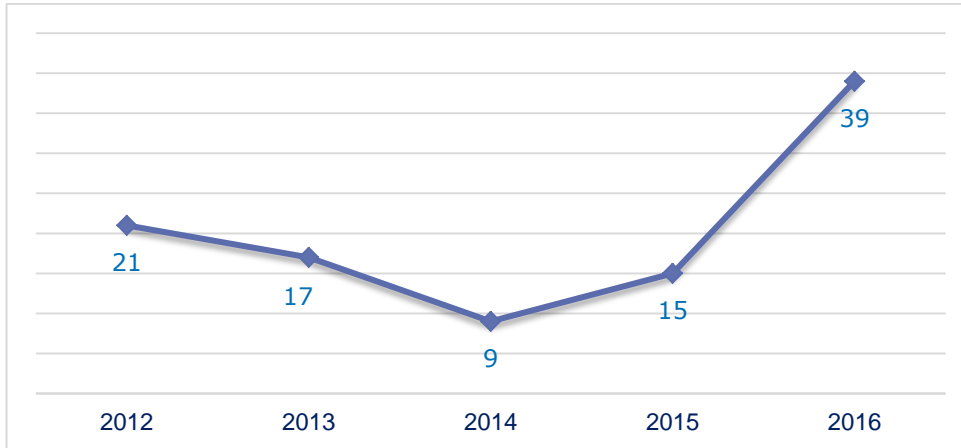
¹⁰ Directive [2003/4/EC](#); [MEMO/16/2490](#).

¹¹ Directive [2013/55/EU](#); [MEMO/16/3125](#).

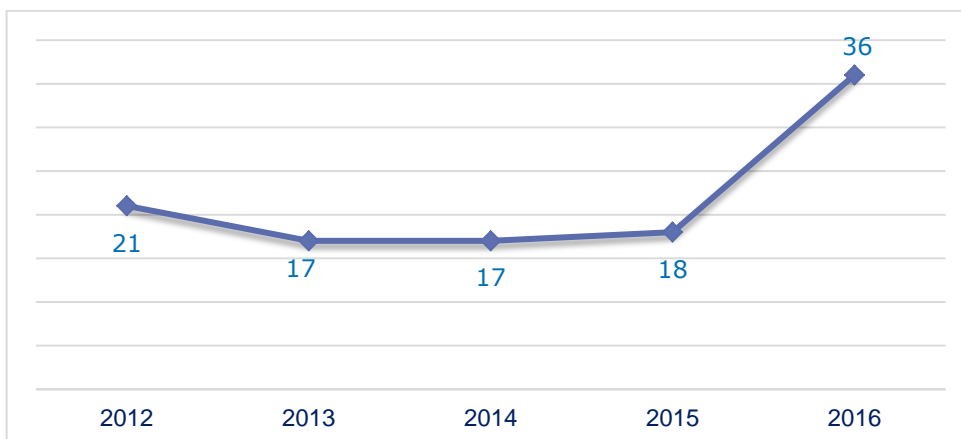
c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

IV. TRANSPOSITION OF DIRECTIVES

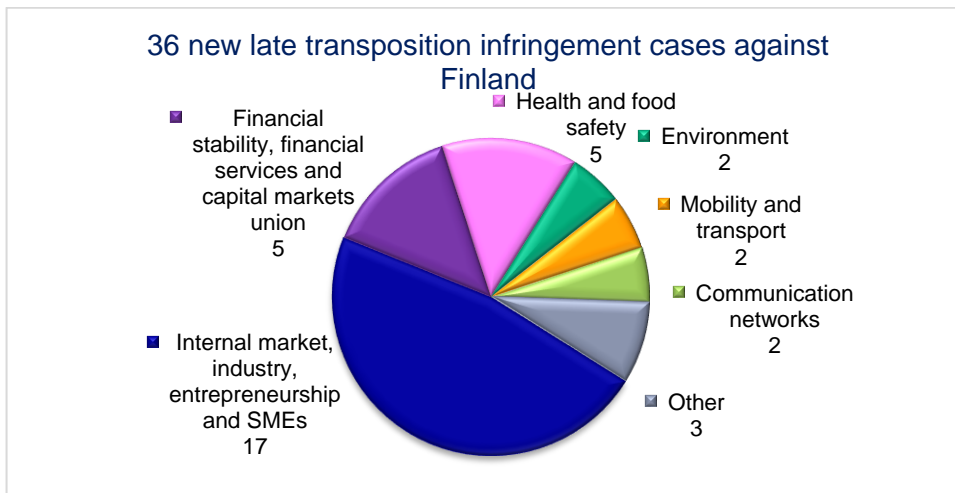
1. Late transposition infringement cases against Finland open on 31 December (2012-2016)



2. New late transposition infringement cases against Finland (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



¹² Directive [2006/126/EC](#); [IP/15/6229](#) and [MEMO/15/6223](#). The Commission subsequently decided to withdraw the case from the Court as Finland remedied the breach before the Court handed down its judgment.

4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- failure to apply correctly the Directive on the protection of pigs as regards group housing of sows;¹³
- incorrect transposition of the Water Framework Directive;¹⁴
- notification of all national measures necessary to transpose the Capital Requirements Directive¹⁵ and the Bank Resolution and Recovery Directive;¹⁶
- failure to fulfil obligations under the Directive on driving licences;¹⁷
- non-compliance with the rules on access to the occupation of road transport operator and with rules on cabotage.¹⁸

VI. IMPORTANT JUDGMENTS

1. Court rulings¹⁹

There were no major Court rulings in 2016.

2. Preliminary rulings

In preliminary rulings addressed to the Finnish judiciary, the Court held that:

- a separation between a programme's closing credits and advertising can be made spatially and not necessarily also optically or acoustically, as long as the advertising remains readily recognisable and distinguishable from editorial content. The Court also held that sponsorship announcements not placed at the beginning or end of a programme, as well as so-called black seconds that briefly separate one advertising spot from another, must be counted within the hourly limit for advertising;²⁰
- when assessing whether the name of a spirit drink can be classified as an 'evocation' of a protected geographical indication, national courts must refer to the perception of the average European consumer who is reasonably well informed, observant and circumspect, and must take into consideration the phonetic and visual relationship between the names concerned and any evidence showing that such a relationship is not fortuitous. Evocation may exist even in the absence of any likelihood of confusion between the products concerned. The Court clarified these aspects in a case about the marketing of a Finnish spirit drink named 'Verlados'.²¹

¹³ Directive [2008/120/EC](#).

¹⁴ Directive [2000/60/EC](#).

¹⁵ Directive [2013/36/EU](#).

¹⁶ Directive [2014/59/EU](#).

¹⁷ Directive [2006/126/EC](#); [IP/15/6229](#) and [MEMO/15/6223](#).

¹⁸ Regulations (EC) No [1071/2009](#) and (EC) No [1072/2009](#).

¹⁹ These rulings are almost exclusively handed down in infringement procedures.

²⁰ *Sanoma Media Finland Oy — Nelonen Media v Viestintävirasto*, [C-314/14](#).

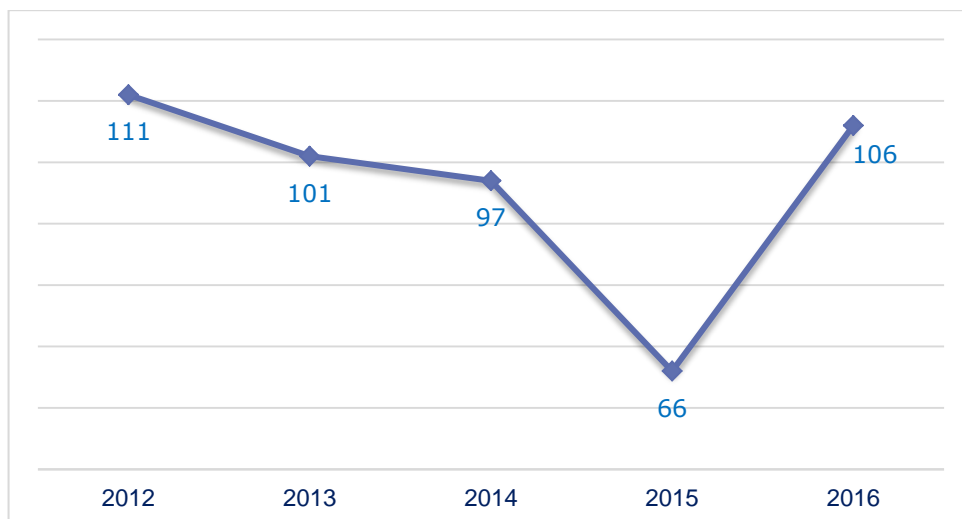
²¹ Regulation (EC) No [110/2008](#), *Viiniverla*, [C-75/15](#).

Sweden

New complaints against Sweden jumped in 2016 to their highest level since 2012, and new EU Pilot files rose slightly after falling for 2 years. Open infringement cases continued to increase, reaching a five-year peak. The number of new cases for late transposition fell slightly after the previous year's sharp rise.

I. COMPLAINTS

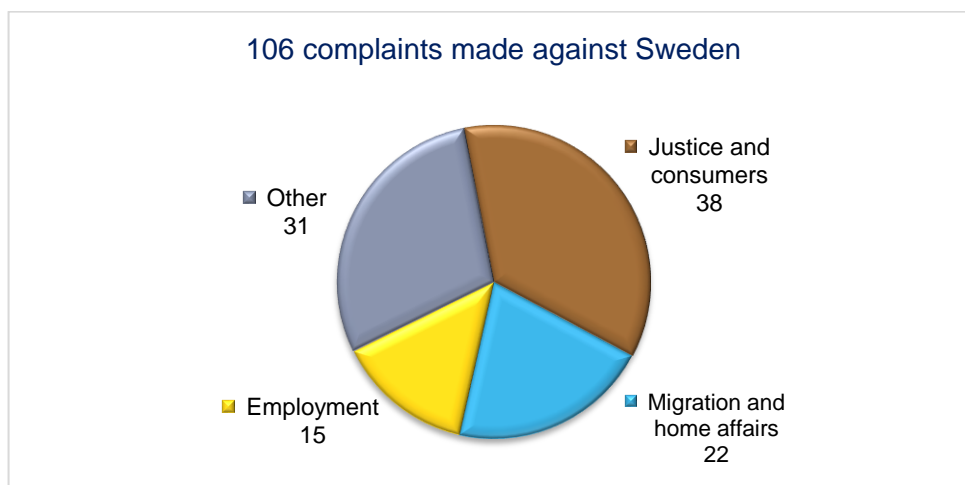
1. New complaints made against Sweden by members of the public (2012-2016)



2. Public complaints against Sweden open at year-end

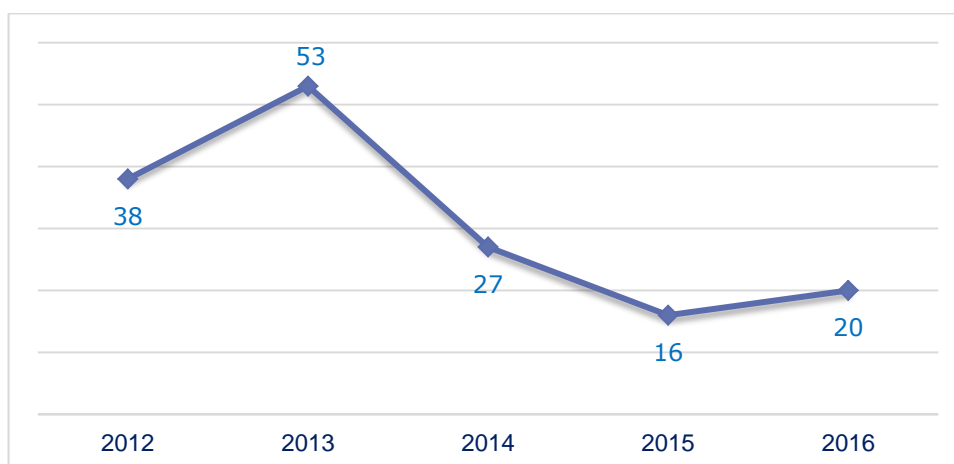
80	>	Complaints open at end-2015
106	>	New complaints registered in 2016
97	>	Complaints handled in 2016
<hr/>		
= 89	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

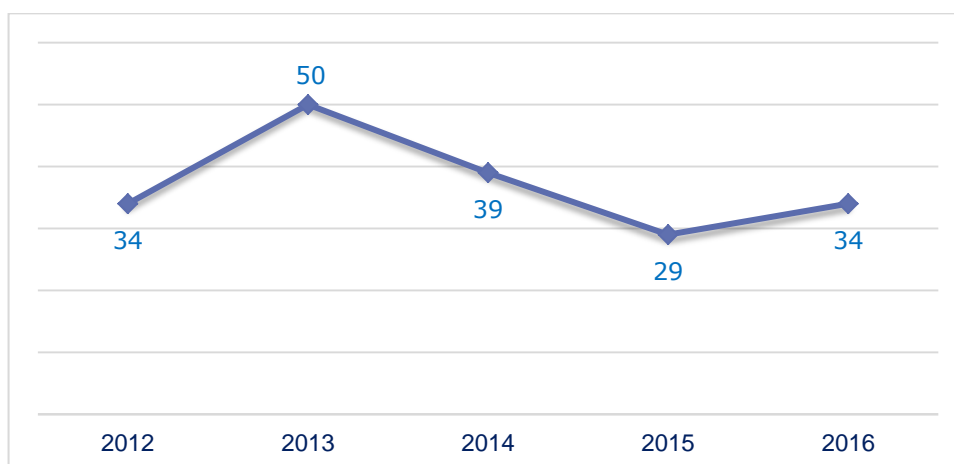


II. EU PILOT

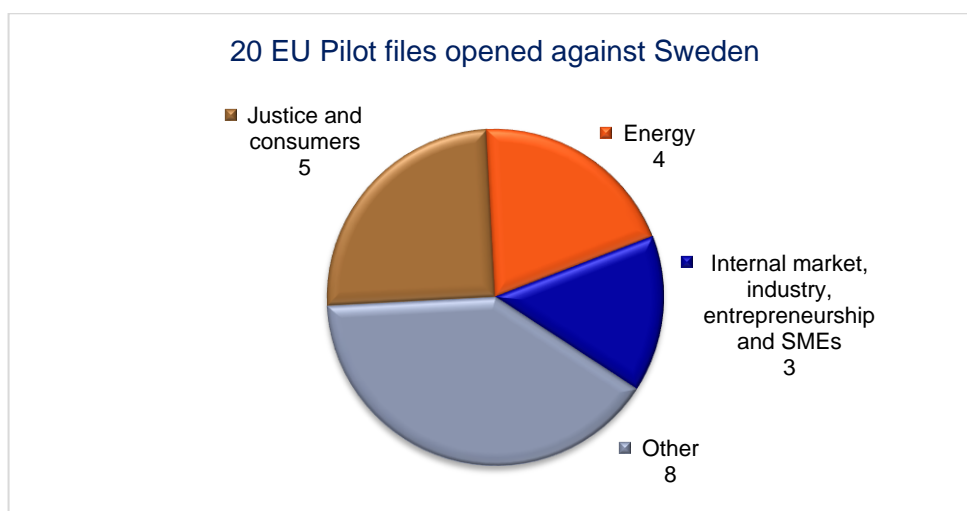
1. New EU Pilot files opened against Sweden (2011-2016)



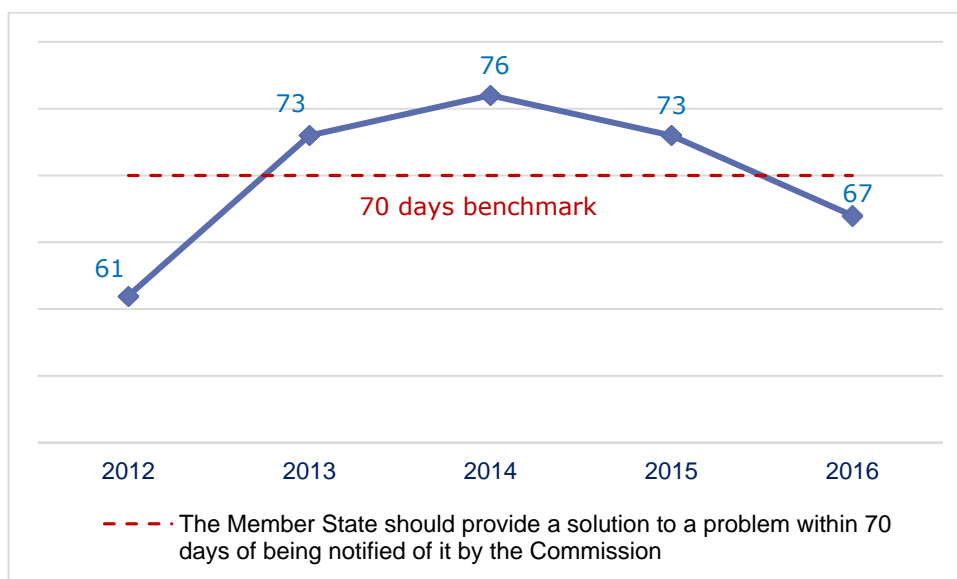
2. Files relating to Sweden open in EU Pilot at year-end



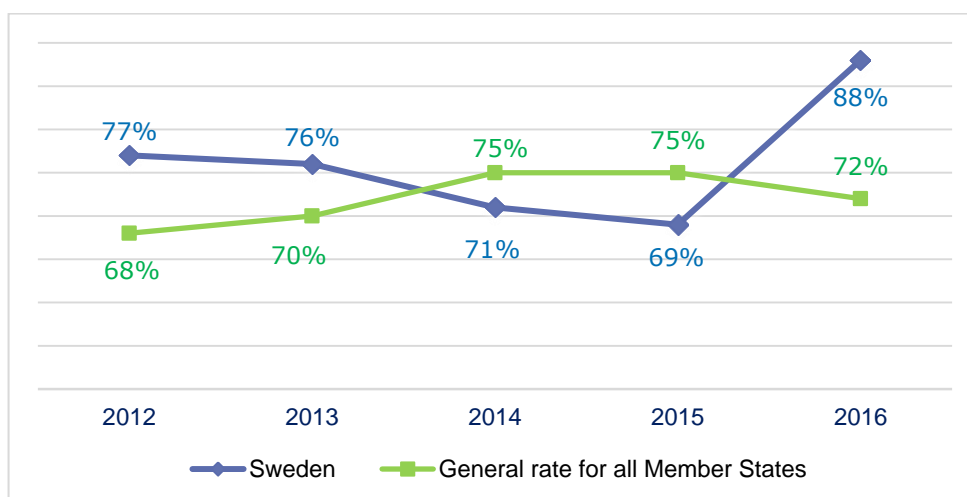
3. New EU Pilot files opened in 2016: main policy areas



4. EU Pilot files: Sweden's average response time in 2012-2016 (in days)

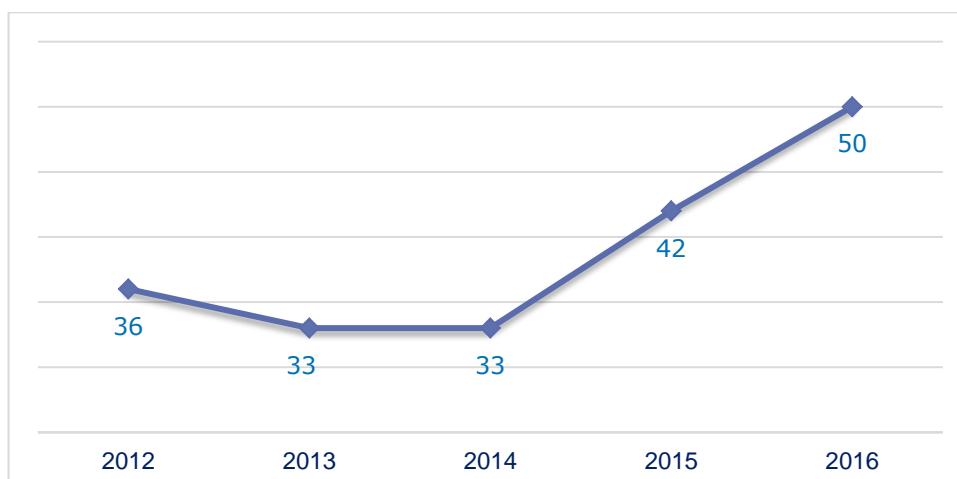


5. EU Pilot files: Sweden's resolution rate in 2012-2016

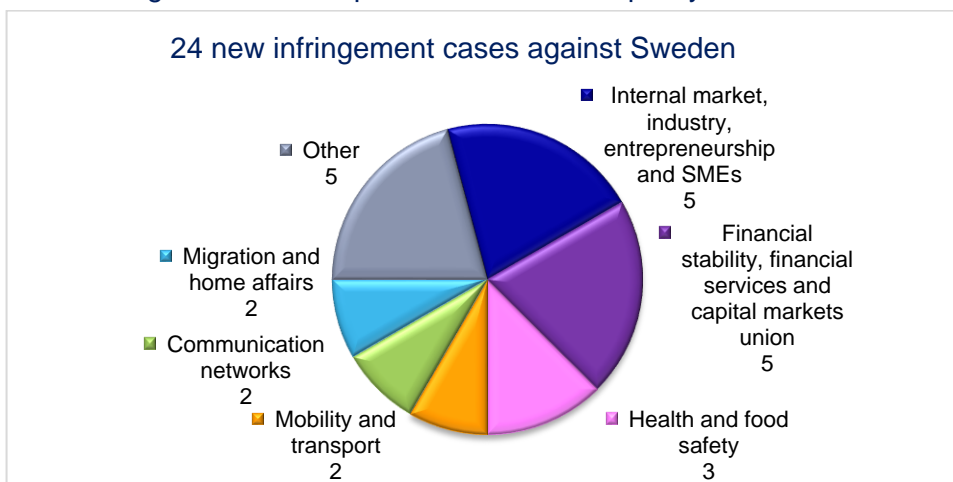


III. INFRINGEMENT CASES

1. Infringement cases against Sweden open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas



3. Key infringement cases and referrals to the Court

- a) The Commission opened 24 new infringement cases against Sweden in 2016. These, and other major ongoing infringement cases, include:
 - failure to notify measures transposing the Tobacco Directive;¹
 - non-complaint transposition of the Waste Framework Directive² and the Water Framework Directive;³
 - failure to communicate all national measures transposing the Mortgage Credit Directive;⁴
 - bilateral investment treaties signed before all state parties became members of the EU and which now overlap and conflict with the EU single market on cross-border investments;⁵
 - failure to correctly implement the Airport Charges Directive;⁶
 - failure to correctly transpose the Directive on driving licences;⁷
 - failure to transpose in full one or more of the three Directives on public procurement and concessions.⁸
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

¹ Directive [2014/40/EU](#); [MEMO/16/4211](#).

² Directive [2008/98/EC](#).

³ Directive [2000/60/EC](#).

⁴ Directive [2014/17/EU](#), and press releases [MEMO/16/3644](#) and [MEMO/16/4211](#).

⁵ [MEMO/16/3125](#).

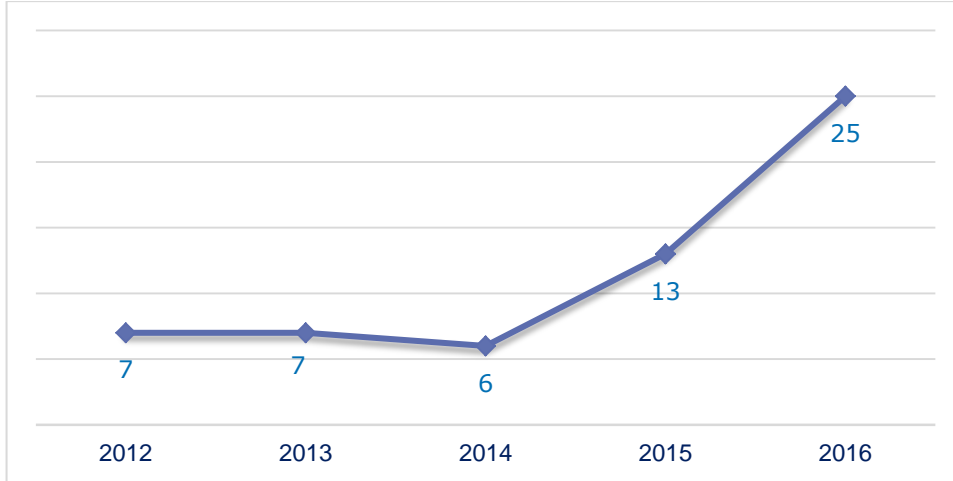
⁶ Directive [2009/12/EC](#), [MEMO/16/319](#).

⁷ Directive [2006/126/EC](#), [MEMO/16/2097](#).

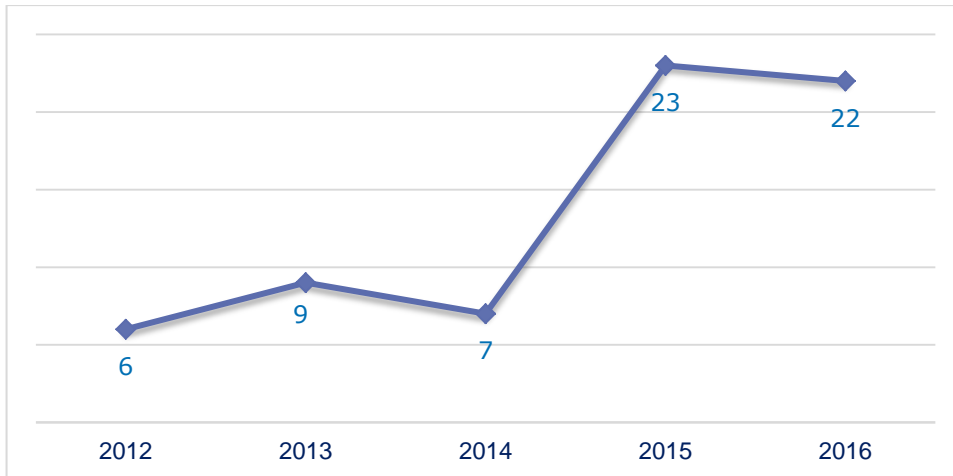
⁸ Directives [2014/23/EU](#), [2014/24/EU](#), [2014/25/EU](#), [MEMO/16/1823](#).

IV. TRANSPOSITION OF DIRECTIVES

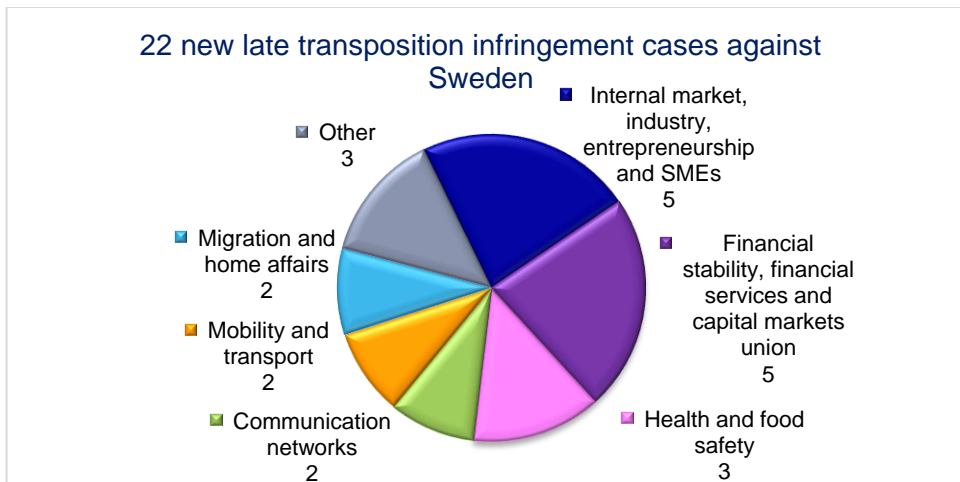
1. Late transposition infringement cases against Sweden open on 31 December (2012-2016)



2. New late transposition infringement cases against Sweden (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- lack of access to justice in relation to hunting decisions taken by the County Administrative Boards;
- insufficient protection in national legislation against abuse of successive fixed-term employment contracts. This allowed employers to use various fixed-term contracts without limitation;
- completing the notification of all national measures necessary to transpose the Capital Requirements Directive.⁹

VI. IMPORTANT JUDGMENTS

1. Court ruling¹⁰

There were no major Court rulings in 2016.

2. Preliminary rulings

In preliminary rulings addressed to or concerning the Swedish judiciary, the Court held that:

- an asylum applicant may, in an action challenging a transfer decision made about him, invoke an infringement of the rule set out in the Dublin Regulation¹¹ concerning an absence of at least 3 months from the territory of the Member State concerned;¹²
- under the Directive on privacy and electronic communications¹³ Member States may establish, as a preventive measure, a targeted retention of data solely for the purpose of fighting serious crime, provided that such retention is limited to what is strictly necessary regarding the categories of data to be retained, means of communication affected, persons concerned and duration of the retention period. The Court further clarified that the access of national authorities to the retained data must be subject to conditions, including prior review by an independent authority, and that the data must be retained within the EU;¹⁴
- the European arrest warrant issued by the Swedish National Police Board is invalid as such body is not covered by the term 'issuing judicial authority' and acts issued by police service cannot be regarded as a 'judicial decision';¹⁵
- higher taxation of Swedish dividends paid to non-resident pension funds than of dividends paid to resident pension funds is not contrary to EU law because resident and non-resident pension funds are not in a comparable situation. This is so because the objective of the Swedish yield tax, applicable to resident pension funds, is to tax the fund's entire capital, and this objective cannot be fulfilled for non-resident pension funds as they are by definition only liable for tax on Swedish-sourced income, not on their entire capital.¹⁶

⁹ Directive [2013/36/EU](#).

¹⁰ These rulings are almost exclusively handed down on infringement procedures.

¹¹ Article 19(2) of Regulation [\(EU\) 604/2013](#).

¹² Karim, [C-155/15](#).

¹³ Directive [2002/58/EC](#).

¹⁴ Tele2 Sverige, joined case [C-203/15](#) and [C-698/15](#), Court press release [No 145/16](#).

¹⁵ Poltorak, [C-452/16](#).

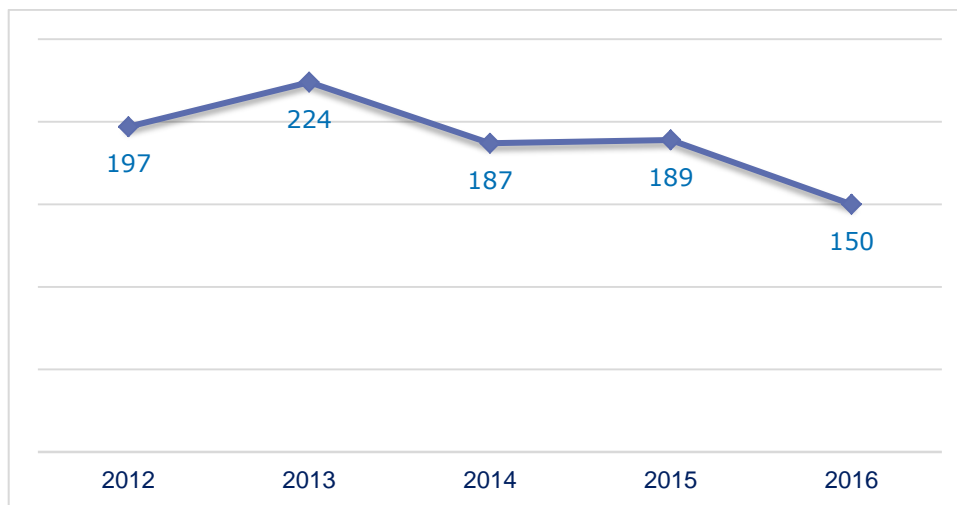
¹⁶ Pensioenfonds Metaal en Techniek, [C-252/14](#).

United Kingdom

New complaints against the United Kingdom decreased markedly in 2016 to a five-year low. The number of new EU Pilot files continued its downward trend since 2012, also reaching a five-year low. Open infringement cases at the end of 2016 increased somewhat and the Commission initiated more new infringement cases for late transposition.

I. COMPLAINTS

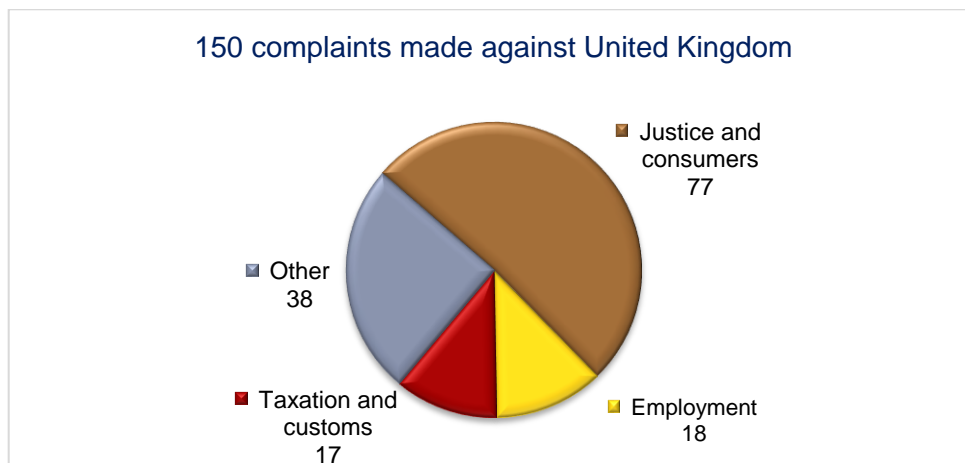
1. New complaints made against the United Kingdom by members of the public (2012-2016)



2. Public complaints against the United Kingdom open at year-end

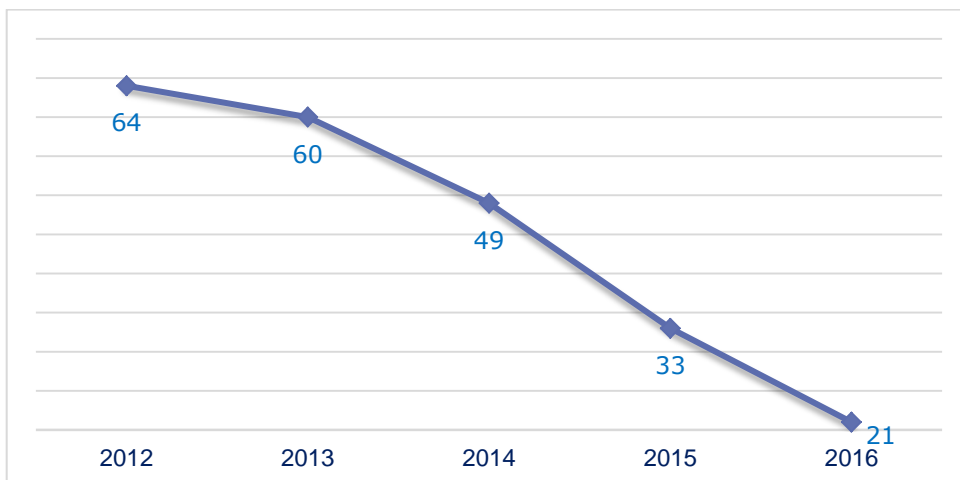
186	>	Complaints open at end-2015
150	>	New complaints registered in 2016
164	>	Complaints handled in 2016
<hr/>		
= 172	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy areas

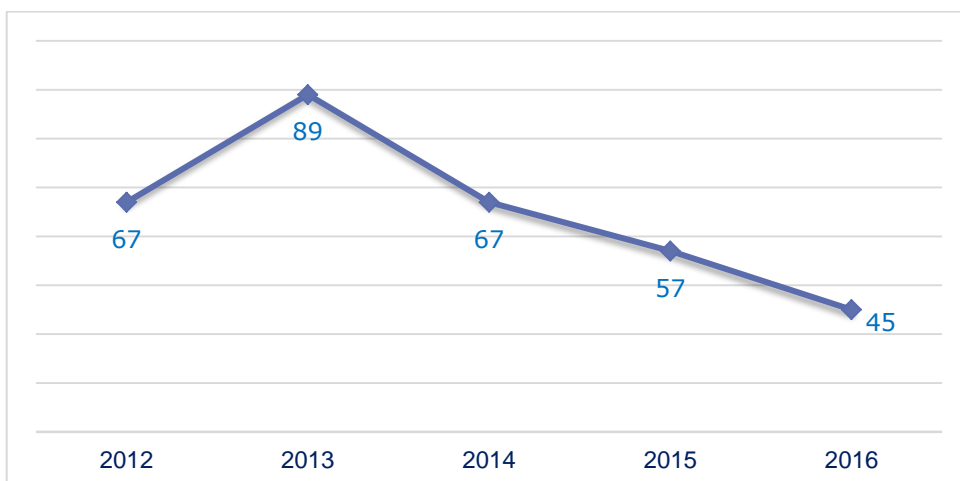


II. EU PILOT

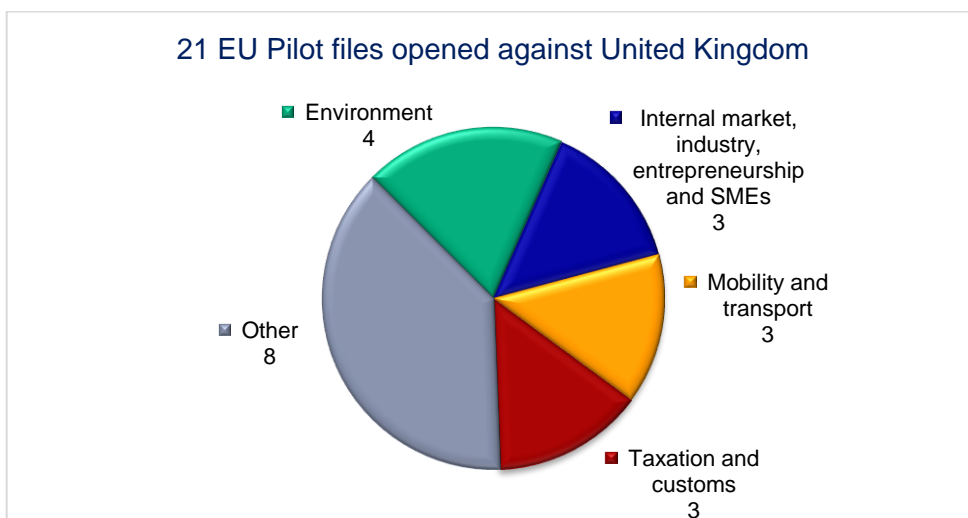
1. New EU Pilot files opened against the United Kingdom (2012-2016)



2. Files relating to the United Kingdom open in EU Pilot at year-end

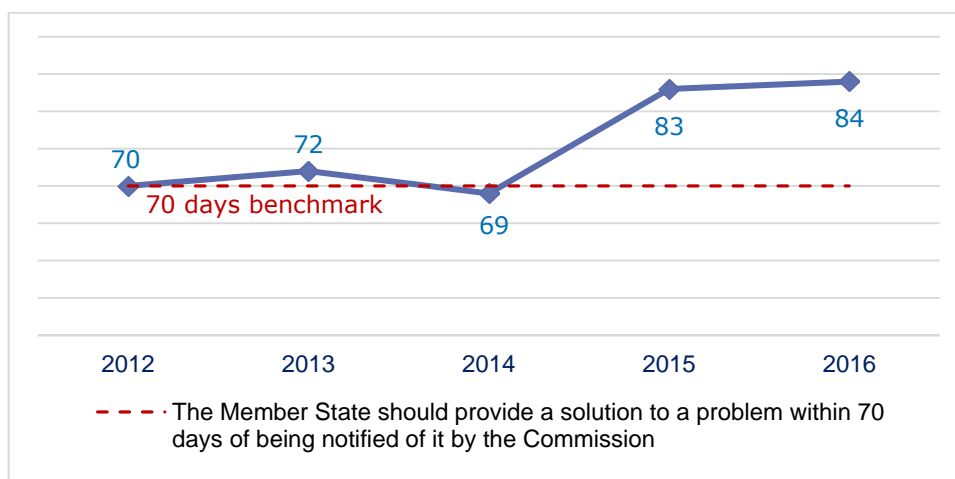


3. New EU Pilot files opened in 2016: main policy areas

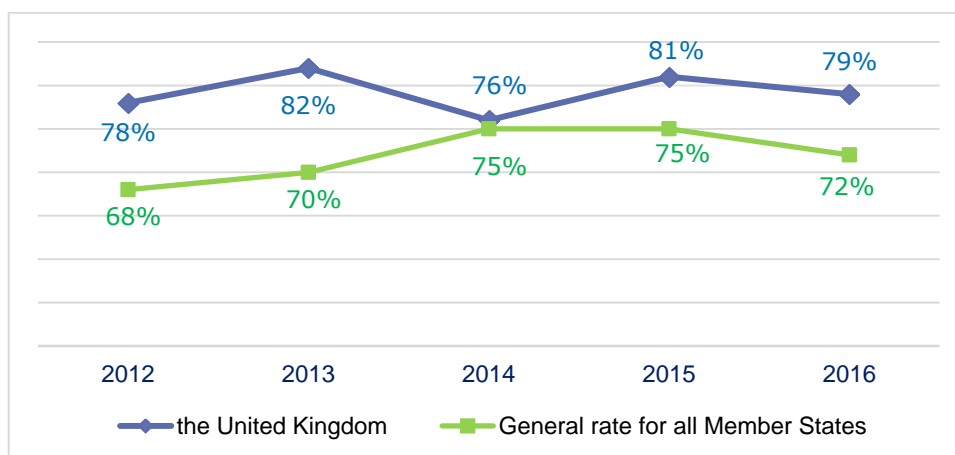


United Kingdom

4. EU Pilot files: United Kingdom's average response time in 2012-2016 (in days)

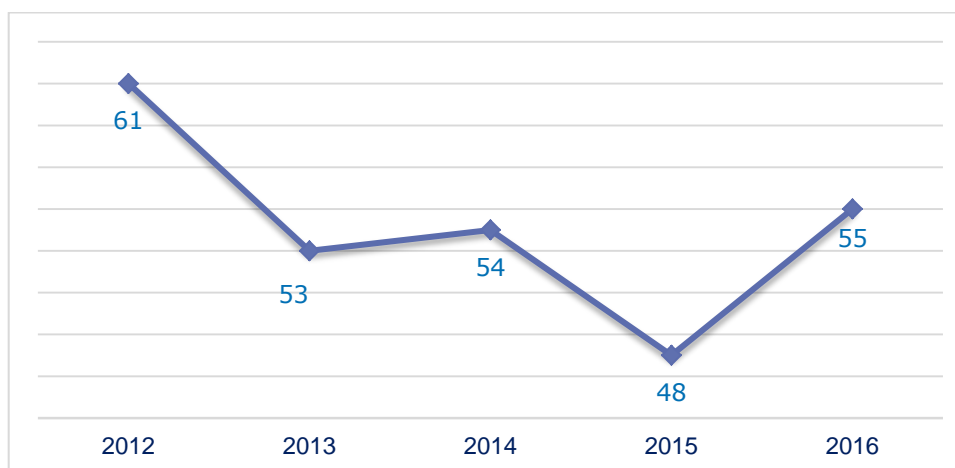


5. EU Pilot files: United Kingdom's resolution rate in 2012-2016

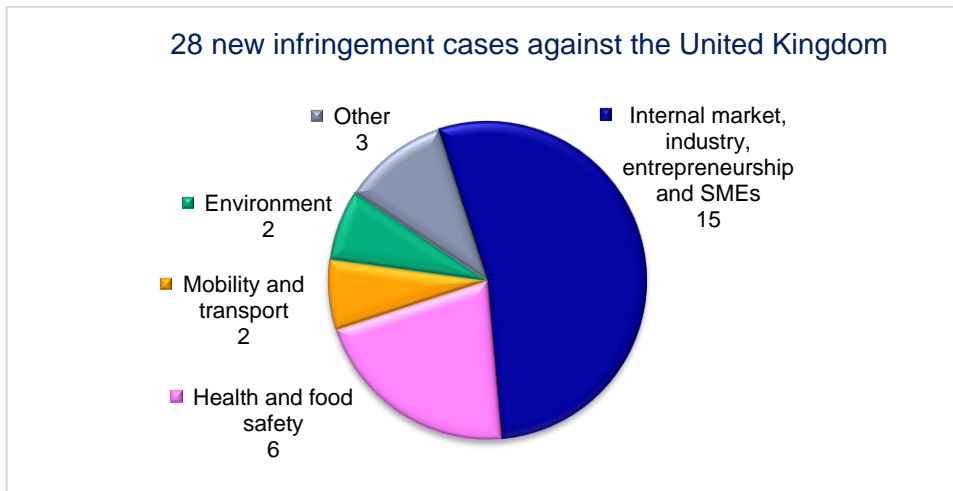


III. INFRINGEMENT CASES

1. Infringement cases against the United Kingdom open on 31 December (2012-2016)



2. New infringement cases opened in 2016: main policy areas

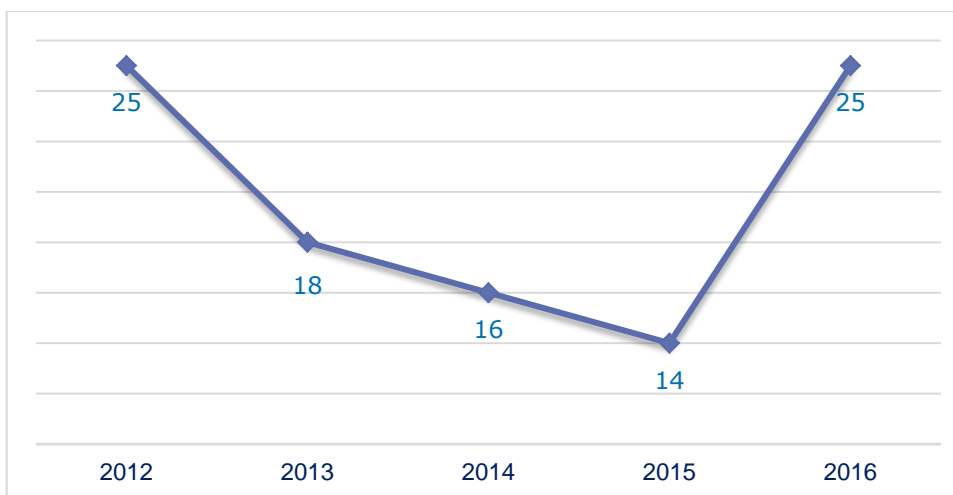


3. Key infringement cases and referrals to the Court

- a) The Commission opened 28 new infringement cases against the United Kingdom in 2016. These, and other major ongoing infringement cases, include:
- failure to fully transpose the Offshore Safety Directive;¹
 - restrictions on the provision of transport services and free movement of goods;²
 - failure to protect priority blanket bogs, in particular from excessive burning, in special areas of conservation in England;
 - failure to transpose in full the Directive amending EU legislation on the recognition of professional qualifications and the Internal Market Information System;³
 - failure to fulfil the obligations under EU vehicle type approval legislation.⁴
- b) The Commission did not refer any cases to the Court under Article 258 TFEU.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

IV. TRANSPOSITION OF DIRECTIVES

1. Late transposition infringement cases against the United Kingdom open on 31 December (2012-2016)

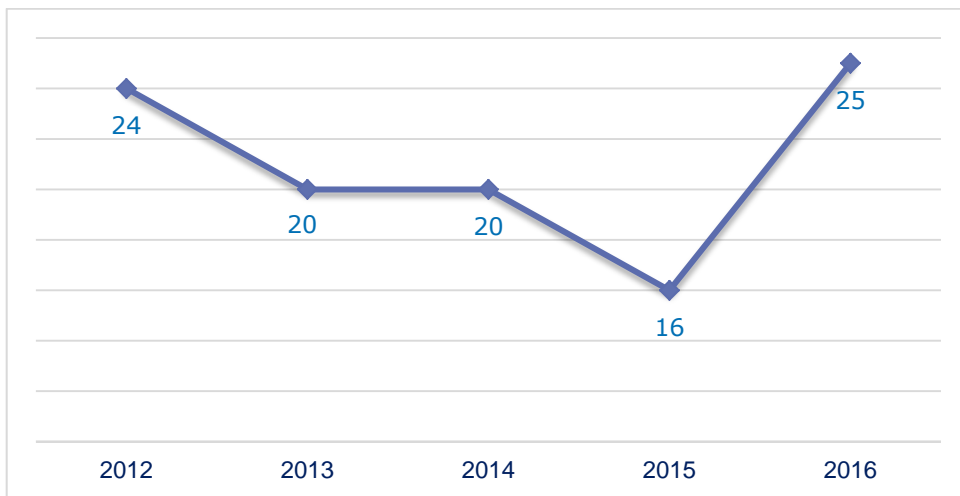


¹ Directive [2013/30/EU](#), [MEMO/16/319](#), [MEMO/16/1452](#) and [MEMO/16/3644](#).
² [IP/16/2101](#), [IP/16/1456](#).

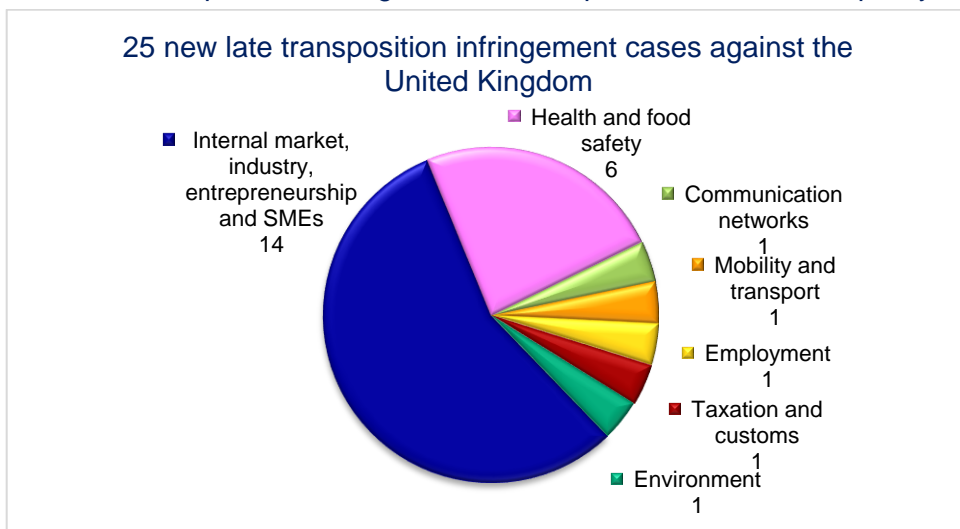
³ Directive [2013/55/EU](#), [MEMO/16/3125](#).

⁴ Directive [2007/46/EC](#) and Regulation [2007/715/EC](#), [IP/16/4214](#).

2. New late transposition infringement cases against the United Kingdom (2012-2016)



3. New late transposition infringement cases opened in 2016: main policy areas



4. Referrals to the Court

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

V. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

- failure to comply with the Habitats Directive as regards protection of wild salmon in Scotland;⁵
- non-communication of national measures transposing the Seveso III Directive;⁶
- incorrect application of the Industrial Emissions Directive by excluding small waste oil burners from the scope of the definition of waste incineration plants;⁷
- notification of all national measures necessary to transpose the Capital Requirements Directive⁸ and the Financial Conglomerates Directive;⁹
- transposition of the Directive on over-reliance on credit ratings;¹⁰

⁵ Directive [92/43/EEC](#).

⁶ Directive [2012/18/EU](#).

⁷ Directive [2010/75/EU](#).

⁸ Directive [2013/36/EU](#).

⁹ Directive [2011/89/EU](#).

- non-compliance with the First Railway Package.

VI. IMPORTANT JUDGMENTS

1. Court rulings¹¹

The Court ruled that:

- the United Kingdom has incorrectly applied the Large Combustion Plants Directive to the Aberthaw Power Station in Wales, by not respecting the emission limit value for nitrogen oxides (NOx);¹²
- the United Kingdom did not violate the Regulation on the coordination of social security systems¹³ by requiring a person claiming certain social benefits (child benefit and child tax credit) to satisfy the so-called right to reside test in order to be treated as habitually resident in the UK.¹⁴

2. Preliminary rulings²

In preliminary rulings addressed to the UK judiciary, the Court held that:

- a national of a non-EU country who has the sole care of an EU citizen who is a minor cannot be automatically refused a residence permit or expelled from the territory of the European Union on the sole ground that he has a criminal record. To be capable of being adopted, an expulsion measure must be proportionate and founded on the personal conduct of the national of a non-EU country. That conduct must constitute a genuine, present and sufficiently serious threat adversely affecting one of the fundamental interests of the society of the host Member State;¹⁵
- under the Directive on privacy and electronic communications¹⁶ Member States may establish, as a preventive measure, a targeted retention of data solely for the purpose of fighting serious crime, provided that such retention is limited to what is strictly necessary regarding the categories of data to be retained, means of communication affected, persons concerned and duration of the retention period. The Court further clarified that the access of national authorities to the retained data must be subject to conditions, including prior review by an independent authority, and that the data must be retained within the EU;¹⁷
- a fee demanded for the issuing of services licences was excessive as it did not correspond to the real cost of authorisation procedures. The national legislation on granting the licences was therefore judged non-compliant with the Services Directive;¹⁸
- the placing on the EU market of cosmetic products containing some ingredients that have been tested on animals outside the EU in order to market those products in third countries may be prohibited if the data resulting from that testing is used to prove the safety of the products concerned for the purposes of placing them on the EU market.¹⁹

¹⁰ Directive [2013/14/EU](#).

¹¹ These rulings are almost exclusively handed down in infringement procedures.

¹² Directive [2001/80/EC](#), Commission v United Kingdom, [C-304/15](#).

¹³ Regulation (EC) No [883/2004](#).

¹⁴ Commission v United Kingdom, [C-308/14](#).

¹⁵ Rendón Marín and CS, joined cases [C-165/14](#) and [C-304/14](#) and Court press release [No 95/16](#).

¹⁶ Directive [2002/58/EC](#).

¹⁷ Tele2 Sverige, joined case [C-203/15](#) and [C-698/15](#), Court press release [No 145/16](#).

¹⁸ Directive [2006/123/EC](#), [C-316/15](#), Timothy Martin Hemming and Others v Westminster City Council, Court press release No [127/2016](#).

¹⁹ European Federation for Cosmetic Ingredients v Secretary of State for Business, Innovation and Skills and Attorney General, [C-592/14](#), Court press release No [105/2016](#).

METHODOLOGY AND EXPLANATIONS

ANNEX II — MEMBER STATES

1. COMPLAINTS

First chart: New complaints made against the Member State by members of the public (2012-2016)

This shows the number of public complaints the Commission registered against the Member State for the years 2012-2016.

Second chart: Public complaints against the Member State open at year-end

This starts with the number of open complaints against the Member State carried over from 2015 (first column). The second column shows the number of new complaints registered in 2016. The third column shows the number of complaints on which the Commission took a decision in 2016. The fourth column shows the number of complaints against the Member State that were open at the end of 2016 (calculated by taking the first figure, adding the second and subtracting the third).

Third chart: New complaints registered in 2016: main policy areas

The number of complaints registered in 2016 is broken down by policy area. Generally, this breakdown shows the three policy areas which attracted the most complaints. However, four (or more) policy areas are mentioned if two (or more) policy areas tied for the third highest number of complaints.

2. EU PILOT

First chart: New EU Pilot files opened against the Member State (2012-2016)

This analyses the number of EU Pilot files the Commission opened against the Member State for the years 2012-2016.

Second chart: EU Pilot files relating to the Member State open at year-end

This analyses the number of EU Pilot files still pending at year-end against the Member State for the years 2012-2016.

Third chart: New EU Pilot files opened in 2016: main policy areas

The figure for the number of new EU Pilot files opened against the Member State in 2016 is broken down by policy area. Generally, this breakdown shows the three policy areas in which the most EU Pilot files were opened in 2016. However, four (or more) policy areas are mentioned if two (or more) policy areas tied for the third highest number of EU Pilot files or if the top three policy areas do not account for more than 50 % of the cases.

Fourth chart: EU Pilot files: Member State's average response time in 2012-2016 (in days)

This shows how the Member State's average response time in EU Pilot has changed over the past 5 years.

Fifth chart: EU Pilot files: Member State's resolution rate in 2012-2016

This shows how many EU Pilot files the Commission closed without opening an infringement case by 31 December of each year from 2012 to 2016.

3. INFRINGEMENT CASES

First chart: Infringement cases against the Member State open on 31 December (2012-2016)

These figures include all procedures the Commission initiated against the Member State by sending a letter of formal notice under Article 258 TFEU. It covers letters sent in 2016 or before, irrespective of the stages the cases have reached. Only cases which have not yet been closed by a formal decision are shown.

Accordingly, these numbers include all cases that, on 31 December of the years 2012 to 2016:

- were in the pre-litigation phase (letter of formal notice, reasoned opinion or decision on referral to the Court under Article 258 TFEU);
- were pending before the Court under Article 258 TFEU and Article 260(3) TFEU;
- the Court had ruled on but where the Commission could not yet confirm that the Member State had implemented the judgment correctly;
- were in the second pre-litigation procedure (letter of formal notice or referral decision under Article 260(2) TFEU);
- were pending before the Court due to a second referral; and
- the Court had ruled on for the second time but where the Commission could not yet confirm that the Member State had implemented the second judgment correctly.

These figures do *not* include, for example, open EU Pilot files in the policy area. They also do not include EU Pilot files for which the Commission had already rejected a Member State's response but had not yet sent a letter of formal notice under Article 258 TFEU.

Second chart: New infringement cases opened in 2016: main policy areas

As a rule, this chart shows the three policy areas in which the most infringements were open on 31 December 2016. Four (or more) policies are mentioned if two (or more) policies tied for the third highest number of open infringements. Only two policies are highlighted if too many policies tied for the third highest number, or if this would make the chart very fragmented (this might occur in Member States with relatively few infringements).

Key infringement cases and referrals to the Court

This section has three parts:

Part a) shows the number of new infringement cases opened against the Member State in 2016 and lists the major new and ongoing infringement cases at the stage of letters of formal notice or reasoned opinions (under Article 258 TFEU).

Part b) lists the cases which the Commission referred to the Court solely under Article 258 TFEU by 31 December 2016. The cases submitted to the Court under Article 258 *and* 260(3) TFEU are discussed in the 'Transposition of directives' section (see below).

Part c) lists the cases which the Commission referred to the Court under Article 260(2) TFEU by 31 December 2016.

4. TRANSPOSITION OF DIRECTIVES

First chart: Late transposition infringement cases against the Member State open on 31 December (2012-2016)

This shows the number of letters of formal notice sent to the Member State under Article 258 TFEU for missing or partial notification of national transposition measures. It covers letters sent in 2016 or before, irrespective of the stages the cases have reached. Only cases which have not yet been closed by a formal decision are shown.

Accordingly, the number includes all cases that, on 31 December of the years 2012 to 2016:

- were in the pre-litigation phase (letter of formal notice, reasoned opinion or decision on referral to the Court under Article 258 TFEU and Article 260(3) TFEU),
- were pending before the Court under Article 258 TFEU and Article 260(3) TFEU.

This figure is already included in the total number of infringement cases open against the Member State in 2016. It should therefore *not* be added to the figure shown in the first chart of the general statistics section.

Second chart: New late transposition infringement cases against the Member State (2012-2016)

This shows the number of new letters of formal notice sent in 2016 to the Member State under Article 258 TFEU for missing or partial notifications of national transposition measures. This figure is already included in the total number of new infringement cases initiated against the Member State in 2016. It should therefore *not* be added to the figure shown in the second chart of the general statistics section.

Please note that not all of these new infringement cases for late transposition were necessarily still open on 31 December 2016. For example, if the Commission opened a late transposition infringement procedure in March 2016 by sending a letter of formal notice, this would be added to the new infringement cases even if the Commission closed the case in October 2016 as a result of the Member State notifying complete transposition.

Third chart: New late transposition infringement cases opened in 2016: main policy areas

As a rule, this chart shows the three policy areas in which the most infringement procedures for late transposition were launched in 2016. Four (or more) policies are mentioned if two (or more) policies tied for the third highest number of open infringements. Only two policy areas are highlighted if too many policy areas tied for the third highest number, or if this would make the chart very fragmented (this might occur in Member States with relatively few infringements).

Referrals to the Court

This section contains the cases which the Commission referred to the Court under Article 258 TFEU and Article 260(3) by 31 December 2016.

5. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

This section contains a list of the major infringement cases the Commission closed in 2016 without a Court judgment. The list is not exhaustive.

6. IMPORTANT JUDGMENTS

This section contains two lists:

The first list contains the Court's most important judgments against the Member State in 2016. These judgments are almost exclusively handed down under Article 258 or Articles 260(2) TFEU.

The second list contains the most important preliminary rulings the Court has issued to the Member State's judiciary. These lists are not necessarily exhaustive.