

COMMISSION STAFF WORKING DOCUMENT  
PART I: GENERAL STATISTICAL OVERVIEW  
ACCOMPANYING THE DOCUMENT  
MONITORING THE APPLICATION OF EUROPEAN UNION LAW  
2019 ANNUAL REPORT

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## I. WORKING WITH MEMBER STATES TO ENSURE PROPER IMPLEMENTATION OF EU LAW

The Member States and the European Commission share responsibility for ensuring compliance with EU law. In line with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union, they should ‘in full mutual respect, assist each other in carrying out tasks which flow from the Treaties’.

The ultimate purpose of the Commission’s enforcement actions is to ensure compliance with EU law, and in this sense infringement procedures are an option of last resort to achieve that purpose. In many cases, good cooperation and communication between the Commission and the Member States is more conducive to reaching compliance at an early stage than having to resort to infringement procedures. In its Communication ‘EU law: Better results through better application’<sup>1</sup>, the Commission committed to strengthening its partnership with Member States.

In line with this approach, the Commission has developed a number of tools to help Member States transpose, apply and implement EU law correctly and on time. These include guidance documents, implementation plans, expert groups, explanatory documents, providing training, organising workshops and holding package meetings. Some of these tools are used to avoid (‘prevent’) breaches of EU law, while others are intended to be used in parallel with infringement procedures to resolve (‘correct’) breaches of EU law and to avoid having to refer the matter to the Court of Justice of the European Union. The Commission often uses a combination of these tools to address problems and promote compliance with EU law.

The Commission is committed to better explaining its role as guardian of the treaties and its work with Member States on issues concerning the application and implementation of EU law. Information provided in this section of the report goes beyond the dialogue engaged with the Member States during the formal infringement procedures. It gives a brief overview of other types of action taken by the Commission in 2019 to assist Member States in implementing and applying EU law.

### 1. Explanatory documents: state of play

The EU institutions and the Member States agreed in 2011 that Member States, when notifying national transposition measures to the Commission, may also have to provide documents explaining how they have transposed directives into their law<sup>2</sup>. The Commission can ask Member States to submit these ‘explanatory documents’ in justified cases<sup>3</sup>.

Explanatory documents play an essential role in allowing the Commission to understand how Member States transpose EU directives. They help to make monitoring compliance easier: without these documents, the Commission would need considerable resources and numerous contacts with national authorities to track the methods of transposition in all Member States. Often, transposing measures must fit into a complex legal framework. The resulting transposition exercise thus produces hundreds of measures that the Commission needs to examine.

In 2019, the Commission submitted only one proposal for a directive to the European Parliament and the Council. The proposal included a request for explanatory documents. The 66 directives that the Parliament and the Council adopted during this year included 26 directives for which the Commission had asked for explanatory documents. For all 26 directives, the agreed recital on the need for such documents was maintained in the final text.

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<sup>1</sup> [C\(2016\)8600](#); adopted on 13 December 2016 and published in the Official Journal on 19 January 2017.

<sup>2</sup> This was established by (1) a Joint Political Declaration of 28 September 2011 between the Commission and the Member States ([OJ 2011/C 369/02](#)) and (2) a Joint Political Declaration of 27 October 2011 between the European Parliament, the Council and the Commission ([OJ 2011/C 369/03](#)).

<sup>3</sup> The standard recital in such directives reads as follows: Member States ‘undertake to accompany the notification of transposition measures with one or more explanatory documents, which can take the form of correlation tables or other documents serving the same purpose’. The Commission will have ‘to justify on a case-by-case basis, when submitting the relevant proposals, the need for, and the proportionality of, providing such documents’.

During 2019, Member States had to transpose 42 directives. They undertook to submit explanatory documents for 36 directives<sup>4</sup>. In total, Member States notified 238 explanatory documents. The process of assessing the national transposition measures for these directives is under way.

Nine of the 36 directives for which the Member States undertook to provide explanatory documents in 2019 concerned the **environment**. Member States notified to the Commission the following numbers of explanatory documents:

- 1 Member State notified 2 explanatory documents for the Directive on the restriction to use certain hazardous substances in electrical equipment<sup>5</sup>.
- 3 Member States notified 3 explanatory documents for the Directive on exemption for certain electrical components containing lead in glass or ceramic<sup>6</sup>.
- 3 Member States notified 3 explanatory documents for the Directive on exemption for lead in solders<sup>7</sup>.
- 3 Member States notified 3 explanatory documents for the Directive on exemption for lead in cermet-based trimmer potentiometer elements<sup>8</sup>.
- 3 Member States notified 3 explanatory documents for the Directive on exemption for lead as an alloying element in steel<sup>9</sup>.
- 3 Member States notified 3 explanatory documents for the Directive on exemption for lead as an alloying element in aluminium<sup>10</sup>.
- 3 Member States notified 3 explanatory documents for the Directive on exemption for lead as an alloying element in copper<sup>11</sup>.
- 3 Member States notified 3 explanatory documents for the Directive on exemption for lead as an alloying element in high melting temperature solders<sup>12</sup>.
- 3 Member States notified 3 explanatory documents for the Directive on exemption for lead in bearings and bushes<sup>13</sup>.

Another 4 of the 36 directives are in the field of **justice and consumers**. The Commission received:

- 27 explanatory documents for the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings<sup>14</sup>, submitted by 13 Member States.
- 12 explanatory documents for the Directive on legal aid for suspects and accused persons in criminal proceedings<sup>15</sup>, submitted by 7 Member States.
- 23 explanatory documents for the Directive as regards the encouragement of long-term shareholder engagement<sup>16</sup>, submitted by 16 Member States.
- 13 explanatory documents for the Directive on the fight against fraud to the Union's financial interest by means of criminal law<sup>17</sup>, submitted by 11 Member States.

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<sup>4</sup> The report takes into account the explanatory documents submitted for these directives between 1 January and 22 December 2019.

<sup>5</sup> Directive (EU) [2017/2102](#).

<sup>6</sup> Directive (EU) [2018/736](#).

<sup>7</sup> Directive (EU) [2018/737](#).

<sup>8</sup> Directive (EU) [2018/738](#).

<sup>9</sup> Directive (EU) [2018/739](#).

<sup>10</sup> Directive (EU) [2018/740](#).

<sup>11</sup> Directive (EU) [2018/741](#).

<sup>12</sup> Directive (EU) [2018/742](#).

<sup>13</sup> Directive (EU) [2019/178](#).

<sup>14</sup> Directive (EU) [2016/800](#). This directive is not applicable to Denmark, Ireland and the United Kingdom.

<sup>15</sup> Directive (EU) [2016/1919](#).

<sup>16</sup> Directive (EU) [2017/828](#).

<sup>17</sup> Directive (EU) [2017/1371](#).

In addition, 6 of the 36 directives concern **transport**. Member States notified to the Commission the following numbers of explanatory documents:

- 4 explanatory documents for the Directive on the interoperability of the rail system<sup>18</sup>, notified by 4 Member States;
- 4 explanatory documents for the Directive on railway safety<sup>19</sup> provided by 4 Member States.
- 2 explanatory documents for the Directive on safety rules and standards for passenger ships<sup>20</sup>, provided by 2 Member States.
- 2 explanatory documents for the Directive on the registration of persons sailing on board passenger ships and on reporting formalities for ships<sup>21</sup>, provided by 2 Member States.
- 4 explanatory documents for the Directive on a system of inspection for the safe operation of roll-on roll-off passenger ships and high-speed passenger craft in regular service<sup>22</sup>, provided by 3 Member States.
- 4 explanatory documents for the Directive on the inland transport of dangerous goods<sup>23</sup>, provided by 3 Member States.

One of the 36 directives concerns **financial services**. The Commission received 21 explanatory documents from 18 Member States for the Directive on activities and supervision of institutions for occupational retirement provision.

Another 1 of the 36 directives is on **climate**. The Commission received 11 explanatory documents from 9 Member States for the Directive to enhance cost-effective emission reductions and low-carbon investments<sup>24</sup>.

In the field of **employment**, the Commission received 5 explanatory documents for the Directive implementing the Agreement concerning the implementation of the Work in Fishing Convention<sup>25</sup>, from 5 Member States.

In the field of **energy**, the Commission received 10 explanatory documents from 8 Member States for the Directive as regards the methods for calculating stockholding obligations<sup>26</sup>.

There were also 3 Directives in the field of **health and safety** for which the explanatory documents were submitted:

- 6 explanatory documents for the Directive as regards minimum conditions for examining certain varieties of agricultural plant species and vegetable species<sup>27</sup>, notified by 6 Member States.
- 1 explanatory document for the Directive as regards the environmental risk assessment of genetically modified organisms 2018/350/EU, notified by 1 Member States.
- 1 explanatory document for the Directive on protective measures against the introduction of organisms harmful to plants or plant products 2019/523/EU, notified by 1 Member State.

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<sup>18</sup> Directive (EU) [2016/797](#).

<sup>19</sup> Directive (EU) [2016/798](#).

<sup>20</sup> Directive (EU) [2017/2108](#).

<sup>21</sup> Directive (EU) [2017/2109](#).

<sup>22</sup> Directive (EU) [2017/2110](#).

<sup>23</sup> Directive (EU) [2018/1846](#).

<sup>24</sup> Directive (EU) [2018/410](#).

<sup>25</sup> Directive (EU) [2017/159](#).

<sup>26</sup> Directive (EU) [2018/1581](#).

<sup>27</sup> Directive (EU) [2019/114](#).

In the area of the **internal market**, Member States submitted to the Commission explanatory documents for 4 Directives:

- 4 explanatory documents for the Directive on electronic invoicing in public procurement<sup>28</sup> from 4 Member States.
- 2 explanatory documents for the Directive on approximation of the laws of the Member States regarding trade marks<sup>29</sup> from 2 Member States.
- 2 explanatory documents for the Directive on control of the acquisition and possession of weapons<sup>30</sup> from 2 Member States.
- 14 explanatory documents for the Directive as regards the list of defence-related products<sup>31</sup> from 13 Member States.

There were also explanatory documents notified by Member States in the field of **taxation** for 6 Directives:

- 17 explanatory documents notified for Directive as regards the treatment of vouchers<sup>32</sup>, by 16 Member States.
- 8 explanatory documents notified for the Directive laying down the rules against tax avoidance practices<sup>33</sup>, by 5 Member States.
- 4 explanatory documents notified for the Directive as regards hybrid mismatches with third countries<sup>34</sup>, by 4 Member States.
- 5 explanatory documents notified for the Directive on tax dispute resolution mechanisms<sup>35</sup> by 4 Member States.
- 2 explanatory documents notified for the Directive as regards mandatory automatic exchange on information<sup>36</sup>, by 2 Member States.
- 4 explanatory documents notified for the Directive as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States<sup>37</sup>, by 4 Member States.

The Commission considers that the current framework gives sufficient flexibility on the use of explanatory documents. Unfortunately, in 2019 Member States did not deliver in all cases on their commitment to provide explanatory documents together with the national measures transposing the directives into their legal order. Moreover, the Commission's initial assessment of the explanatory documents it received indicates that their quality is uneven.

In its judgment of 8 July 2019,<sup>38</sup> the Court of Justice clarified that, when notifying national transposition measures to the Commission, Member States must provide sufficiently clear and precise information, and identify, for each provision of the directive, the national provision(s) ensuring its transposition. If they fail to provide documents explaining the correlation between the provisions of a directive and the corresponding provisions of national law, the Commission will pursue the infringement procedures under Article 260(3) TFEU. This Treaty provision allows the Commission to request the Court to impose financial penalties if a Member State fails to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure.

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<sup>28</sup> Directive (EU) [2014/0055](#).

<sup>29</sup> Directive (EU) [2015/2436](#).

<sup>30</sup> Directive (EU) [2017/853](#).

<sup>31</sup> Directive (EU) [2019/514](#).

<sup>32</sup> Directive (EU) [2016/1065](#).

<sup>33</sup> Directive (EU) [2016/1164](#).

<sup>34</sup> Directive (EU) [2017/952](#).

<sup>35</sup> Directive (EU) [2017/1852](#).

<sup>36</sup> Directive (EU) [2018/822](#).

<sup>37</sup> Directive (EU) [2018/1910](#).

<sup>38</sup> Commission v Belgium, [C-543/17](#).

The Court's judgement does not impose an obligation on the Member States to notify explanatory documents to the Commission in the form of correlation tables. Member States remain free to choose the form of their explanatory documents. The Commission will continue to explore with Member States the benefit of providing guidance on how to draft and submit explanatory documents. This could include the need for a common template and clear rules on the presentation of the relevant information by the Member States.

The Commission will continue to report in its annual report on the explanatory documents received from the Member States.

## 2. Guidelines

The Commission often provides written guidance to Member States on how to implement and apply certain EU legal instruments.

In 2019, the Commission issued guidelines on interpreting and implementing EU law in the following policy areas.

Regarding the **common agricultural policy**, the Commission completed the guide on how to register a protected designation of origin or protected geographical indication for wine. Furthermore, the Commission provided guidance on additional controls on organic products from China, Russia, Ukraine, Moldova and Kazakhstan. The Commission updated the guidance on direct payments and rural development. Through the Expert Group on ESIF and platforms such as InfoRegio, the Commission provided guidance on issues related to the European Structural and Investments Funds.

In the area of **employment and social affairs**, the Commission published the [Practical Guide on Posting of Workers](#) in 2019. This document aims to assist workers, employers and national authorities in understanding the rules on posting of workers, as revised by the Directive on posting of workers<sup>39</sup>. This understanding is essential to ensure that workers are aware of their rights and that the rules are correctly and consistently applied by national authorities and employers throughout the EU.

In order to improve the application of **consumer** legislation, in July 2019, the Commission issued guidance<sup>40</sup> on applying the Unfair Contract Terms Directive<sup>41</sup>. It covers the rich case law of the Court of Justice, for instance, on the transparency of contract terms, the effect of finding contract terms unfair and requirements for procedures before national courts, such as the ex officio review of unfair contract terms.

In the field of **energy**, the Commission adopted three recommendations to help Member States to implement the different elements of the new amending Directive on Energy Efficiency<sup>42</sup> in national law. They cover the energy savings obligation, the revised metering and billing provisions for thermal energy and the revised provisions for efficiency in heating and cooling. The Commission has also published two recommendations<sup>43</sup> on both the building renovation and building modernisation aspects of the new rules in the amended Energy Performance of Buildings Directive<sup>44</sup>.

In the field of the **environment**, the Commission published guidance on the application of exemptions under the Environmental Impact Assessment Directive<sup>45</sup>. It aims to help national administrative and judicial authorities apply the Environmental Impact Assessment Directive. Furthermore, the Commission completed the first ever habitat action plan for the conservation of wild pollinators<sup>46</sup> in November 2019. The action plan provides comprehensive information on the status and trends of the relevant species and habitats, the pressures and threats acting on them and the measures needed to address them in order to achieve the Nature Directive's objectives. The implementation of the Water Framework Directive raises a number of shared technical challenges, which are addressed at regular meetings of the Strategic Coordination Group and its sub-groups, gathering Member States and stakeholders. This has resulted in extensive guidance, which is regularly updated.

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<sup>39</sup> Directive (EU) [2018/957](#).

<sup>40</sup> [Commission notice — Guidance on the interpretation and application of Council Directive 93/13/EEC on unfair terms in consumer contracts](#)

<sup>41</sup> Directive [93/13/EEC](#).

<sup>42</sup> Directive (EU) [2018/2002](#).

<sup>43</sup> Recommendations (EU) [2019/786](#) and (EU) [2019/1019](#).

<sup>44</sup> Directive [2018/844/EU](#).

<sup>45</sup> [C\(2019\)8014](#); Directive [2011/92/EU](#).

<sup>46</sup> See [https://ec.europa.eu/environment/nature/conservation/species/pollinators/index\\_en.htm](https://ec.europa.eu/environment/nature/conservation/species/pollinators/index_en.htm)

### 3. Implementation plans: state of play

The Commission prepares implementation plans for certain legislative proposals for directives and regulations. An implementation plan identifies the challenges that the Member States will face and which need to be taken into account when they prepare to transpose and implement the respective directive or regulation. The plans also provide for a wide range of tools to help Member States implement EU laws, such as guidance documents, expert groups and dedicated websites. Implementation plans could also include actions and monitoring arrangements by the Member States to track progress and report on their implementation.

The Commission prepared one implementation plan for the revised Capital Requirements Directive<sup>47</sup> later in the legislative process, as the Directive entered into force on 27 June 2019. The main objective of the Directive is to strengthen the current regulatory framework and to align it with international regulatory standards set by the Basel Committee.

Taking into account these findings, the Commission will continue to explore avenues for improving the effectiveness of the implementation plans together with the Member States.

### 4. Meeting-based compliance tools

The Commission deploys a wide range of meeting-based tools, such as committees, networks, expert groups and workshops, to promote the good implementation of EU law across policy areas.

#### 4.1. Committees, networks, expert groups and workshops

The Commission regularly discussed the implementation of the **energy** legislation with Member States in various committee meetings. In the field of energy efficiency, the Commission held several meetings of the Energy Performance of Buildings Directive<sup>48</sup>.

In the field of nuclear safety and radiation protection, the Commission held several meetings of the European Nuclear Safety Regulators Group (ENSREG).

In the area of **climate change** policy, the Commission organised four Technical Working Groups with experts from all Member States on the implementation of the Governance Regulation<sup>49</sup> and notably on the preparation of the national energy and climate plans.

In the area of **financial services**, the Commission organised meetings of an Expert Group on Payments to support Member States to ensure compliance with the Payment Services Directive<sup>50</sup>. This expert group advised the Commission on payments and assisted the Commission in preparing legislative acts and policy initiatives regarding payments, including fraud prevention issues related to the payment industry and users.

Since the introduction of the **common agricultural policy**, the Commission has made intensive use of committees and expert groups to ensure compliance. Apart from their institutional role in adopting implementing acts, the committees in the agricultural sector<sup>51</sup> provide an important forum for discussing, explaining, clarifying and interpreting the applicable rules. In 2019, the Commission services held nearly 160 committee and expert meetings. The discussions covered a broad range of topics with a particular focus on the correct application and implementation of EU law and the exchange of best practices between Member States. The Commission used the Committee for the common organisation of agricultural markets to discuss the requirements for the new regulation on market transparency<sup>52</sup>. The

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<sup>47</sup> Directive (EU) [2019/878](#).

<sup>48</sup> Directive (EU) [2018/844](#).

<sup>49</sup> Regulation (EU) [2018/1999](#).

<sup>50</sup> Directive (EU) [2015/2366](#).

<sup>51</sup> Such as the Committee for the Common Organisation of the Agricultural Markets, the Rural Development Committee, the Committee on the Agricultural Funds, the Committee for Direct Payments, the Agricultural Product Quality Policy Committee, the Regulatory Committee on Organic Production, the Committee on Spirit Drinks.

<sup>52</sup> Regulation (EU) [2019/1746](#).

Expert Group for Agricultural Markets was a forum to share experience gained through Commission audits. The Expert Group for Animal Products discussed the outcome of the on-the-spot checks by the Union Inspection Committee on carcass classification, and management and control issues regarding the EU school fruit, vegetables and milk scheme. The technical clarifications provided in the context of the Rural Development Committee concerned the agri-environmental-climate measure, the annual implementation reports, the voluntary agricultural certification schemes, the financial instruments, the outcomes of the performance reserve, those provided in the context of quality policy concerned the control and practical implementation of rules on the protection of protected designations of origin and protected geographical indications. Finally, following the adoption of the Unfair Trade Practices Directive<sup>53</sup>, expert group meetings provided several opportunities to assist Member States in transposing the Directive into national law.

In the area of the **environment** and in particular waste management, the Commission Directorate-General for Environment held 13 technical committee meetings and 10 expert group meetings as well as several other meetings (e.g. a stakeholders' meeting under the Restriction of Hazardous Substances Directive, an environmental directors' meeting, a meeting of waste shipment correspondents under the Waste Shipment Regulation). These meetings concerned both the preparation of new legislation and the implementation of existing directives.

Under Action 6 of the EU action plan for **nature**, people and the economy<sup>54</sup>, the Commission has further supported the Natura 2000 biogeographical process. This is a process of cooperation between various stakeholders at the level of a biogeographical region. The Member States in which the region lies are involved in improving the implementation, management, monitoring, financing and reporting for the Natura 2000 network on the basis of agreed roadmaps. Two Natura 2000 biogeographical seminars were organised in 2019, for the Atlantic region and the Boreal region.

As regards the area of **working conditions**, the Commission has established a Member State expert group to facilitate the transposition of the Directive on Transparent and Predictable Working Conditions in the European Union<sup>55</sup>. In October 2019, in the Expert Group on European Works Councils, the Commission presented the results of its evaluation of the Directive<sup>56</sup> and discussed how to address weaknesses in the redress and sanctions regimes in Member States. The Commission also participates regularly in the sectoral Social Dialogue Committee on Temporary Agency Work, with frequent discussions on the enforcement of the Directive on Temporary Agency Work<sup>57</sup>, as well as in the Social Dialogue Committees on Maritime Transport and on Fishing.

In the field of **occupational health and safety**, in 2019 the Commission made regular use of committees and expert groups to discuss the appropriate implementation and application of EU labour legislation on the safety and health of workers. The Advisory Committee on Safety and Health met twice in plenary and several times in various working groups. It adopted several opinions, namely on future priorities in the field of occupational safety and health. The Technical Progress Committee met four times in 2019 to discuss possible technical updates to the annexes to three occupational safety and health directives (on biological agents, personal protective equipment and medical treatment on board vessels) and the adoption of a fifth list of indicative occupational exposure limit values. Following this work, the Commission adopted four directives in October 2019. The Senior Labour Inspectors' Committee adopted guidance on addressing health risks from welding fumes and started discussion on future enforcement priorities in occupational safety and health.

The Commission had a first meeting with representatives of Member States responsible for the transposition of the Directive on accessibility of products and services<sup>58</sup> to support them in their efforts.

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<sup>53</sup> Directive (EU) [2019/633](#)

<sup>54</sup> [https://ec.europa.eu/environment/nature/legislation/fitness\\_check/action\\_plan/communication\\_en.pdf](https://ec.europa.eu/environment/nature/legislation/fitness_check/action_plan/communication_en.pdf) .

<sup>55</sup> Directive (EU) [2019/1152](#).

<sup>56</sup> Directive [2009/38/EC](#).

<sup>57</sup> Directive [2008/104/EC](#).

<sup>58</sup> Directive (EU) [2019/882](#).

The Committee of Experts on Posting of Workers held several meetings in 2019 and established a working group for the transposition of the Directive on the Posting of Workers.<sup>59</sup>

The Administrative Commission on the Coordination of Social Security Systems met four times in 2019, enabling national authorities to discuss topics linked to the application of the Regulation on the Coordination of Social Security Systems<sup>60</sup>. Moreover, the network of social security experts (MoveS network) contributed to the correct application of the Regulation via information tools, ad hoc analyses, reports on specific issues and seminars in Member States.

Following the adoption of the Unfair Trade Practices Directive<sup>61</sup>, two expert group meetings took place and provided answers to Member States on how to interpret the Directive. Moreover, the Commission set up a dedicated web space to allow for an exchange of information.

In the area of **justice and consumers**, the Commission continued its efforts to ensure proper application of the new data protection rules. It received feedback from stakeholders on implementation of the General Data Protection Regulation<sup>62</sup> through a dedicated multi-stakeholder group composed of representatives from industry, civil society, practitioners and academics. In parallel, the Commission is actively contributing to the work of the European Data Protection Board, composed of the national authorities who are the enforcers of data protection rules.

In February 2019, the Regulation simplifying the circulation of certain public documents between Member States<sup>63</sup> became applicable. The Commission and the Member States met within the Committee on Public Documents to discuss the Regulation's application. Discussions showed that Member State authorities are not yet fully familiar with the new provisions and as a result further training for authorities at national level is planned.

In the area of **free movement and Union citizenship**, the Expert Group on Free Movement met once in 2019 to discuss several implementation issues and in particular compliance with the *Coman* judgement<sup>64</sup>. In 2019, the consular protection expert group discussed the Directive's implementation and the collection of statistical data.

Regarding **gender equality**, following the adoption in June 2019 of the Directive on Work-Life Balance<sup>65</sup>, the Commission started the preparatory work on its implementation in the Member States. An informal kick-off general meeting with all Member States on 10 and 11 December 2019 discussed issues of interpretation of the Directive's provisions. This was followed by several bilateral meetings in the days that followed.

The Commission regularly discussed implementation of the **security and migration** legislation with Member States in various committee meetings, and expert groups remained an essential framework for discussion and exchanging expertise, namely in the area of legal migration, prevention of radicalisation and information systems for borders and security.

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<sup>59</sup> Directive (EU) [2018/957](#).

<sup>60</sup> Regulation (EC) [883/2004](#).

<sup>61</sup> Directive (EU) [2019/633](#).

<sup>62</sup> Regulation (EU) [2016/679](#).

<sup>63</sup> Regulation (EU) [2016/1191](#). The Regulation aims at cutting red tape and costs for citizens who need to present to the authorities of a Member State a public document issued by the authorities of another Member State, such as public documents on civil status (for example, a birth or a marriage certificate) and the absence of a criminal record. While recognition of the effects of the public documents depends on the law of the receiving Member State, a multilingual standard form avoids the need for translations. Member State authorities started using the internal market information system to check the authenticity of public documents when they have a doubt.

<sup>64</sup> Case *Coman and Others*, [C-673/16](#).

<sup>65</sup> Directive (EU) [2019/1158](#). This Directive provides: fathers the right to 10 working days of paid paternity leave; each parent the right to 2 months of reserved and paid parental leave (with a further 2 months of non-paid leave that may be transferred to the other parent); carers the right to 5 working days of leave per year per worker; and parents and carers the right to request flexible working arrangements.

## 4.2. Package meetings

On **transport**, the Commission organised 7 package meetings in 2019. These meetings have generally led to a swifter handling of a number of files and, in certain cases, to a substantial reduction of the number of infringements.

On **environment**, the Commission organised 9 package meetings in 2019 to discuss ongoing infringements and other issues related to the implementation of environmental legislation in the Member States. Before the meeting with the state authorities, the Commission usually meets with the local environmental non-governmental organisations.

In the area of **migration and home affairs**, 1 package meeting took place in 2019 to discuss pending infringement and EU Pilot procedures.

## 4.3. Other compliance tools

In enforcing the EU's **maritime affairs and fisheries** legislation, the Commission relies heavily on a system of verifications, inspections and audits by Commission inspectors<sup>66</sup>. In addition, the control action plans adopted by the Commission in close cooperation with the Member State concerned are a strong tool to promote the correct enforcement of EU legislation and of the sanctioning system. In 2019, the Commission adopted new action plans for several Member States and actively monitored their implementation. On the common organisation of the markets in fishery and aquaculture products, the Commission ensures that Member States carry out regular checks on the proper implementation of the relevant EU legislation<sup>67</sup>.

In the **agricultural sector**, the Commission uses audits and financial correction procedures to check whether the Member States have set up control systems ensuring that payments to beneficiaries from the EU funds are made correctly. In addition, the Commission verifies the fulfilment of the organic legislation through audits and the monitoring of the organic farming information system (OFIS)<sup>68</sup>. Furthermore, Member States regularly have to notify the Commission of their policy decisions as well as data on their annual implementation of direct payments, greening and cross-compliance. The Commission uses these notifications to guide Member States towards more uniform implementation. When the Commission detects systemic deficiencies in the control systems for direct payments, it requests that Member States set up remedial action plans. If a Member State fails to comply with the action plan, the Commission may decide to suspend or reduce payments. As a result of the above activities, compliance has improved in the domains concerned. For instance, notifications from Member States received in 2019 on the annual review of voluntary coupled support for 2020 and on the implementation of decoupled direct payments in 2018 showed general consistency with the relevant legal framework and required less clarifications and corrections compared to previous years.

In the field of **energy**, the Commission continued to use the Concerted Action Forum, which gathers representatives of Member States and other interested parties, to exchange best practices when applying specific EU instruments. Key discussion topics concerned the implementation of the Energy Performance of Buildings Directive<sup>69</sup> and the Energy Efficiency Directive<sup>70</sup>.

In the area of the **environment** and in particular waste management, three events were held in Athens, Lisbon and Budapest in 2019, building on the Virtuous Circles events organised in Malta, Romania and Bulgaria in 2018. These events are organised in Member States identified as being at risk of not reaching the new recycling targets and other requirements of the waste legislation, as revised in 2018. They emphasise the potential of good waste management in generating value from circular activities including remanufacturing, re-use, symbiosis, repair and recycling. In addition to recommendations on

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<sup>66</sup> Regulation (EC) [1224/2009](#).

<sup>67</sup> Regulation (EU) [1379/2013](#).

<sup>68</sup> [Organic farming - controls and enforcement](#).

<sup>69</sup> Directive [2010/31/EU](#).

<sup>70</sup> Directive [2012/27/EU](#).

the way forward from top experts, these events are designed to offer and seek commitment on concrete financial and technical measures and assistance to implement EU waste policies.

In the area of urban waste water treatment, the Commission Directorate-General for Environment organised six country visits in 2019 in cooperation with the OECD. These allowed for in-depth dialogues on governance, financing possibilities and potential solutions to anticipate financing gaps and avoid infringements.

The Commission organises air quality dialogues to consult Member States on the main air quality challenges and to explore further action to address them. In 2019 the air quality dialogue was held in Italy.

Eleven Natura dialogues took place under the EU action plan for nature, people and the economy<sup>71</sup> in 2019<sup>72</sup>. These bilateral dialogues have been set up to promote discussions with individual Member States on key challenges in the implementation of the Nature Directives and involve the nature authorities as well as other relevant authorities and stakeholders. These meetings are being followed up through agreed implementation roadmaps, with milestones and actions to be delivered.

In the area of **occupational safety and health**, the Commission continued its cooperation with Member States and social partners to make the EU occupational safety and health legislative framework future-proof and ensure proper compliance and enforcement in line with its 2017 Communication<sup>73</sup>. In this context, the Commission supported two initiatives: i) a joint action between the Commission and other stakeholders on a 'roadmap on carcinogens' a voluntary action scheme to raise awareness about the risks arising from exposure to carcinogens in the workplace and ii) an exchange of good practices between companies and organisations as well as a peer review process with Member States on the legislation and practical management of psychosocial risks at work, which took place in Sweden.

In the area of **justice and home affairs**, Union law has created the [Schengen Evaluation Mechanism](#) as a specific monitoring mechanism designed to verify the application of the European Union's so-called Schengen acquis. This is a body of legislation spanning borders, visas, returns, police cooperation, information systems and data protection. It aims to ensure that high uniform standards are applied in practice by those European Union countries in the Schengen area - an area comprising 26 countries, 22 of which are EU countries<sup>74</sup> and 4 of which are non-EU countries associated to the Schengen area<sup>75</sup>. In this area, no internal border controls are applied. The Schengen evaluation mechanism is a multi-layered tool involving the Commission and the Member States (as well as the Schengen associated countries) and also engages the European Parliament. It is without prejudice to the Commission's powers to initiate infringement procedures. Countries belonging to the Schengen area are subject to monitoring and evaluation according to an evaluation programme.

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<sup>71</sup> Communication - [An Action Plan for nature, people and the economy](#) and the accompanying [staff working document](#).

<sup>72</sup> Estonia (6-7 February 2019), Croatia (4-5 March 2019), Greece (28-29 March 2019), Malta (3-4 June 2019), Latvia (17-18 September 2019), Luxembourg (14 -15 October 2019), Denmark (23-24 October 2019), Sweden (4-5 November 2019), France (12 November 2019), Spain (21-22 November 2019), Belgium (27-28 November 2019).

<sup>73</sup> [Safer and Healthier Work for All - Modernisation of the EU Occupational Safety and Health Legislation and Policy](#).

<sup>74</sup> Ireland does not belong to the Schengen area; however, in line with Protocol 19 annexed to the Treaties it has been authorised to participate in certain aspects of the Schengen acquis, in practice those related to security, judicial cooperation in criminal matters and police cooperation. The same is true for the United Kingdom. Bulgaria, Croatia, Cyprus and Romania are Member States whose internal border controls have not yet been abolished. Therefore, although the Schengen acquis is fully binding upon them, they do not apply it yet in its totality.

<sup>75</sup> Iceland, Norway, Switzerland and Liechtenstein.

## II. INFRINGEMENT PROCEDURES

There are four main types of infringements of EU law:

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

Infringements may be detected by the Commission's own investigations or brought to its attention by complaints or petitions from members of the public, businesses, NGOs or other organisations.

The Commission actively informs complainants of the decisions taken throughout all stages of the procedure.

The infringement procedure under Article 258 TFEU is divided into a **pre-litigation phase** and a **litigation phase**.

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

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

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

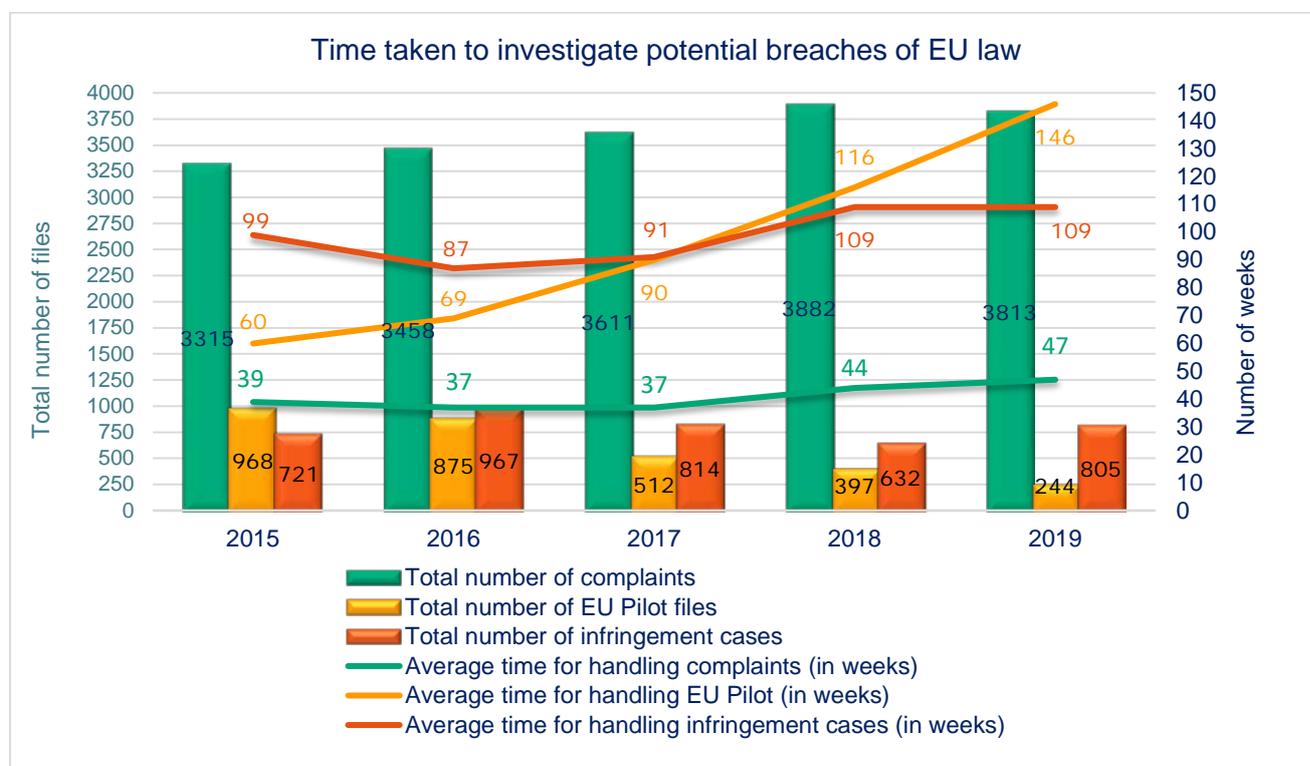
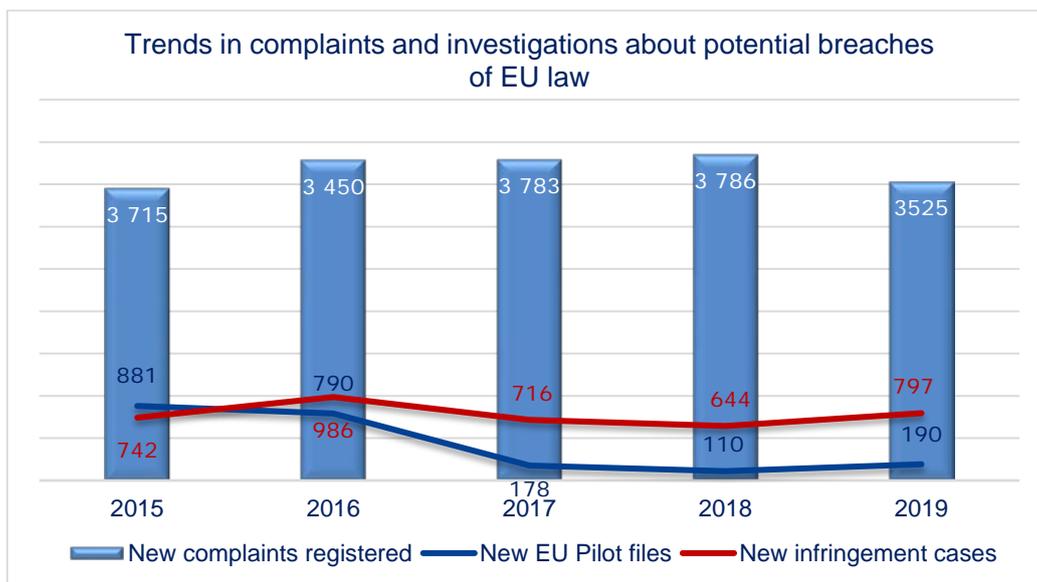
The Court may agree with the Commission and rule that the Member State has breached its obligations under EU law. If the Court does so but the Member State still has not taken the steps needed to comply, the Commission may continue the infringement procedure under Article 260(2) TFEU. This involves referring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

At the request of national courts, the Court of Justice may also issue preliminary rulings under Article 267 TFEU addressing issues of conformity of national laws with EU legislation. While preliminary rulings are distinct from infringement judgments, they give the Commission an additional opportunity to ensure that violations of EU law deriving from national legislation or its application are remedied. The Commission systematically follows up on preliminary rulings where the Court identifies situations of non-conformity of national legislation with EU law.

Over recent years, the Commission has taken concrete measures to improve the transparency of its monitoring activities and decisions on infringement procedures. It has set up a centralised platform for disseminating infringement-related information on the [Europa portal](#). This provides detailed information on the decisions the Commission takes on infringement procedures, including press material on specific cases. Since 2017, the press material covers all formal steps of the infringement procedure.

In addition, every year the Commission provides information in its annual reports on monitoring the implementation of EU legislation, on the follow-up given to complaints and on parliamentary petitions and infringement procedures.

The Commission remains committed to improving the transparency of its enforcement action. At the same time, it has to give due account to the legitimate need for confidentiality with regard to the Member States in infringement procedures, as recognised by the Court of Justice.



### III. BEFORE AN INFRINGEMENT PROCEDURE IS STARTED

#### 1. Complaints

**The Commission registered 3525 new complaints in 2019.**

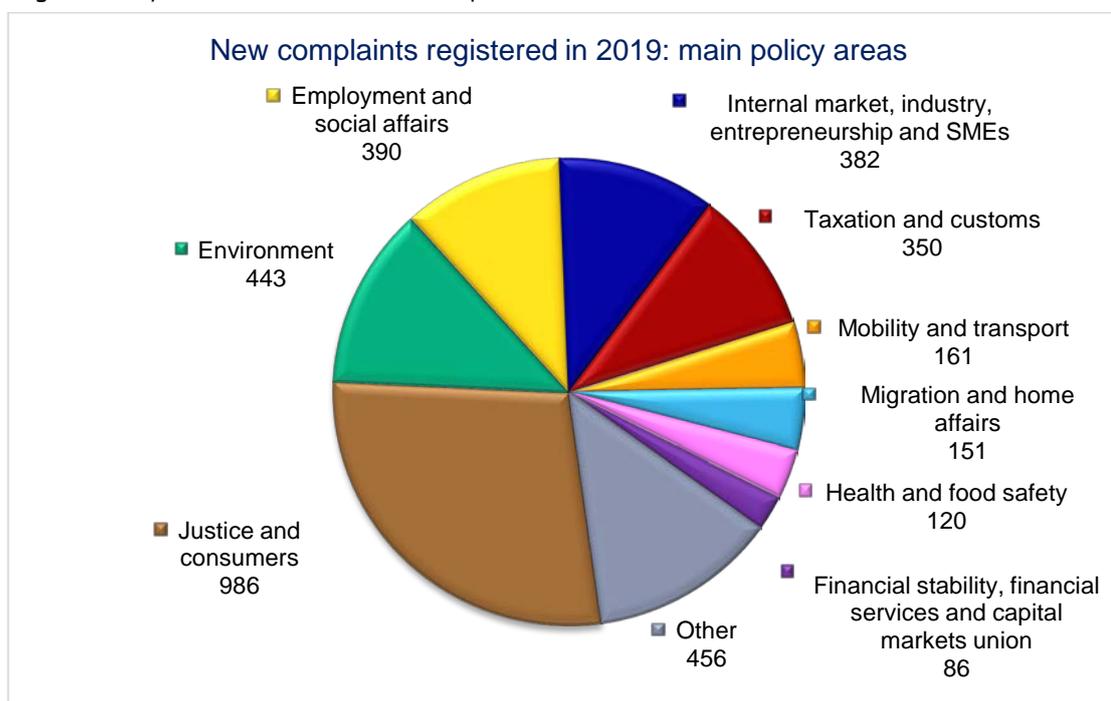
Public complaints open at year-end

3594	>	Complaints open at end-2018
3525	>	New complaints registered in 2019
3813	>	Complaints handled in 2019
<b>= 3306</b>	>	Complaints open at end-2019

The three Member States against which the Commission received the most complaints were Spain, Italy and Germany.

- **Spain:** 542 complaints, especially in connection with: justice and consumers (243 complaints); the environment (70 complaints); and employment (64 complaints);
- **Italy:** 375 complaints, mainly related to: industry, entrepreneurship and SMEs (90 complaints); employment (61 complaints); and taxation and customs (53 complaints); and
- **Germany:** 319 complaints, most of them related to: the environment (106 complaints); justice and consumers (63 complaints); and industry, entrepreneurship and SMEs (40 complaints).

The following chart shows the main policy areas for which new complaints were registered in 2019. Together they account for 88% of all complaints received in 2019.



**The Commission handled 3813 complaints in 2019.** Once it has assessed complaints, the Commission may launch an investigation using the EU Pilot mechanism or through formal infringement procedures to clarify whether EU rules have been breached. Not all complaints in 2019 led to such investigations, because either no EU laws were breached (2712 complaints) or the

correspondence did not qualify as a complaint (829)<sup>76</sup>. The Commission did not pursue 112 cases as the complainants withdrew their complaint. It also transferred 10 complaints to other redress mechanisms, such as SOLVIT. The Commission therefore closed **3663** complaints.

In 2019, the Commission pursued 150 complaints further and launched investigations using the EU Pilot mechanism or the formal infringement procedure.



Complaints leading to investigations using the EU Pilot mechanism were most frequently related to taxation and the customs union; financial stability, financial services and the Capital Markets Union; agriculture and rural development; the environment; and mobility and transport. These complaints mainly concerned Italy, Bulgaria, Malta and Spain.

In 2019, complaints leading to formal infringement procedures were most frequently related to taxation and the customs union; the internal market, industry, entrepreneurship and SMEs; and employment. These new infringements mainly concerned Austria, Belgium and Germany.

## 2. Petitions

Through petitions and questions, the European Parliament alerted the Commission to shortcomings in the way some Member States were implementing and applying certain EU laws in 2019. The Commission systematically ensures follow-up to the petitions received. However, not all petitions lead to investigations about breaches of EU law, because either no EU laws were breached or the Commission had no power to act. In many cases, the situation presented in a petition is already being investigated by the Commission through EU Pilot or a formal infringement procedure.

This section provides an overview of the follow-up the Commission gave to petitions in 2019 in the policy areas most concerned.

With regard to the **environment**, the Commission received 58 petitions linked to complaints or infringements in 2019. While many of those petitions were linked to complaints or to structural infringements, no investigations were started as a direct result of a petition. This was often because a number of petitions raised individual grievances of incorrect application, which are no longer pursued as a matter of priority by the Commission in line with the Communication 'EU law: Better results through better application'.

<sup>76</sup> According to the conditions set out in point 3 of the Annex on administrative procedures for the handling of relations with the complainant regarding the application of European Union law to the Communication *EU law: Better results through better application* (C(2016)8600).

In the areas of **financial services and the Capital Markets Union**, the Commission received 5 petitions concerning the implementation and application of EU law. Of these, the subject matter of 1 petition is being dealt with by the Commission in the context of complaints about a possible breach of EU law and still being assessed. This relates to the free movement of capital, especially the administrative and judicial practice related to restitution of property in several Member States. In the other 4 cases in relation to financial services, the Commission did not pursue the petitions as investigations because either had no competence or no breach of EU law could be established.

In the area of the **internal market**, the Commission received 33 new petitions in 2019 concerning the implementation and application of EU law. The matters raised were not identified as a systemic and serious breach of the Union law falling under the criteria of the Commission's infringement priorities. At the same time, the Commission has given follow up to some of the petitions by putting the issue forward for a discussion with the Member States at the working groups and also is considering a White paper to launch a debate on some other issues.

In the area of **maritime affairs and fisheries**, the Commission received 2 petitions concerning the implementation and application of EU law. The issues raised were already covered by ongoing investigations.

In the area of **migration and home affairs**, the Commission received 19 petitions and launched 1 investigation as a follow up to a petition from the European Parliament concerning the incorrect implementation of the Directive on combating the sexual abuse and sexual exploitation of children and child pornography<sup>77</sup>. The relevant infringement procedure is still pending.

In the **customs and taxation** field, the Commission received 27 petitions concerning the implementation and application of EU law. The petitions concerned cases already opened by the Commission.

### 3. EU Pilot

The EU Pilot dialogue between the Commission and Member States was set up to quickly resolve potential breaches of EU law at an early stage in appropriate cases. However, the recourse to EU Pilot should not add a lengthy step to the infringement process, which in itself is a means to enter into a problem-solving dialogue with a Member State. In line with the Communication [EU law: Better results through better application](#), the Commission launches infringement procedures without relying on the EU Pilot mechanism, unless recourse to EU Pilot is seen as useful in a given case.

**The Commission opened 190 new EU Pilot files in 2019.** Of these, 37 were triggered by complaints and 153 were opened by the Commission on its own initiative (against 86 in 2018).

EU Pilot files open at year-end

553 > EU Pilot files open at end-2018

190 > New EU Pilot files registered in 2019

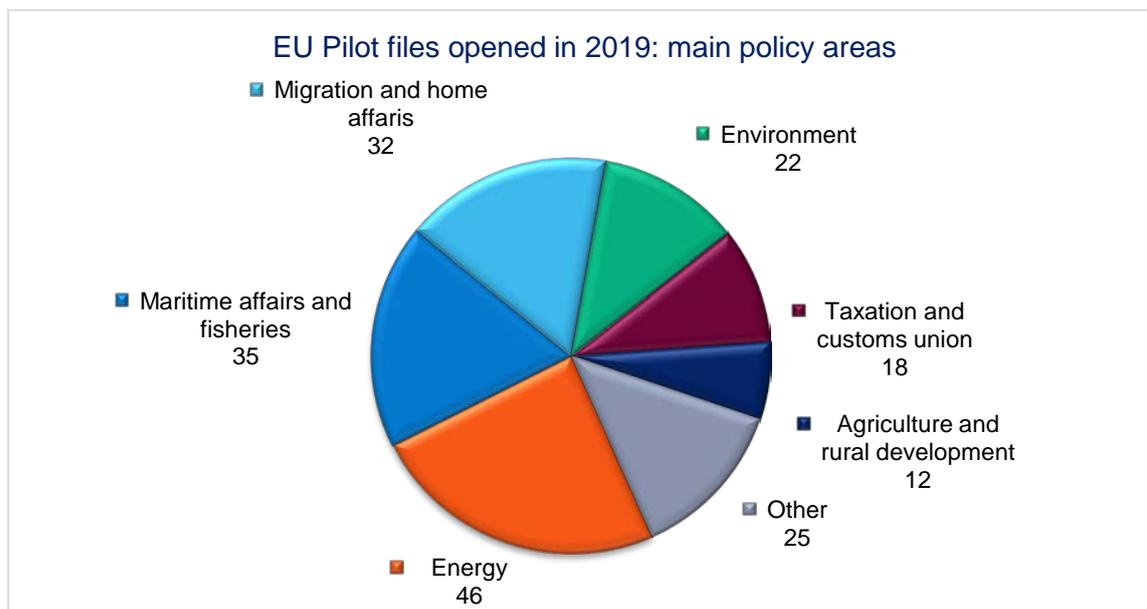
244 > EU Pilot files handled in 2019

= 499 > EU Pilot files open at end-2019

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<sup>77</sup> Directive [2011/93/EU](#).

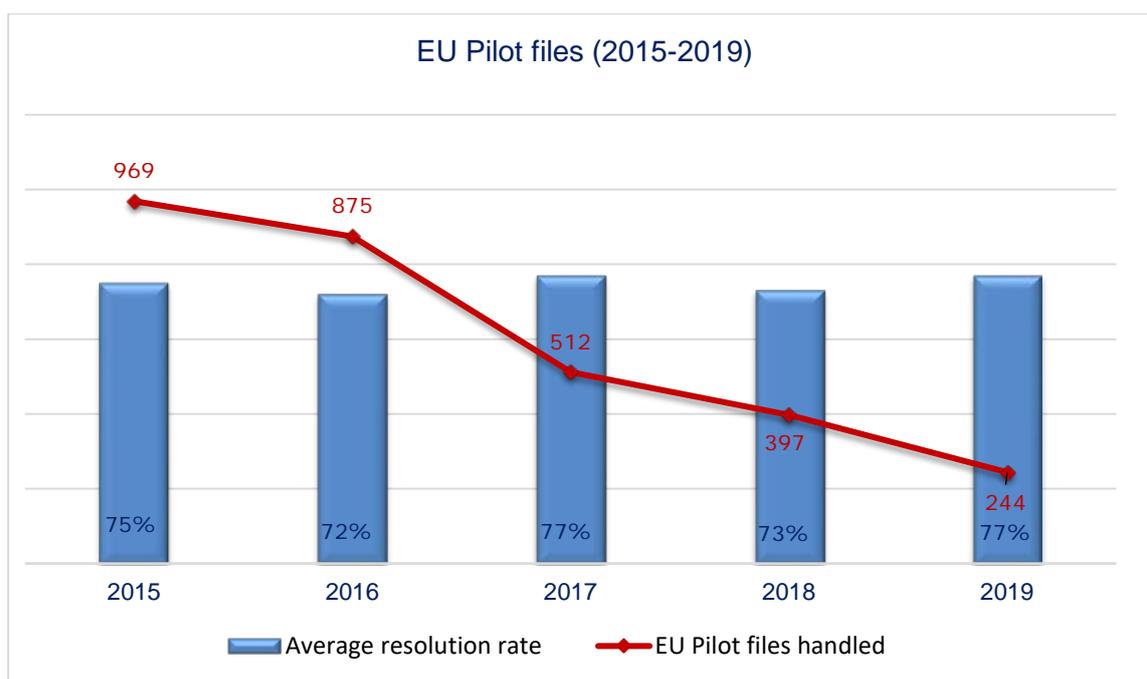
The following pie chart shows the policy areas in which the Commission opened the most new EU Pilot files in 2019:



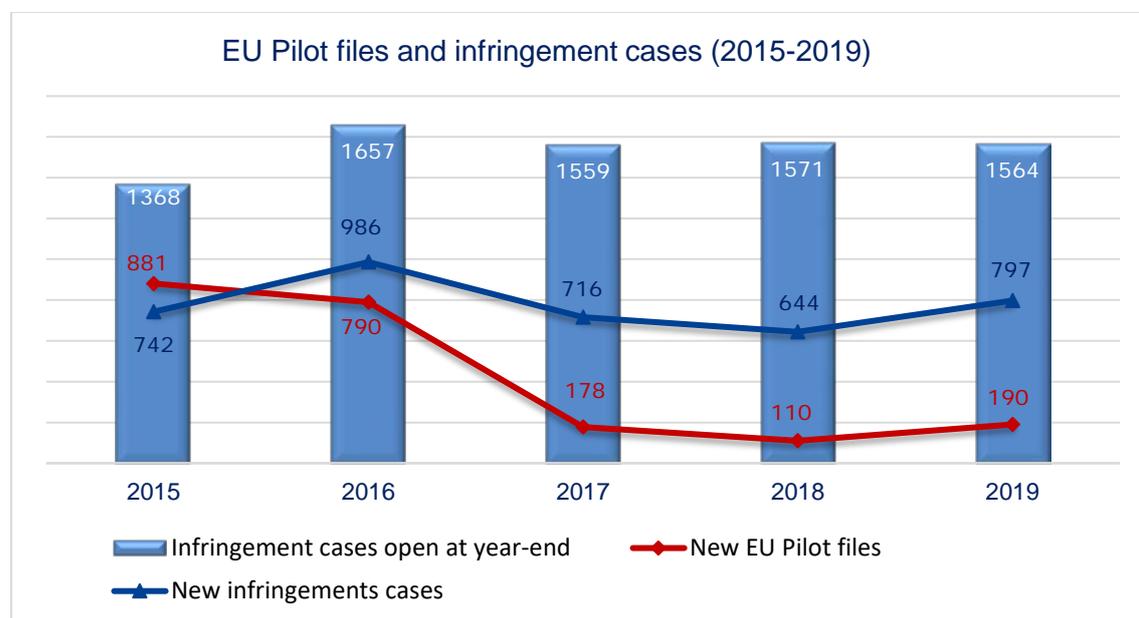
**The Commission handled 244 EU Pilot files in 2019.** It closed 187 of these after receiving satisfactory answers from the Member States concerned. This gives a resolution rate of **77%**, which is above the 2018 level.

Altogether, **57 EU Pilot files** were closed because the Commission rejected the responses provided by Member States. Of these, 42 were followed up by formal infringement procedures. While 8 of these procedures were based on complaints, the Commission launched the remaining 34 on its own initiative.

Most EU Pilot files which led to formal infringement procedures concerned the policy areas of environment (22 cases). Latvia and Poland had the highest number of files in EU Pilot which were pursued further through infringement procedures (4 files each), followed by Italy and Ireland (3 files each).



**At the end of 2019, 499 EU Pilot files were open.** The main Member States concerned were Italy (45), Spain (31) and France (31). The main policy area concerned continued to be the environment (128 open files), followed by justice and fundamental rights (61), migration and home affairs (60) and energy (50).

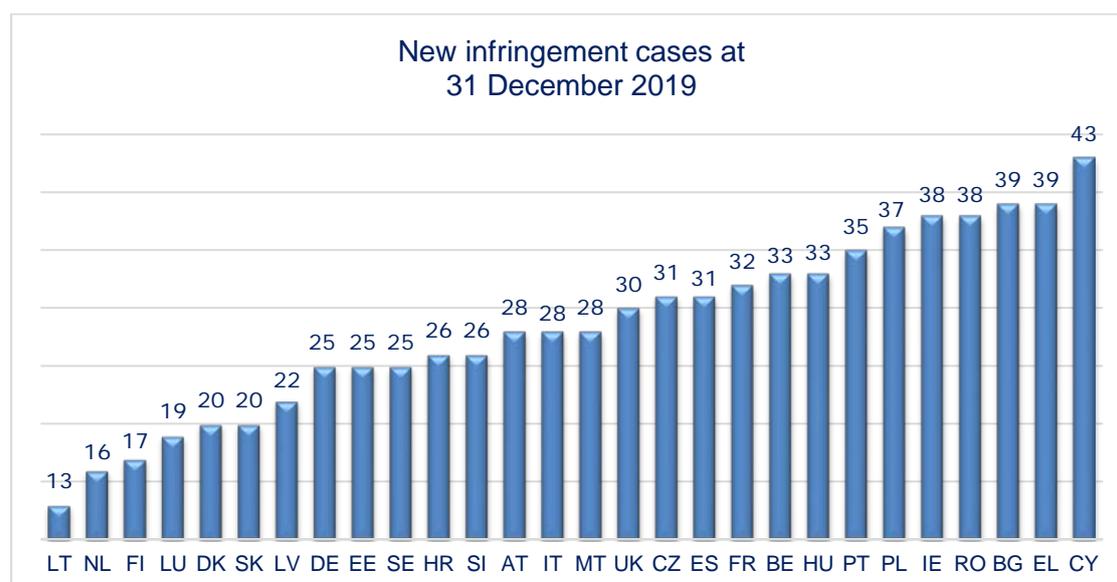


#### IV. STAGES IN INFRINGEMENT PROCEDURES

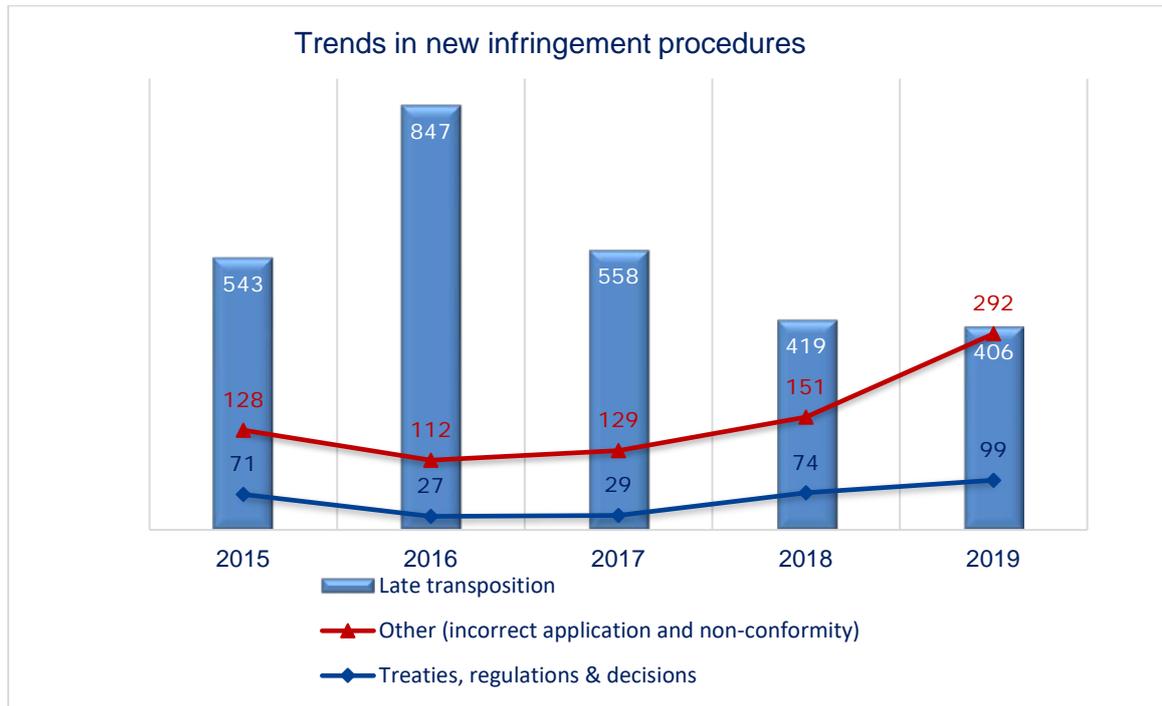
##### 1. Pre-litigation phase

The Commission launched **797** new procedures by sending a letter of formal notice in 2019. Out of these, the Commission launched procedures on its own initiative in **397** cases.

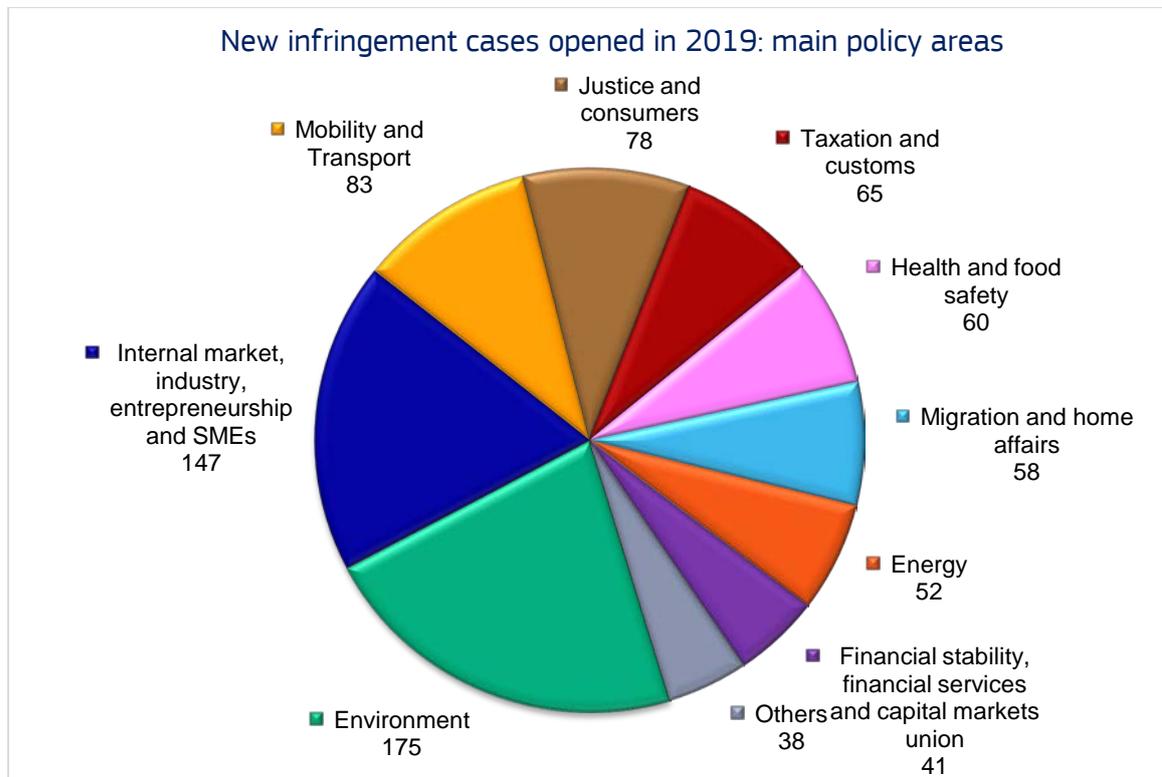
The following chart gives the breakdown by Member State.



Most new infringement cases are for late transposition of EU directives.

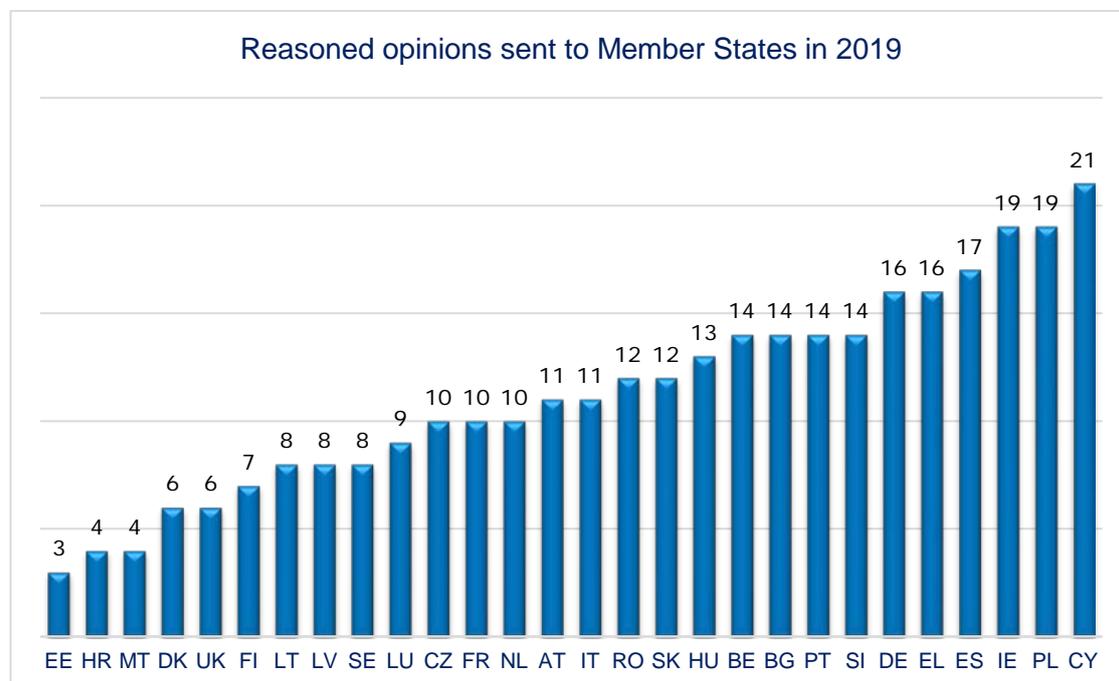


The following chart shows the main policy areas in which new procedures were opened.

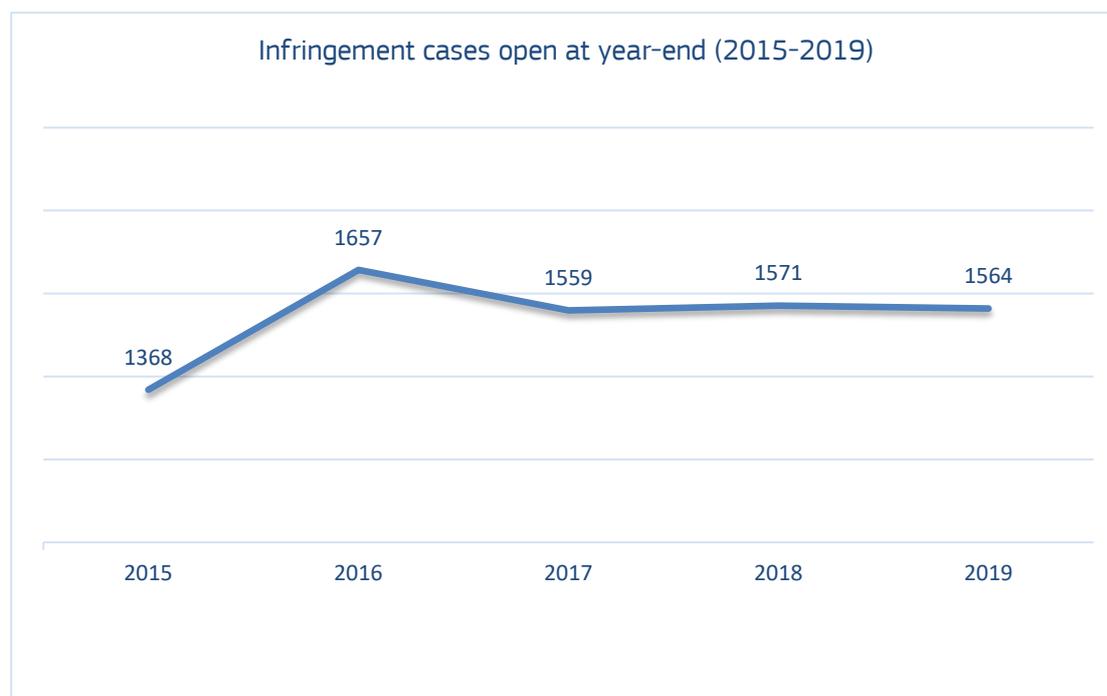


The Commission also sent **316** reasoned opinions to Member States in 2019. The main policy areas concerned were the internal market, industry, entrepreneurship and SMEs (83), the environment (45), justice and consumers (44) and taxation and customs (34).

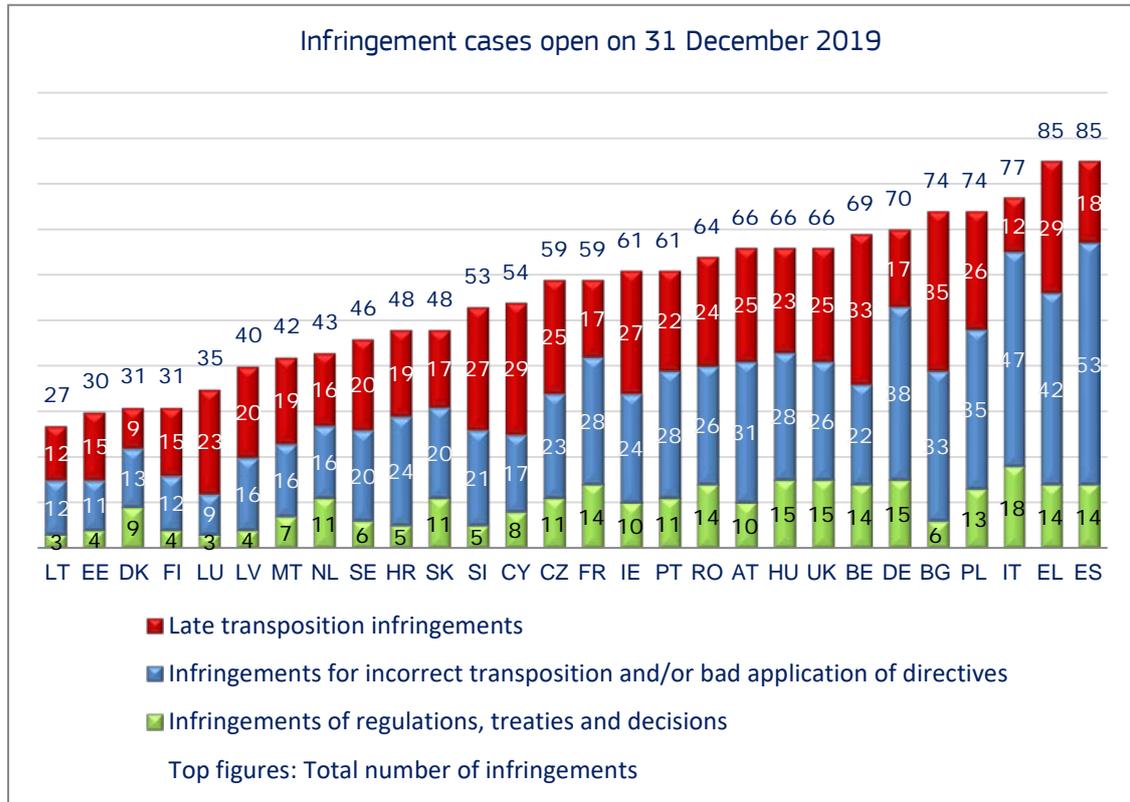
The following chart gives the breakdown by Member State.



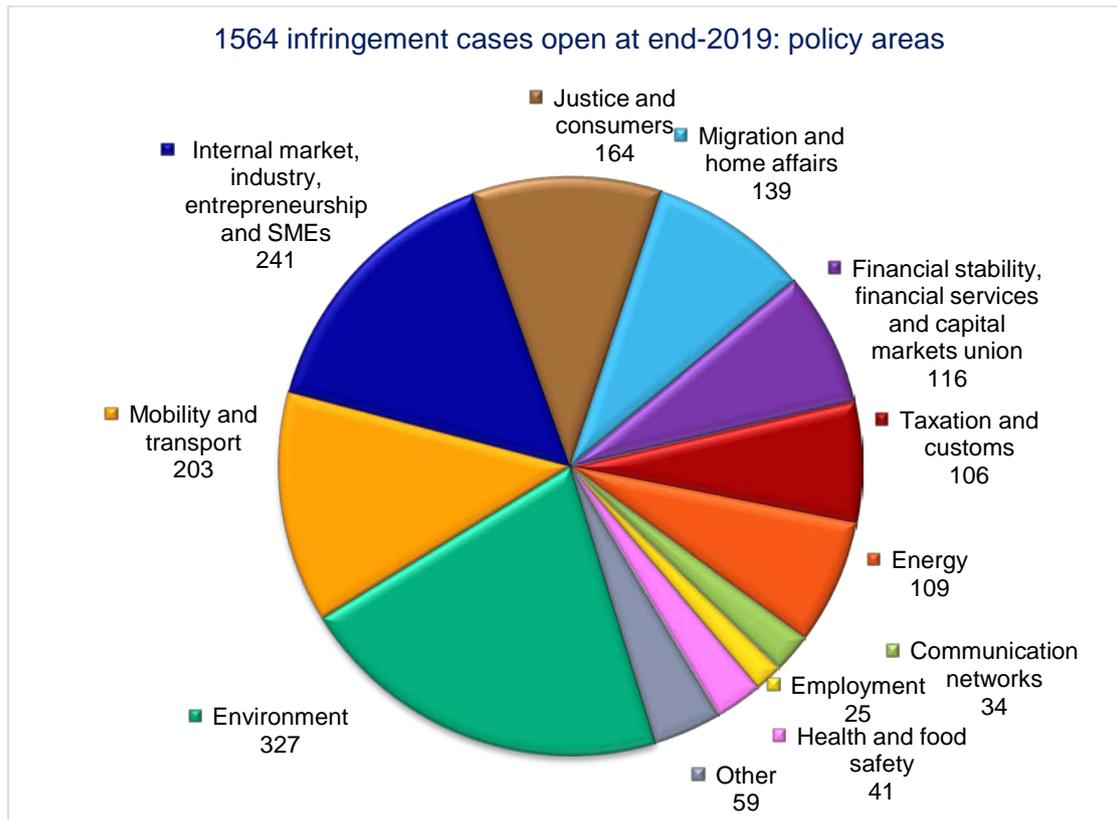
At the end of 2019, **1564** infringement cases remained open. This is a slight decrease from the previous year, as the following chart shows.



The following chart shows the number of open infringement cases by Member State at the end of 2019:



The following chart shows the breakdown of the infringement cases open at the end of 2019, by policy area:



Even after it has launched an infringement procedure, the Commission continues its dialogue with the Member State in order to seek compliance. Statistics confirm that Member States make serious efforts to settle their infringements before the Court hands down its ruling.

In 2019, the Commission closed:

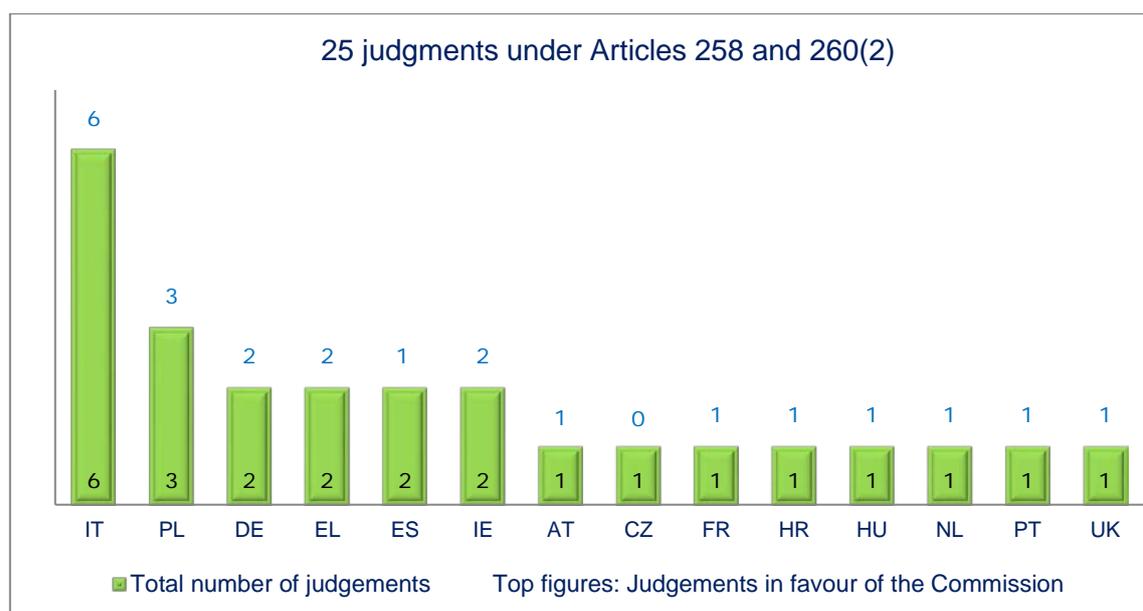
- 604 infringements after sending letters of formal notice<sup>78</sup>;
- 160 cases after sending reasoned opinions;
- 13 cases after deciding to refer the case to the Court but before submitting the application and 19 cases following a Court judgment. In addition, the Commission withdrew 9 cases from the Court before the latter handed down its ruling. The Commission withdrew these cases as the Member States concerned took the necessary measures to comply with EU law.

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

In 2019, the Commission referred 31 cases to the Court under Article 258 TFEU and 2 cases under Article 260(2) TFEU

In 2019, the Court issued 24 judgments under Article 258 TFEU, 1 judgment under Article 260(2) TFEU. Of these, 23 were in the Commission's favour, 2 were in the Member State's favour<sup>79</sup>.

Italy (6), Poland (3), and Germany, (Greece, and Spain (2 each) were the subject of the most Court judgments under Article 258 TFEU in 2019.



Member States frequently take the measures needed to comply with a Court judgment promptly. However, at the end of the year, **98** infringement procedures were still open after a Court ruling because the Commission considered that the Member States concerned had not yet complied with judgments under Article 258 TFEU. The main Member States concerned were Greece (16) Italy (11) and Germany, Spain and the United Kingdom (each 8) These cases mainly related to the environment (52), transport and mobility (12), taxation and customs (9), and the internal market, industry, entrepreneurship and SMEs (8).

Of these **98** cases, the Commission referred 2 cases to the Court for the second time. When the Court imposes financial penalties under Article 260(2) TFEU, the defaulting Member State must pay the lump

<sup>78</sup> This includes 4 letters of formal notice under Article 260 TFEU and 1 letter of formal notice under Article 106 TFEU

<sup>79</sup> Commission v. Spain, [C-642/18](#) and Commission v. Czech Republic, [C-399/17](#).

sum immediately and continue to pay the periodic penalty until it complies fully with the first and second Court judgments. In 2019, the Court delivered one judgment under Article 260(2) TFEU. It imposed penalty payments on Ireland<sup>80</sup>. At the end of 2019, 9 infringement procedures were still open after a Court ruling under Article 260(2) TFEU.

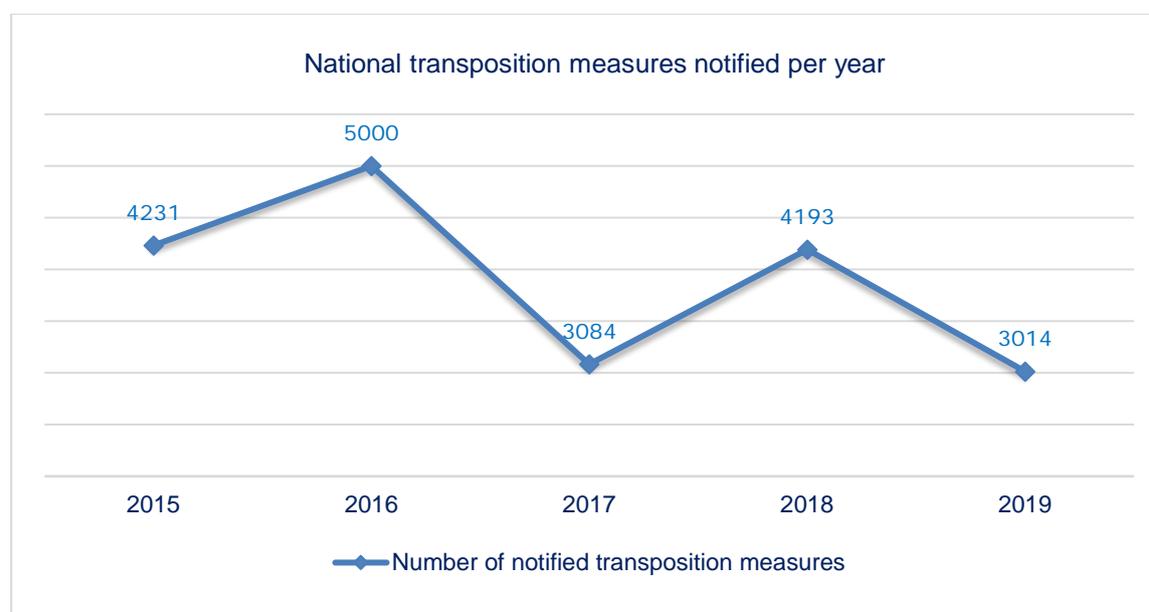
In addition, the Court imposed penalties in 3 judgments handed down under Article 260(2) TFEU in the area of competition<sup>81</sup>.

## V. TRANSPOSITION OF DIRECTIVES

### 1. EU directives to be transposed in 2015-2019

In 2019, the Parliament and the Council adopted 66 directives. Most of these directives modify existing laws; there were 4 new directives and 1 codifying directive (which does not impose a new transposition deadline). The main policy areas concerned were: the environment (13), justice (10) and employment (8). Explanatory documents were required for 26 directives.

At the same time, **42** directives had to be transposed in 2019, which is less than in 2018 (50). For these directives, Member States notified **3014** national transposition measures to the Commission by the end of 2019<sup>82</sup>. On average, Member States notified **71 measures** per directive.



In 2019, the highest number of notifications was submitted by **Hungary (259)**, **Czechia (237)** and **Finland (209)**. The lowest number of notifications was submitted by **Cyprus (28)**, **Spain (42)** and **Ireland (44)**.

The transposition of the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings triggered the highest number of notifications (**503 notifications**)<sup>83</sup>. The two directives with the next highest number of notifications were the Directive on the fight against fraud

<sup>80</sup> Commission v. Ireland, [C-261/18](#).

<sup>81</sup> These are cases in which the Commission action as a first step is a formal letter of notice under Article 260(2) TFEU.

<sup>82</sup> There is a difference between the number of all measures notified by the Member States to the Commission and the number of measures visible on EUR-Lex. Not all measures notified by the Member State are visible on the EUR-Lex website: the explanatory documents and administrative provisions that are not public in the Member States are not sent for publication.

<sup>83</sup> Directive [2016/800/EU](#).

to the Union's financial interests by means of criminal law (**221 notifications**)<sup>84</sup> and the Directive on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (**206 notifications**)<sup>85</sup>.

## 2. Transposition deadlines

Out of 42 directives to be transposed in 2019 there were **9 directives** whose transposition deadline was shorter than 1 year from the time of their publication (same as in 2018).

The average period to transpose directives remained **19 months**. The directive with the longest transposition period and deadline in 2019 (**59 months**) was the Directive on electronic invoicing in public procurement<sup>86</sup>. This Directive, however, had two different transposition deadlines<sup>87</sup>.

A short transposition period does not always result in an increased number of infringements for late transposition. Out of 4 directives with a transposition period of less than 5 months, 2 directives triggered a small number of infringements<sup>88</sup>, whereas 2 triggered a higher number of late transposition infringement cases (**12 cases** – Directive on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community<sup>89</sup> and **11 cases** – Directive regarding the establishment of harmonised risk indicators<sup>90</sup>).

## 3. Transparency

To further encourage Member States to be more transparent with the national measures transposing EU directives, the Commission invited Member States to agree to the publication of the text of these measures on EUR-Lex. To date, 12 Member States have agreed to do so: Austria, Czechia, Cyprus, Estonia, France, Greece, Malta, Latvia, Luxembourg, Slovakia, Spain and Poland. The Commission also invited Member States to make their declaration of transposition public on EUR-Lex<sup>91</sup>, which accompanies the national transposition measures notified to the Commission. Only Greece has so far agreed to do so.

In line with the commitments taken in the Inter-Institutional Agreement on Better Law-making, the Commission encouraged Member States to identify which provisions stem from an EU directive and which are in no way related to that Union legislation. Members of the public have an interest in knowing which national transposition measures go beyond the requirements of EU directives. Up to now, only 2 Member States provided this information to the Commission<sup>92</sup>.

## VI. LATE TRANSPOSITION INFRINGEMENTS

Combatting late transposition is a long-established priority for the Commission. The Commission therefore proposes financial sanctions whenever it refers a Member State to the Court of Justice under Articles 258 and 260(3) TFEU for not having communicated on time its measures to transpose a directive adopted under a legislative procedure (see details in subsection V.5).

<sup>84</sup> Directive [2017/1371/EU](#).

<sup>85</sup> Directive [2016/1919/EU](#).

<sup>86</sup> Directive [2014/55/EU](#).

<sup>87</sup> The first transposition deadline concerned the majority of the Directive's provisions. The second transposition deadline concerned provisions related to the duration of the examination procedure for asylum applications at the national level.

<sup>88</sup> These are Directive (EU) [2019/514](#) (9 infringement cases) and Directive (EU) [2019/178](#) (4 infringement cases).

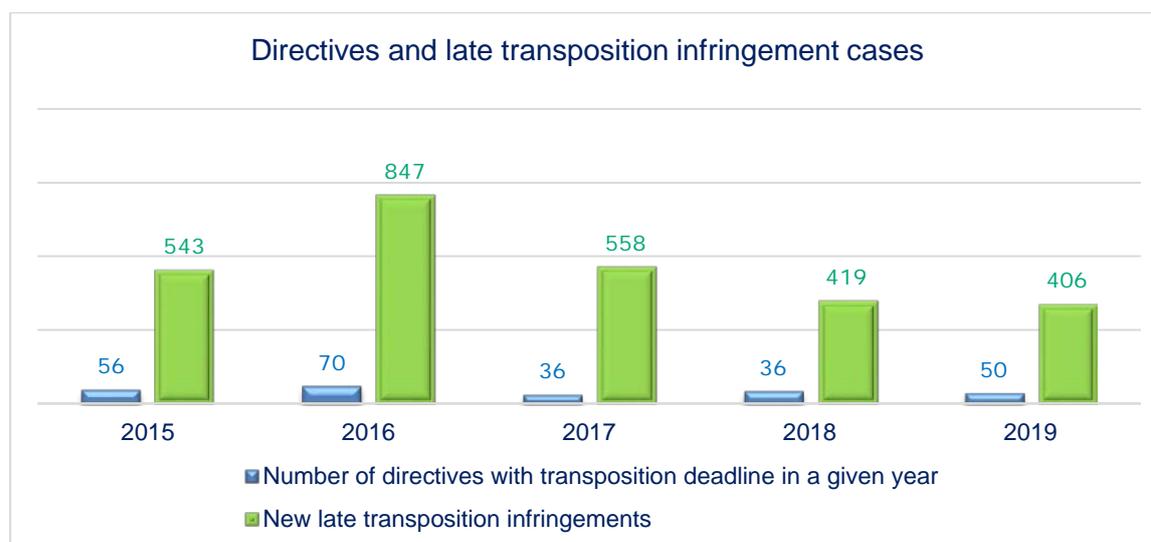
<sup>89</sup> Directive (EU) [2019/523](#).

<sup>90</sup> Directive (EU) [2019/782](#).

<sup>91</sup> With this declaration, the Member State informs the Commission whether it considers that the transposition is complete.

<sup>92</sup> Belgium for Directive [2010/63/EU](#) and the United Kingdom for Directives [2016/680/EU](#) and [2016/681/EU](#).

The number of new late transposition infringements decreased from 419 in 2018 to 406 in 2019<sup>93</sup>.



At the end of 2019, **599 late transposition infringement cases were still open**, a 21% decrease from the 758 cases open at the end of 2018.

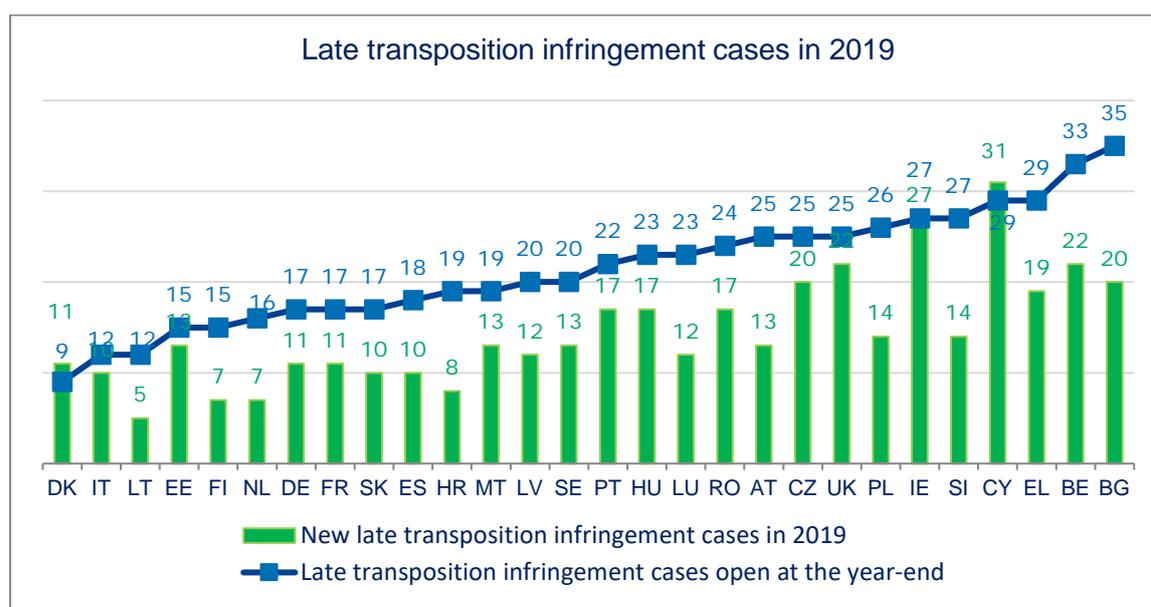
758 > Late transposition cases open at end-2018

406 > New late transposition cases registered in 2019

565 > Late transposition cases closed in 2019

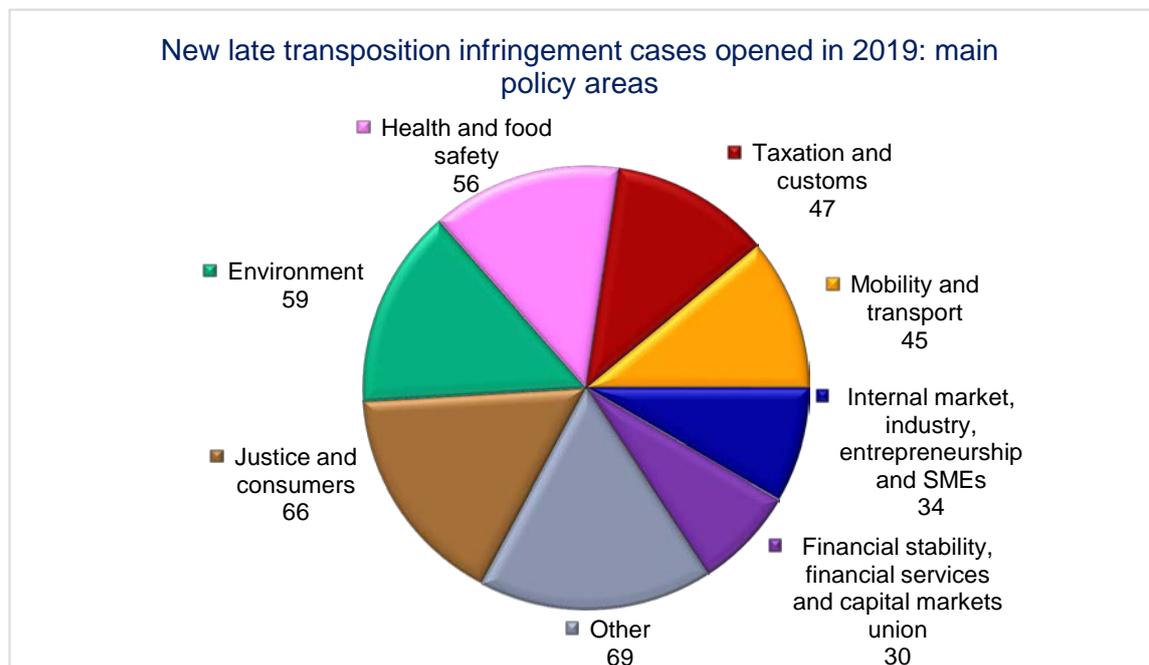
**= 599** > Late transposition cases open at end-2019

The following chart shows the number of late transposition infringement cases open at the end of 2019 (599 in total), by Member State, irrespective of the year in which the case was opened and new late transposition infringement cases (406 in total) opened in 2019, by Member State.



<sup>93</sup> The current annual report does not cover the late transposition infringement cases opened for directives that had a transposition deadline in November and December 2019 (17 directives). The Commission launched these cases in January 2019. Therefore, they will be included in the next annual report.

The policy areas in which the new cases were launched in 2019 are shown in the following chart:



#### 4. Referrals and judgments of the Court of Justice under Articles 258 and 260(3) TFEU

Under Article 260(3) TFEU, the Commission may propose financial penalties even when it refers a case for the first time to the Court of Justice under Article 258 TFEU on the ground that a Member State has failed to transpose a legislative Directive. This innovation, introduced in the Treaty of Lisbon, aims to incentivise the Member States to transpose directives on time. The Commission proposes the level of financial penalty to the Court in line with the policy laid down in its Communications on the implementation of Article 260(3) TFEU and on the calculation method for lump sum payments and daily penalty payments<sup>94</sup>.

In 2019, the Commission continued to bring late transposition infringement cases to the Court of Justice with a request for daily penalties under Article 260(3) TFEU. It referred 1 Member State (Spain) to the Court<sup>95</sup>.

In its judgment of 8 July 2019, *Commission v Belgium*<sup>96</sup>, the Court of Justice applied for the first time the sanction scheme of Article 260(3) TFEU. It imposed a daily penalty on Belgium of EUR 5 000 from the date of the judgment for the Member State's failure to adopt and communicate all the measures necessary for the transposition of the Directive on measures to reduce the cost of deploying high-speed electronic communications networks<sup>97</sup>. The Court upheld the Commission's position and clarified that the sanction scheme of Article 260(3) TFEU may also be applied to cases of partial failure to adopt and communicate transposition measures. In addition, when notifying national transposition measures to the Commission, Member States must provide sufficiently clear and precise information, and identify, for each provision of the directive, the national provision(s) ensuring its transposition<sup>98</sup>.

<sup>94</sup> OJ, C 12, 15.01.2011, p.1-5.

<sup>95</sup> *Commission v. Spain*, [C-658/19](#)

<sup>96</sup> *Commission v. Belgium*, [C-543/17](#).

<sup>97</sup> Directive [2014/61/EU](#).

<sup>98</sup> See section on explanatory documents of this report.

## VII. METHODOLOGY AND EXPLANATIONS

### Infringement procedures

#### **First chart: Trends in complaints and investigations about potential breaches of EU law**

This chart shows aggregated data over a five-year period covering new complaints registered, new EU Pilot files and new infringement cases.

#### **Second chart: Time taken to investigate potential breaches of EU law**

This shows the total number of files (complaints, EU Pilot and infringement cases) closed in a given year with the average time in weeks needed before taking a decision to close them. This means that certain files are potentially counted in all three categories, if the initial complaint becomes an infringement.

### Before an infringement procedure is started

#### Complaints

#### **First chart: Complaints open at year-end**

This starts with the number of open complaints at the end of 2018 (first line)<sup>99</sup>. The second line shows the number of new complaints registered in 2019. The third line shows the number of complaints for which the Commission took a decision in 2019. The fourth line shows the number of complaints open at the end of 2019 (calculated by taking the first figure, adding the second and subtracting the third).

#### **Second chart: New complaints registered in 2019 (main policy areas)**<sup>100</sup>

This shows the main policy areas for which new complaints were registered in 2019.

#### **Third chart: Complaints leading to investigations**

This shows the number of complaints which the Commission pursued further by launching an investigation about breaches of EU law (via the EU Pilot mechanism or launching a formal infringement procedure).

### EU Pilot

#### **First chart: EU Pilot files open at year-end**

This starts with the number of open EU Pilot files at the end of 2018 (first line). The second line shows the number of new EU Pilot files opened in 2019. The third line shows the number of files on which the Commission took a decision in 2019. The fourth line shows the number of EU Pilot files open at the end of 2019 (calculated by taking the first figure, adding the second and subtracting the third).

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<sup>99</sup> In some instances a difference between the figures from the preceding annual report may be due to delayed, double or erroneous registration at the moment of extracting statistical data.

<sup>100</sup> The data on policy areas referred to in the main report and in the sections on the Member States is based on information provided by the European Commission's Directorates-General. The policy areas are referred to as follows: agriculture and rural development; budget; climate action; communication networks, content and technology; competition; education and culture; economic and financial affairs; financial stability and Capital Markets Union; neighbourhood and enlargement negotiations; employment; energy; environment; migration and home affairs; justice and consumers; maritime affairs and fisheries; internal market, industry, entrepreneurship and SMEs; mobility and transport; regional policy; health and food safety; taxation and customs; trade.

### **Second chart: EU Pilot files opened in 2019 (main policy areas)**

This shows the policy areas in which the new EU Pilot files were opened in 2019.

### **Third chart: EU Pilot files (2015-2019)**

This shows the number of EU Pilot files processed in a given year and the resolution rate in that year. The resolution rate is the percentage of EU Pilot files handled for which the Commission accepted the Member States' responses.

### **Fourth chart: EU Pilot files and infringement cases**

This compares the number of new EU Pilot files and new infringement cases in an overlay with the total number of infringement cases open at the year-end.

## Stages in infringement procedures

### **First chart: New infringement cases at 31 December 2019**

This shows the number of new infringement cases opened in 2019, by Member State.

### **Second chart: Trends in new infringement procedures**

This shows comparison — over a five-year period — between different types of infringement cases originating as late transposition cases, breaches of regulations and treaties and incorrect application or non-conformity with directives.

### **Third chart: New infringement cases opened in 2019 (main policy areas)**

This shows the main policy areas in which the new infringement cases were opened in 2019.

### **Fourth chart: Reasoned opinions sent to Member States in 2019**

This shows the number of reasoned opinions sent to Member States in 2019.

### **Fifth chart: Infringement cases open at year-end (2015-2019)**

This shows the number of infringements that remained open on 31 December of each year from 2015 to 2019.

### **Sixth chart: Infringement cases open on 31 December 2019**

These figures show all procedures that the Commission has started against each Member State by sending a letter of formal notice under Article 258 TFEU. It covers letters sent in 2019 or before, irrespective of the stages the cases have reached. Only cases which have not yet been closed by a formal decision are shown. For each Member State, the chart distinguishes between infringements for incorrect transposition and/or bad application of EU law, late transposition infringements and breaches of regulations and treaties.

Accordingly, the numbers include all cases that, on 31 December 2019:

- 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 or 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; or
- 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.

This figure does *not* include, for example, open EU Pilot files. It also does not include EU Pilot files for which the Commission rejected the Member State's response but had not yet sent a letter of formal notice under Article 258 TFEU.

#### **Seventh chart: Infringement cases open at end-2019: policy areas**

This shows the breakdown, by policy area, of the infringement cases open on 31 December 2019.

#### **Eighth chart: Court of Justice judgments under Article 258 and 260(2) TFEU in 2019**

This shows the total number of Court of Justice judgments and the number of judgments in favour of the Commission and the Member States.

### Transposition of directives

#### Late transposition infringements

#### **First chart: National transposition measures notified per year**

This shows the total number of national transposition measures submitted by Member States to the Commission in a given year.

#### **Second chart: Directives and late transposition infringement cases**

This shows how many directives had to be transposed in the years 2015-2019 and how many new infringement cases for late transposition were opened in that period.

#### **Third chart: Late transposition infringement cases open at year-end**

This starts with the number of late transposition infringements at the end of 2018 (first line). The second line shows the number of new late transposition infringements registered in 2019. The third line shows the number of infringement cases on which the Commission took a decision in 2019. The fourth line shows the number of late transposition infringements open at the end of 2019 (calculated by taking the first figure, adding the second and subtracting the third).

#### **Fourth chart: Late transposition infringement cases in 2019**

This shows the number of late transposition infringements open at year-end for each Member State, irrespective of the year in which the infringement was opened. In addition, it also shows new late transposition infringement cases opened in 2019 for each Member State.

#### **Fifth chart: New late transposition infringement cases opened in 2019 (main policy areas)**

This shows the main policy areas in which the procedures for late transposition were launched in 2019.