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**COMMISSION STAFF WORKING DOCUMENT**

**Part I: Policy areas**

*Accompanying the document*

**Monitoring the application of European Union law  
2016 Annual Report**

{ COM(2017) 370 final }  
{ SWD(2017) 260 final }

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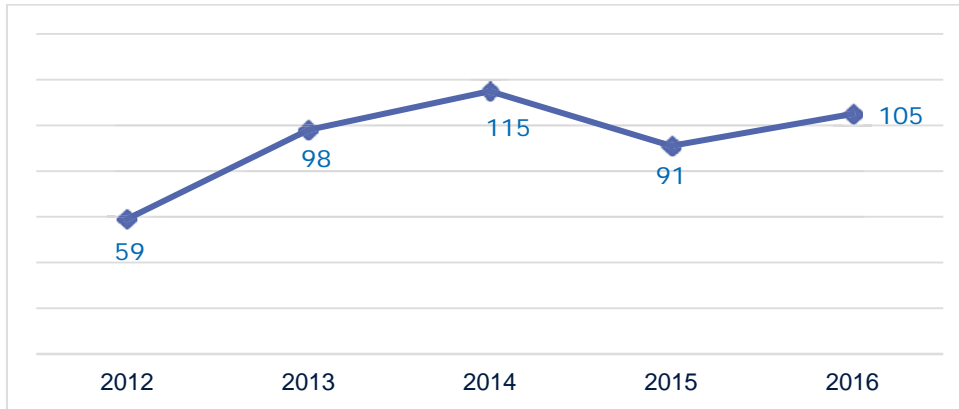
This document provides an overview of the challenges in application of EU law in policy areas where the most significant developments related to infringement took place.

Agriculture and rural development

*New complaints in the area of agriculture and rural development increased in 2016 but remained below their 2014 peak. The number of new EU Pilot files dropped below the 2014 and 2015 levels. The Commission did not open any new formal infringement procedures.*

I. COMPLAINTS

1. New complaints received from members of the public (2012-2016)

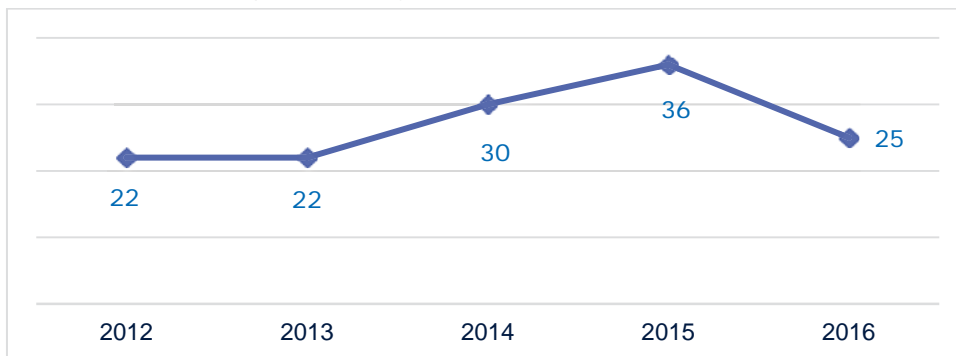


2. Public complaints open a year-end

35	>	Complaints open at end-2015
105	>	New complaints registered in 2016
78	>	Complaints handled in 2016
<b>= 62</b>	>	<b>Complaints open at end-2016</b>

II. EU PILOT

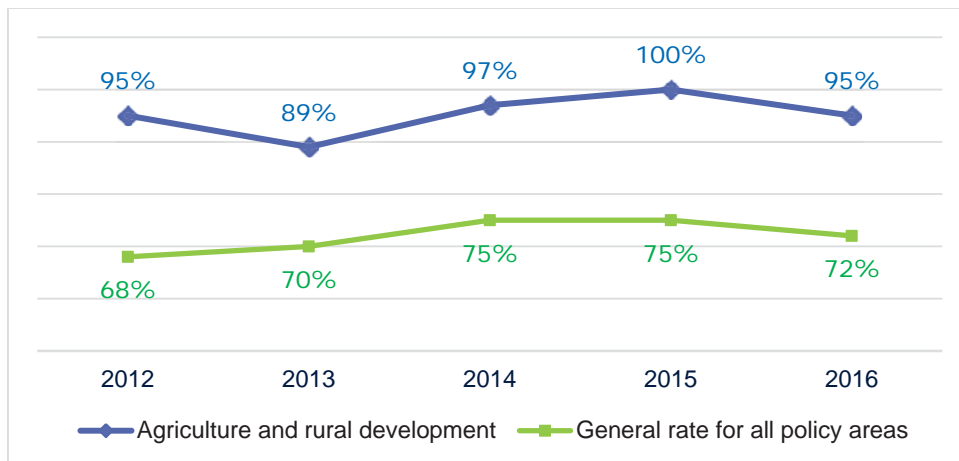
1. New EU Pilot files (2012-2016)



2. EU Pilot files open at year-end

At the end of 2016, 26 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2012-2016)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2016, the Commission opened own-initiative infringement cases for non-compliance with the Direct Payments Regulation.<sup>1</sup>

## IV. INFRINGEMENT CASES

### 1. Key infringement cases and referrals to the Court

- a) The Commission did not open any new formal infringement procedures in 2016, but pursued other ongoing infringement cases, including:
  - *Greece*: the prohibition placed on individual wine growers on the island of Samos from producing and marketing wine products.<sup>2</sup>
- 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.

## V. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

The Commission did not close any major infringement cases in 2016 in this area.

## VI. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2016 in this area.

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Germany*: the EU poultry meat labelling rules are compatible with the Charter of Fundamental Rights' freedom to conduct a business and do not discriminate by requiring the indication of the total price and the price per weight unit on the pre-packaging or on the attached label;<sup>3</sup>

<sup>1</sup> Regulation (EU) No [1307/2013](#).

<sup>2</sup> [MEMO/16/2490](#).

<sup>3</sup> Regulation (EC) No [543/2008](#), Lidl, [C-134/15](#).

- *Finland*: 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'.<sup>4</sup>

## VII. OUTLOOK

Important implementation work in 2017 includes:

- ensuring the correct and effective application of the rules of the common agricultural policy;
- pursuing legal action against Member States failing to apply correctly the mechanisms of the common market organisation and the direct payments regime;
- continuing to make use of the clearance of accounts procedure in the agricultural sector to persuade Member States to adjust their management and control systems when infringements have been detected through conformity audit mechanisms.

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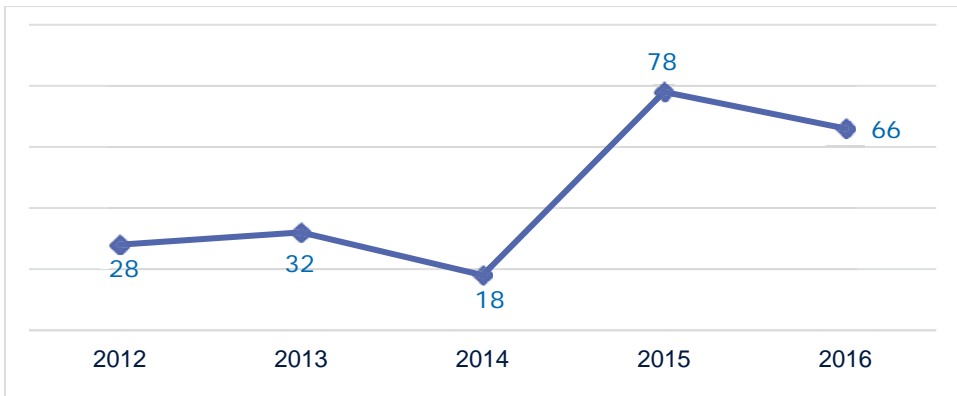
<sup>4</sup> Regulation (EC) No [110/2008](#), Viiniverla, [C-75/15](#).

Communications networks, content and technology

In 2016 new complaints in the area of communications networks, content and technology dropped slightly from the previous year's peak. New EU Pilot files also fell back to the low level seen in 2014. The number of infringement cases pending at the end of the year almost doubled, however. The Commission opened 50 new late transposition cases, almost three times as many as in 2015.

I. COMPLAINTS

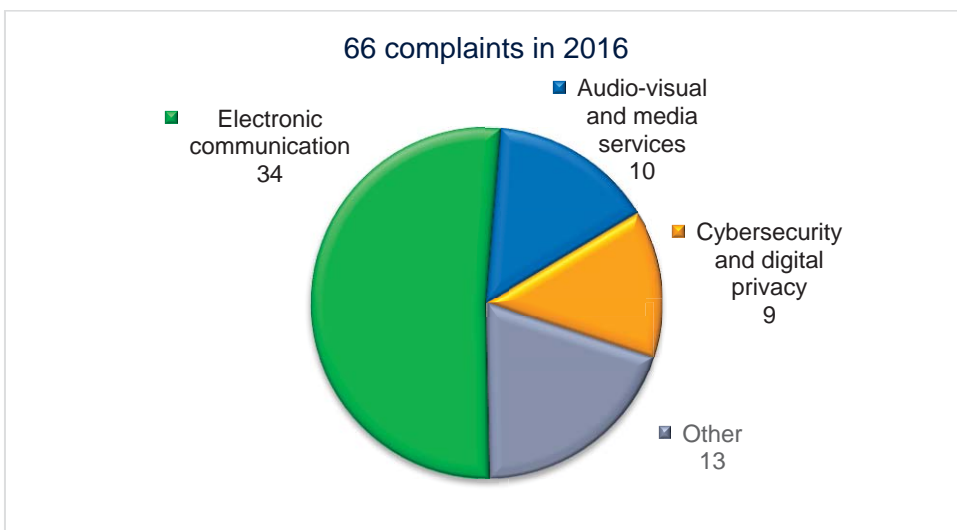
1. New complaints received from members of the public (2012-2016)



2. Public complaints open a year-end

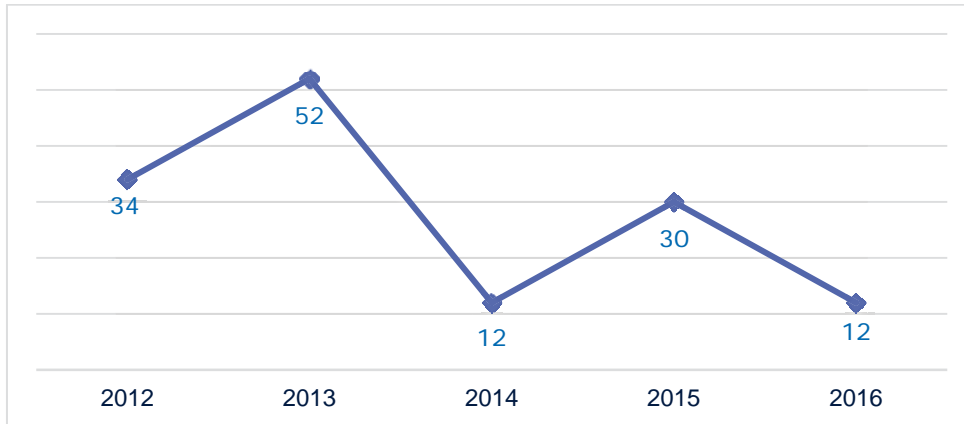
69	>	Complaints open at end-2015
66	>	New complaints registered in 2016
48	>	Complaints handled in 2016
<b>= 87</b>	>	<b>Complaints open at end-2016</b>

3. New complaints registered in 2016: main policy sectors



## II. EU PILOT

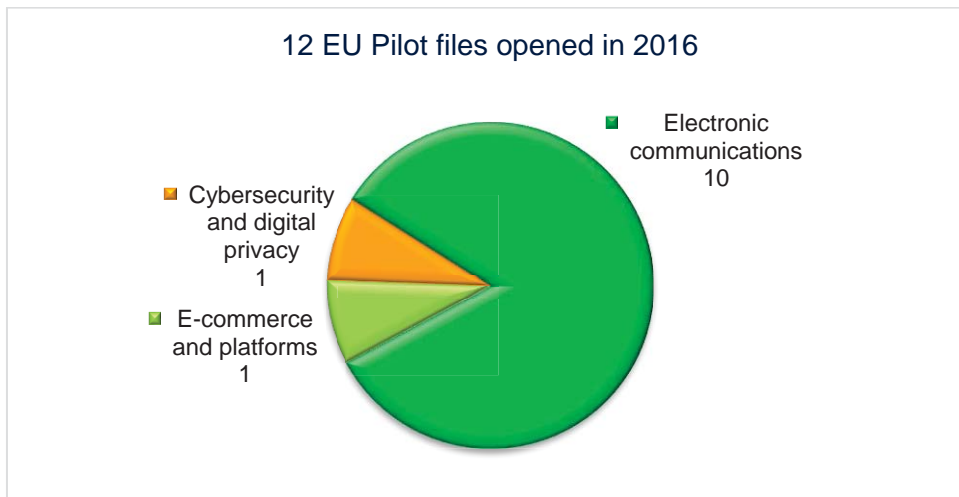
### 1. New EU Pilot files (2012-2016)



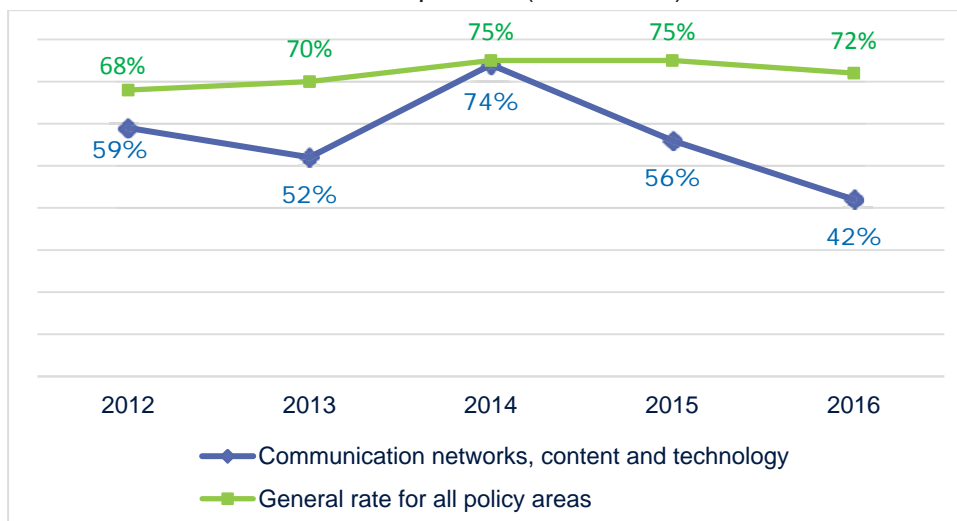
### 2. EU Pilot files open at year-end

At the end of 2016, 38 EU Pilot files remained open.

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



### 4. EU Pilot files: resolution rate for policies (2012-2016)



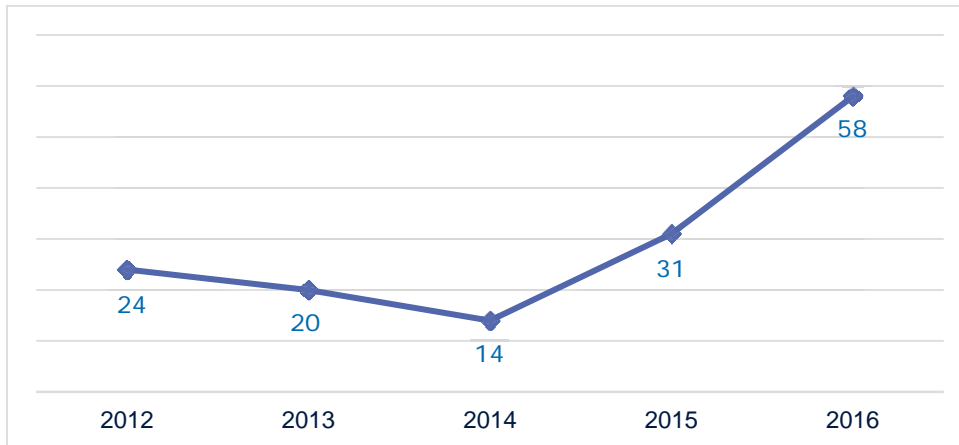
### III. OWN-INITIATIVE CASES

#### New own-initiative infringement cases

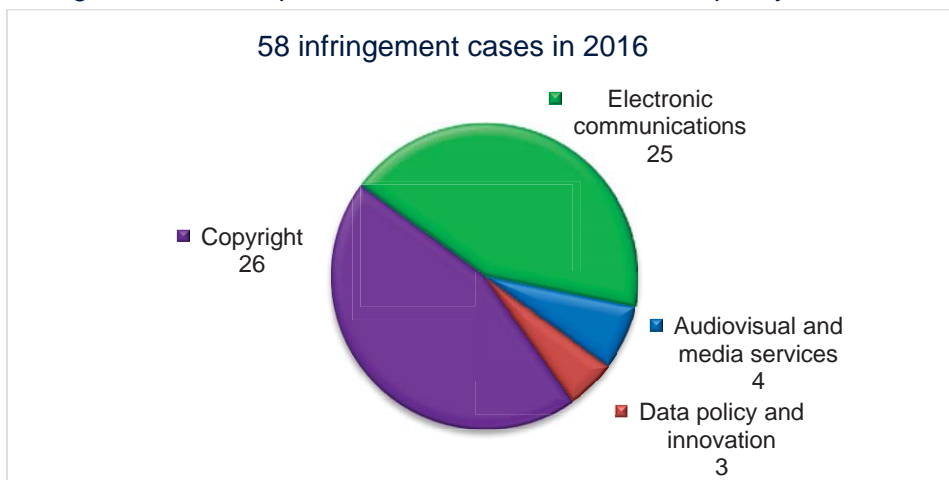
The Commission did not open any own-initiative infringement cases in this area in 2016.

### IV. INFRINGEMENT CASES

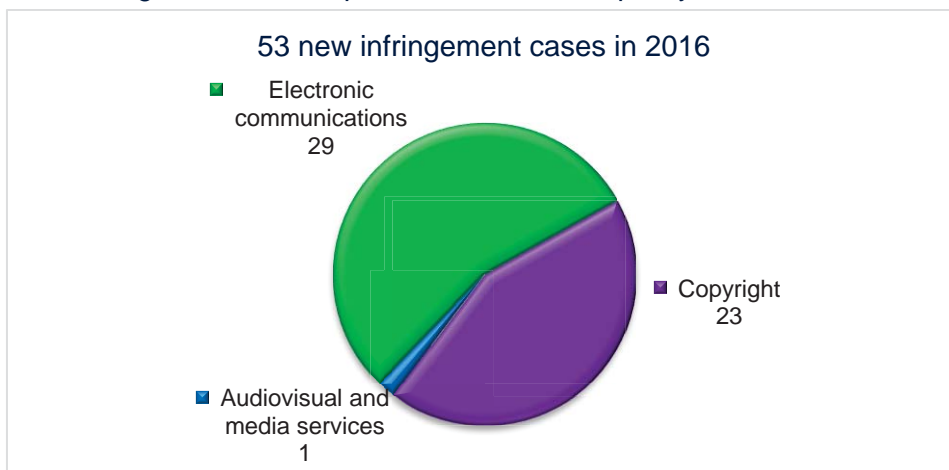
#### 1. Infringement cases open on 31 December (2012-2016)



#### 2. Infringement cases open on 31 December 2016: main policy sectors



#### 3. New infringement cases opened in 2016: main policy sectors



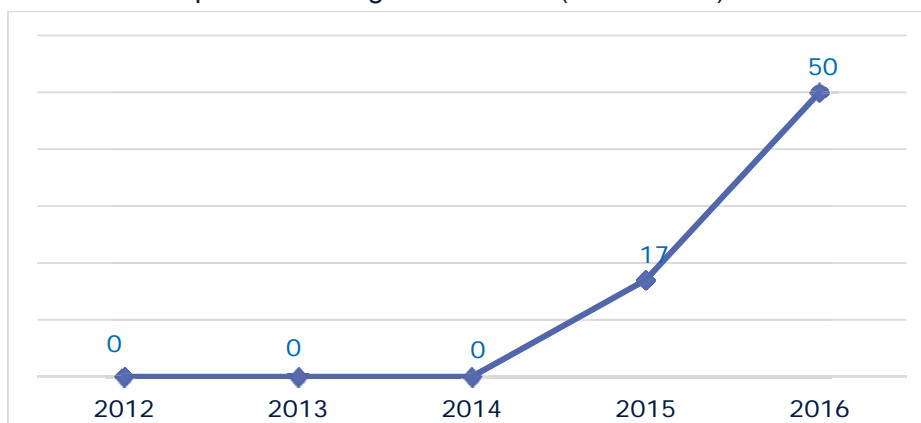


#### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 53 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
  - *Greece*: non-compliance with the rules under the Authorisation and Framework Directives regarding the independence of the national regulatory authority and rules on digital terrestrial television broadcasting;<sup>1</sup>
  - *Poland*: 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.<sup>2</sup>
- 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.

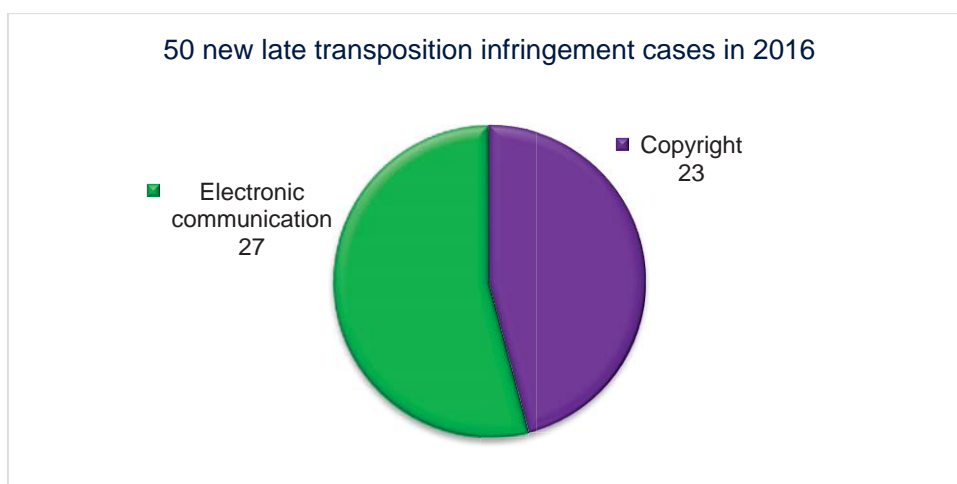
### V. TRANSPOSITION OF DIRECTIVES

#### 1. New late transposition infringement cases (2012- 2016)



#### 2. New late transposition infringement cases opened in 2016: main policy sectors

The Commission opened 50 new late transposition infringement cases in the area of electronic communication<sup>3</sup> and copyright<sup>4</sup> (see below).



<sup>1</sup> Directives [2002/20/EC](#) and [2002/21/EC](#).

<sup>2</sup> Directives [2002/20/EC](#), [2002/21/EC](#) and [2002/77/EC](#).

<sup>3</sup> Directive [2014/61/EU](#).

<sup>4</sup> Directive [2014/26/EU](#).

### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 50 cases for late transposition in 2016. Most concern:
  - the Collective Management Rights Directive (23 cases);<sup>5</sup>
  - the Broadband Cost-Reduction Directive (20 cases).<sup>6</sup>
- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

The Commission did not close any major infringement cases in 2016 in this area.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>7</sup>

There were no major Court rulings in 2016 in this area.

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Denmark*: the Universal Service Directive<sup>8</sup> must be interpreted as precluding national legislation under which an undertaking designated as the provider of additional mandatory services is entitled to compensation from the Member State for the net cost of providing those services only if that cost constitutes an unfair burden on that undertaking;<sup>9</sup>
- *Germany*: when a person provides access to somebody else's content through open internet access, the person whose rights are breached cannot claim compensation from the access provider for that breach by a third party. However, it can claim compensation from the access provider if the infringement continues;<sup>10</sup>
- *Spain*: the Framework Directive on electronic communications networks and services<sup>11</sup> does not preclude the possibility for national regulatory authorities to merge into one multisectoral authority, provided that, in performing those tasks, that body meets the requirements of competence, independence, impartiality and transparency laid down by the Directive. In addition, an effective right of appeal to an independent body against its decisions must be available, which is a matter to be determined by the national court;<sup>12</sup>
- *Netherlands*: 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;<sup>13</sup>
- *Netherlands*: under the Directive on rental and lending rights,<sup>14</sup> 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

<sup>5</sup> Directive [2014/26/EU](#).

<sup>6</sup> Directive [2014/61/EU](#).

<sup>7</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>8</sup> Directive [2002/22/EC](#).

<sup>9</sup> TDC, [C-327/15](#).

<sup>10</sup> Mc Fadden, [C-484/14](#), Court press release No. [99/16](#).

<sup>11</sup> Directive [2002/21/EC](#).

<sup>12</sup> Ormaetxea Garai and Lorenzo Almendros, [C-424/15](#).

<sup>13</sup> GS Media, [C-160/15](#).

<sup>14</sup> Directive [2006/115/EC](#).

it onto his own computer. Only one copy may be downloaded and it can only be used during the lending period;<sup>15</sup>

- *Poland*: the Universal Services Directive<sup>16</sup> 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;<sup>17</sup>
- *Finland*: 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;<sup>18</sup>
- *Sweden and United Kingdom*: under the Directive on privacy and electronic communications<sup>19</sup> 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, the means of communication affected, the persons concerned and the 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.<sup>20</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- monitoring the correct application of EU law in the fields of the single market for telecommunications, with a focus on the correct application of the 'roam like at home' principle and of EU law on e-signatures and trust services. This concerns:
  - the Regulation laying down measures concerning open internet access;<sup>21</sup>
  - the Regulation on electronic identification and trust services for electronic transactions in the internal market;<sup>22</sup>
- monitoring the transposition of:
  - the Broadband Cost-Reduction Directive;<sup>23</sup>
  - the Collective Management Rights Directive.<sup>24</sup>

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<sup>15</sup> Vereniging Openbare Bibliotheken, [C-174/15](#), Court press release No. [123/16](#).

<sup>16</sup> Directive [2002/22/EC](#).

<sup>17</sup> Polkomtel, [C-397/14](#).

<sup>18</sup> Sanoma Media Finland - Nelonen Media, [C-314/14](#).

<sup>19</sup> Directive [2002/58/EC](#).

<sup>20</sup> Joined case Tele2 Sverige [C-203/15](#) and Watson and Others, [C-698/15](#), Court press release No. [145/16](#).

<sup>21</sup> Regulation (EU) [2015/2120](#).

<sup>22</sup> Regulation (EU) [No 910/2014](#).

<sup>23</sup> Directive [2014/61/EU](#).

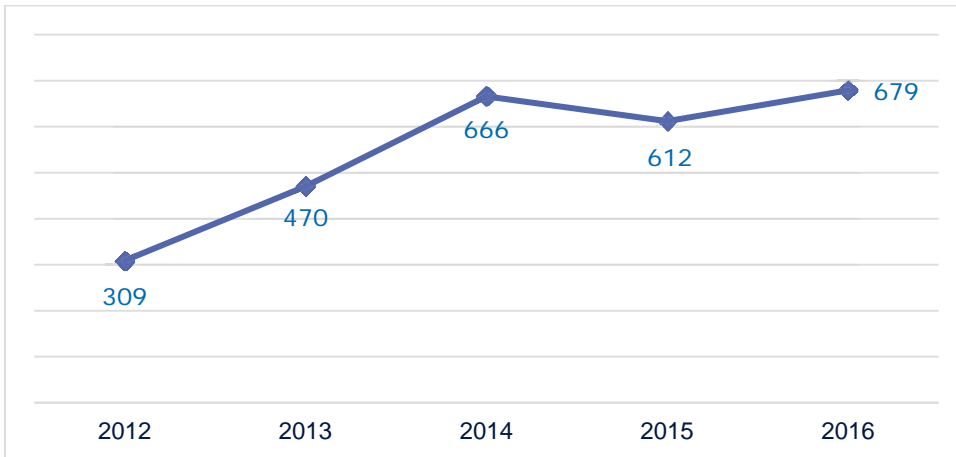
<sup>24</sup> Directive [2014/26/EU](#).

Employment, social affairs and inclusion

*In 2016 new complaints in the area of employment, social affairs and inclusion rose to a five-year peak but the number of new EU Pilot files fell again, reaching its lowest since 2012. Open infringement cases at the end of the year rose for the third year running. The Commission sharply increased the number of new cases it launched for late transposition of directives.*

I. COMPLAINTS

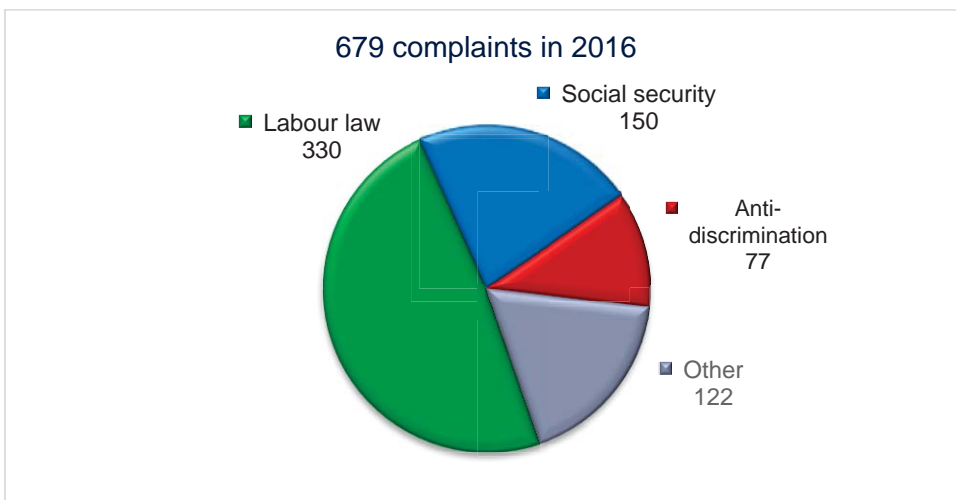
1. New complaints received from members of the public (2012-2016)



2. Public complaints open a year-end

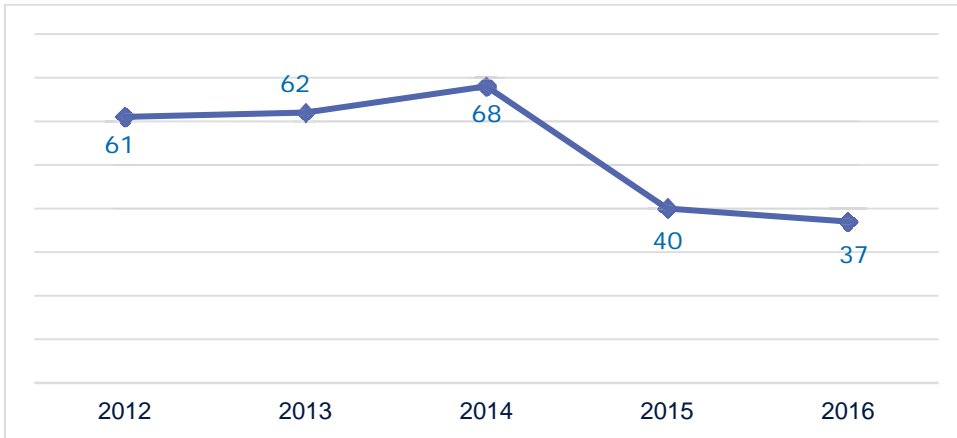
416	>	Complaints open at end-2015
679	>	New complaints registered in 2016
610	>	Complaints handled in 2016
<hr/>		
= 485	>	Complaints open at end-2016

3. New complaints registered in 2016: main policy sectors



## II. EU PILOT

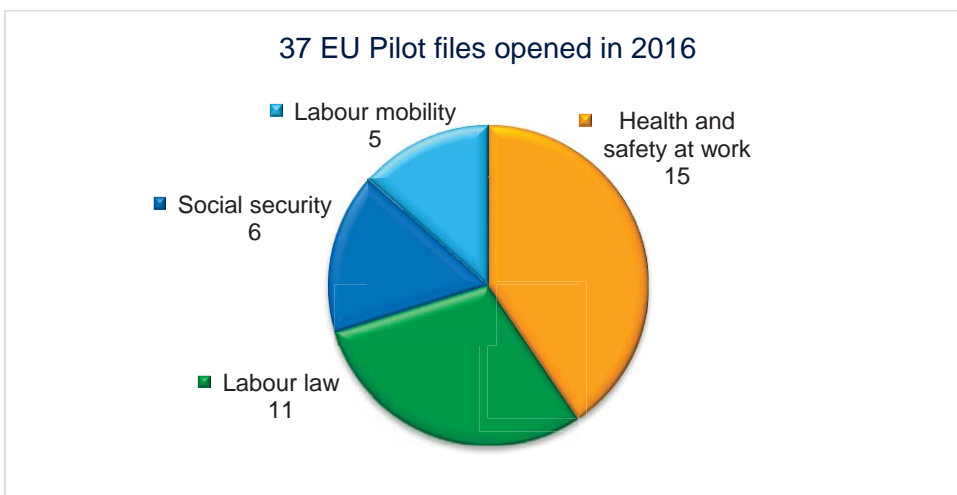
### 1. New EU Pilot files (2012-2016)



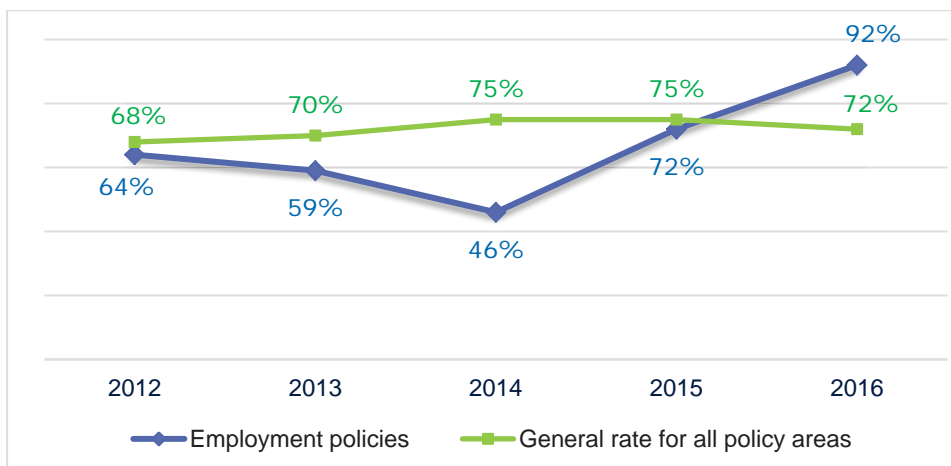
### 2. EU Pilot files open at year-end

At the end of 2016, 45 EU Pilot files remained open.

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



### 4. EU Pilot files: resolution rate for policies (2012-2016)



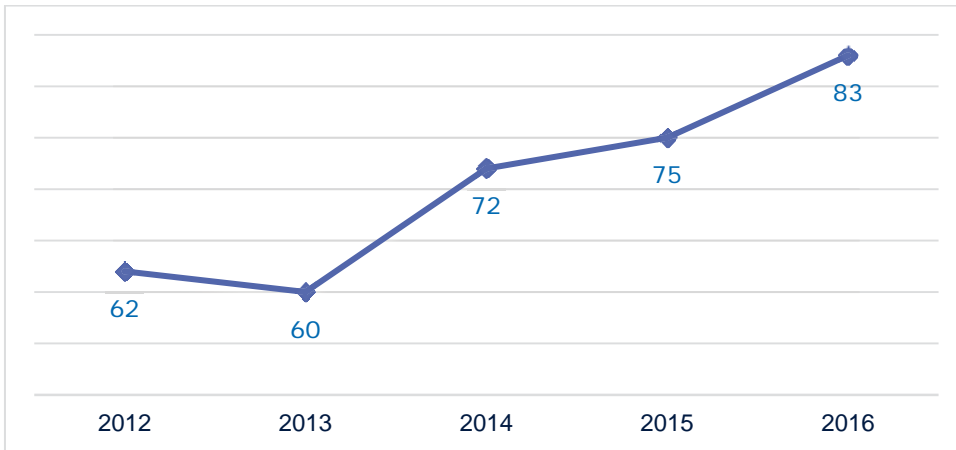
### III. OWN-INITIATIVE CASES

#### New own-initiative infringement cases in 2016

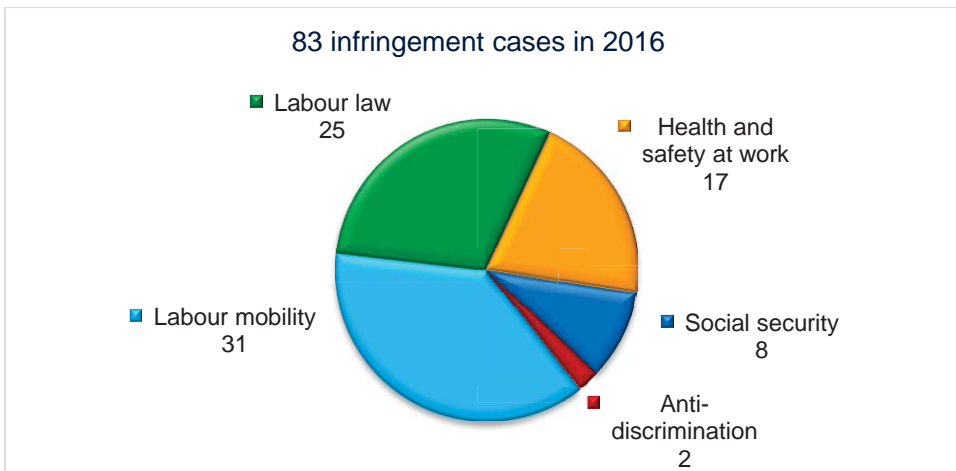
The Commission did not open any own-initiative infringement cases in 2016 in this area.

### IV. INFRINGEMENT CASES

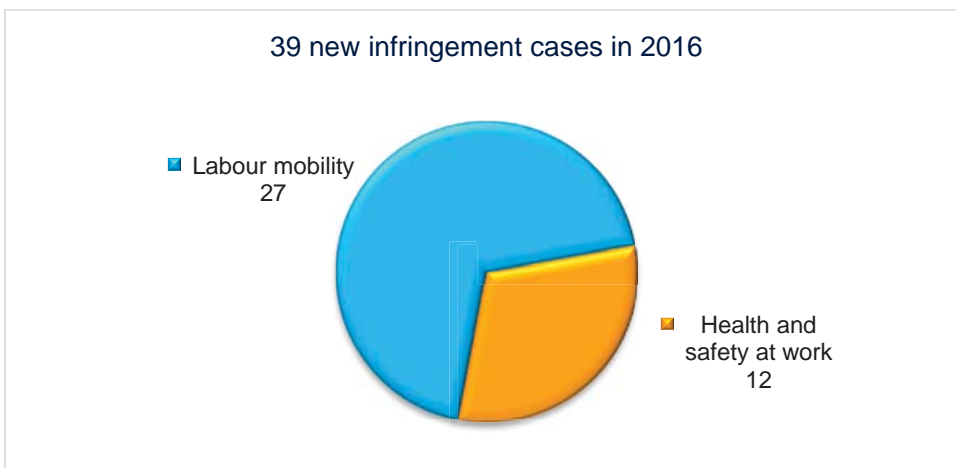
#### 1. Infringement cases open on 31 December (2012-2016)



#### 2. Infringement cases open on 31 December 2016: main policy sectors



#### 3. New infringement cases opened in 2016: main policy sectors

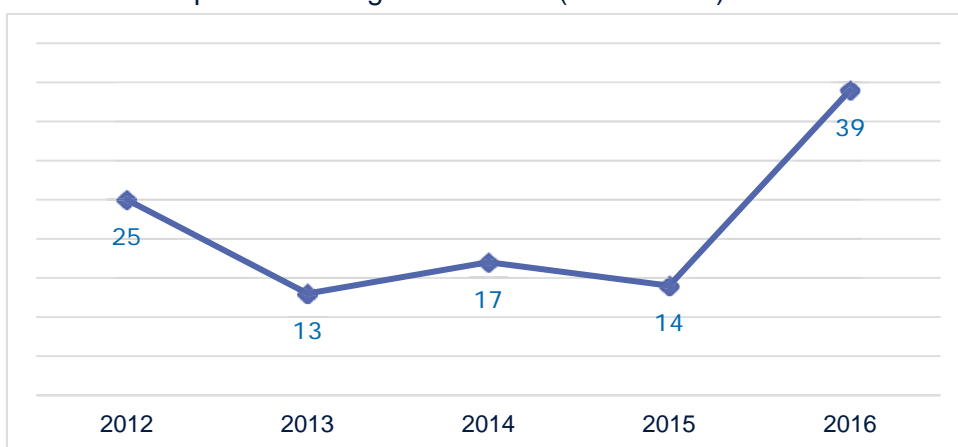


#### 4. Key infringement cases and referrals to the Court

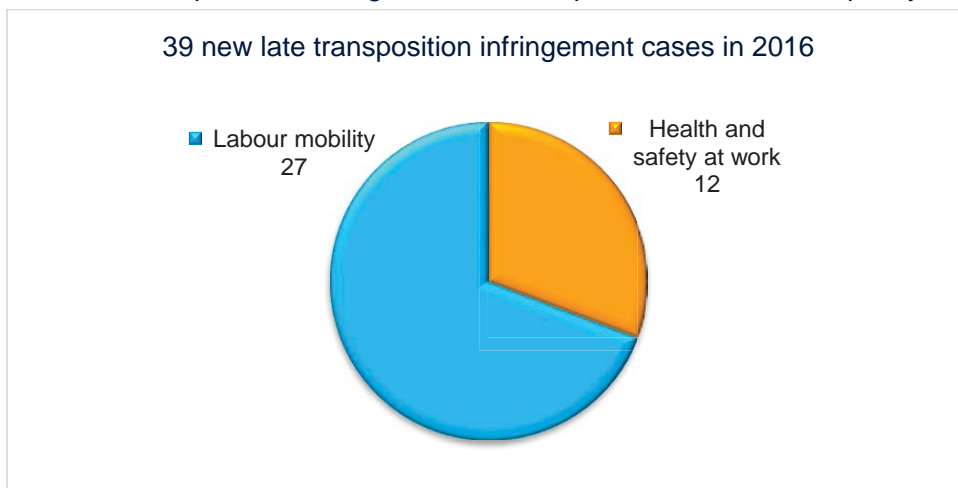
- a) The Commission opened 39 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
  - *Germany*: late transposition of the Directive<sup>1</sup> aligning various rules to the Regulation<sup>2</sup> on classification, labelling and packaging of substances and mixtures;
  - *Spain*: the less favourable treatment of fixed-term staff in the public sector. This raises concerns under the Fixed-Term Work Directive<sup>3</sup>
- 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.

### V. TRANSPOSITION OF DIRECTIVES

#### 1. New late transposition infringement cases (2012- 2016)



#### 2. New late transposition infringement cases opened in 2016: main policy sectors



#### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 39 cases for late transposition in 2016. They included:
  - the Directive on the enforcement of free movement of workers' rights;<sup>4</sup>
  - the Directive on the enforcement of posted workers' rights<sup>5</sup> and

<sup>1</sup> Directive [2014/27/EU](#).

<sup>2</sup> Regulation (EC) No [1272/2008](#).

<sup>3</sup> Council Directive [1999/70/EC](#).

<sup>4</sup> Directive [2014/54/EU](#).

- the Directive on the minimum health and safety requirements to be observed when workers are exposed to electromagnetic fields.<sup>6</sup>
- b) The Commission referred one case to the Court under Articles 258 and 260(3) TFEU. It concerned:
  - *Luxembourg*: late transposition of the Directive<sup>7</sup> aligning various rules to the Regulation<sup>8</sup> on classification, labelling and packaging of substances and mixtures.<sup>9</sup>

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

These concerned:

- *Denmark*: collective agreements in the municipal education sector which excluded part-time staff from a number of benefits if they worked less than 8 hours per week or were employed for less than 1 month;
- *Spain*: two cases related to the incompatibility of national law on the *Guardia Civil* with the Working Time Directive as regards maximum working time, minimum rest periods and the protective provisions concerning night work;
- *Hungary*: paid annual leave granted to members of so-called school cooperatives;
- *Romania*: national laws on government employees which 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;
- *Sweden*: insufficient protection in national legislation against abuse of successive fixed-term employment contracts. This allowed employers to use various fixed-term contracts without limitation.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>10</sup>

The Court ruled that:

- *Cyprus* has treated migrant workers unequally by providing that those who left the national civil service to work within the EU institutions or within another international organisation lose their pension right and receive only a lump sum payment. By contrast, civil servants who remained in their position or took up another civil service position in Cyprus received the lump sum and retained their pension right;<sup>11</sup>
- *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;<sup>12</sup>
- *United Kingdom* did not violate the Regulation on the coordination of social security systems<sup>13</sup> 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.<sup>14</sup>

<sup>5</sup> Directive [2014/67/EU](#).

<sup>6</sup> Directive [2013/35/EU](#).

<sup>7</sup> Directive [2014/27/EU](#).

<sup>8</sup> Regulation (EC) No [1272/2008](#).

<sup>9</sup> *Commission v Luxembourg* [C-511/16](#), [IP/16/2599](#).

<sup>10</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>11</sup> *Commission v Cyprus*, [C-515/14](#).

<sup>12</sup> *Commission v Malta*, [C-12/14](#).

<sup>13</sup> Regulation (EC) No [883/2004](#).

<sup>14</sup> *Commission v United Kingdom*, [C30 8/14](#).



## 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Germany*: a civil servant of a Member State who leaves his post voluntarily in order to be employed in another Member State should not lose his retirement pension rights under the retirement pension scheme for civil servants;<sup>15</sup>
- *Greece*: in principle, EU law allows national authorities to prohibit collective redundancies. However, these rules must strike a fair balance between the protection of workers and employers' freedom to conduct a business. The legal criteria on the basis of which the authorities may oppose planned collective redundancies must therefore be formulated in specific and precise terms. Thus a national authorisation regime for collective redundancies would be incompatible with the Collective Redundancies Directive<sup>16</sup> if it deprived this Directive of its practical effect;<sup>17</sup>
- *Luxembourg*: 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 (while no such condition exists in respect of a student residing in Luxembourg);<sup>18</sup>
- *Austria*: 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.<sup>19</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- monitoring the correct transposition of the Directives on:
  - protecting workers against electromagnetic fields;<sup>20</sup>
  - aligning occupational health and safety Directives to Regulation 1272/2008 on classification, labelling and packaging of substances and mixtures;<sup>21</sup>
  - enforcing free movement of workers<sup>22</sup> and
  - enforcing the posting of workers;<sup>23</sup> and
  - working time in inland waterway transport<sup>24</sup>.
- following up on a preliminary ruling which is expected in 2017 in the *de Lobkowicz* case.<sup>25</sup> This may bring clarifications in relation to the principle of one legislation applicable in social security coordination.

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<sup>15</sup> Pöpperl, [C-187/15](#).

<sup>16</sup> Council Directive [98/59/EC](#).

<sup>17</sup> AGET Iraklis, [C-201/15](#), Court press release [No 143/2016](#).

<sup>18</sup> Bragança Linares Verruga and Others, [C-238/15](#).

<sup>19</sup> Knauer, [C-453/14](#).

<sup>20</sup> Directive [2013/35/EU](#).

<sup>21</sup> Directive [2014/27/EU](#).

<sup>22</sup> Directive [2014/54/EU](#).

<sup>23</sup> Directive [2014/67/EU](#).

<sup>24</sup> Directive [2014/112/EU](#).

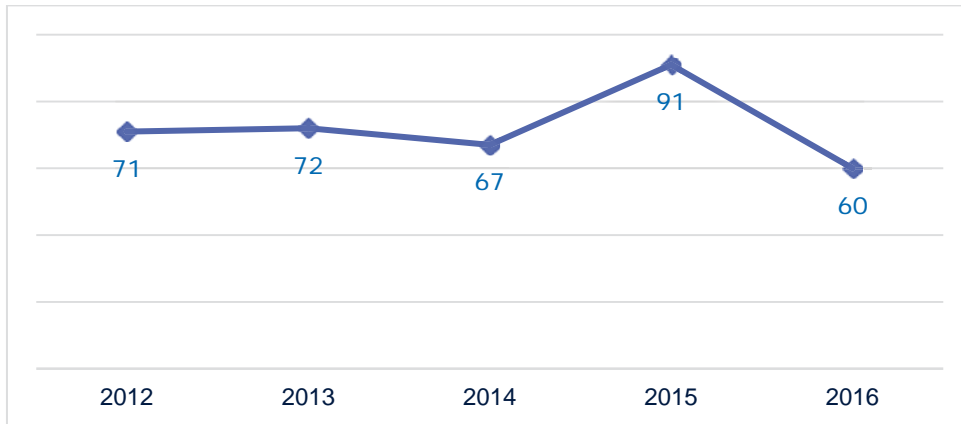
<sup>25</sup> De Lobkowicz [C-690/15](#).

## Energy

All the main indicators in the area of energy improved in 2016. New complaints dropped to their lowest level in five years after peaking the previous year. The number of new EU Pilot files continued the downward trend seen since 2014. Infringement cases pending at the end of the year were down, while new late transposition cases reached an all-time low.

### I. COMPLAINTS

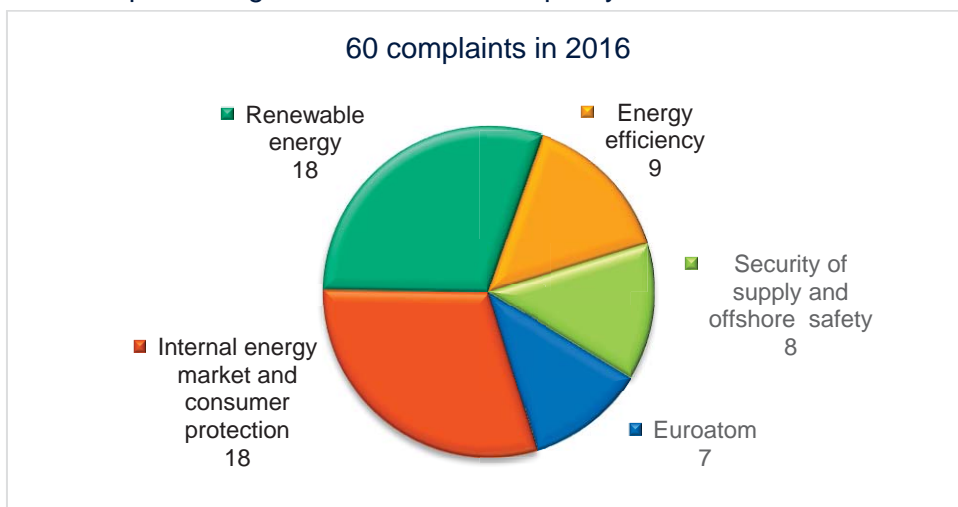
#### 1. New complaints received from members of the public (2012-2016)



#### 2. Public complaints open a year-end

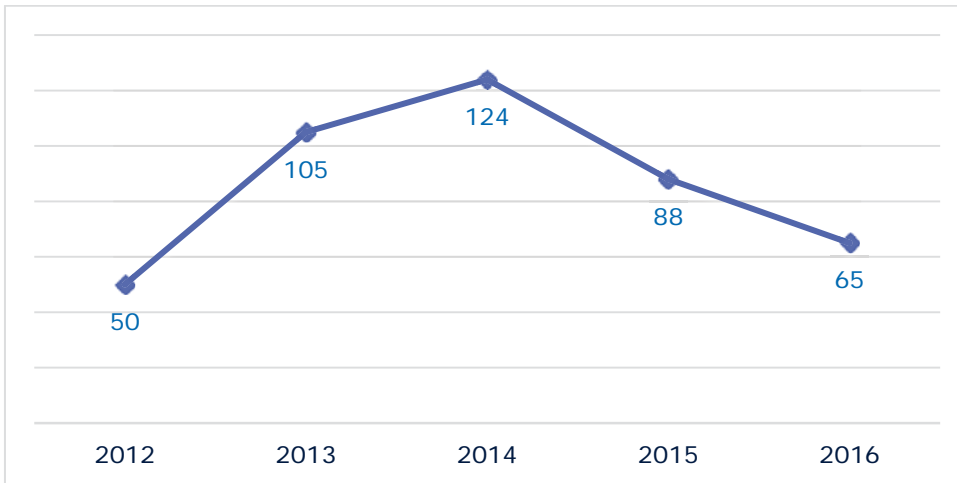
90	>	Complaints open at end-2015
60	>	New complaints registered in 2016
50	>	Complaints handled in 2016
<b>= 100</b>	>	<b>Complaints open at end-2016</b>

#### 3. New complaints registered in 2016: main policy sectors



## II. EU PILOT

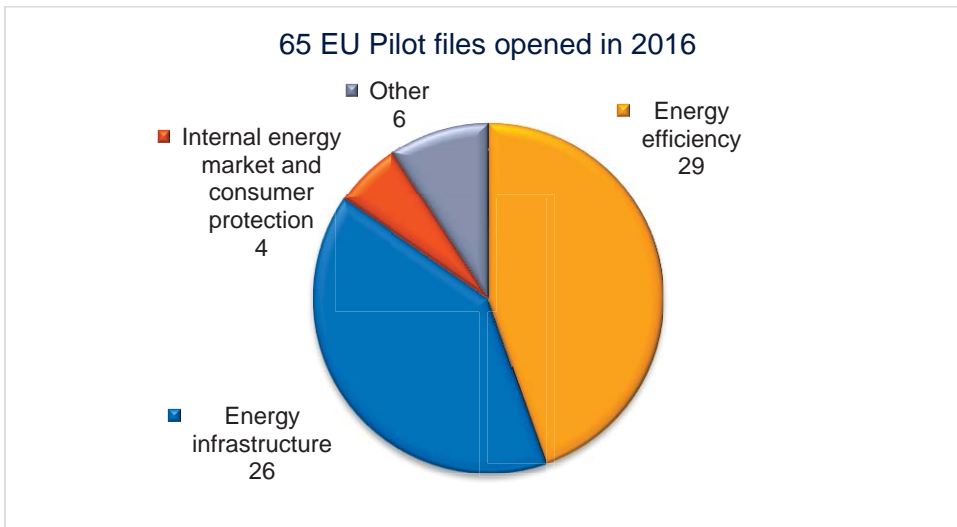
### 1. New EU Pilot files (2012-2016)



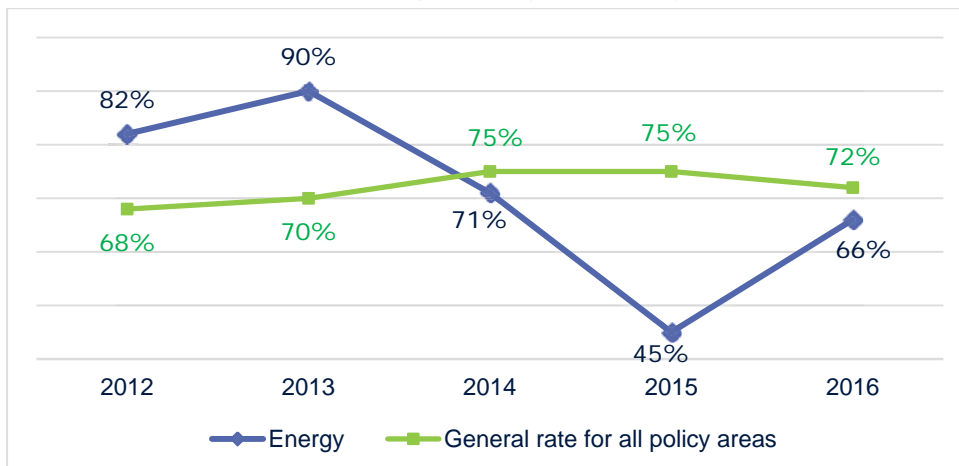
### 2. EU Pilot files open at year-end

At the end of 2016, 65 EU Pilot files remained open.

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



### 4. EU Pilot files: resolution rate for policies (2012-2016)



### III. OWN-INITIATIVE CASES

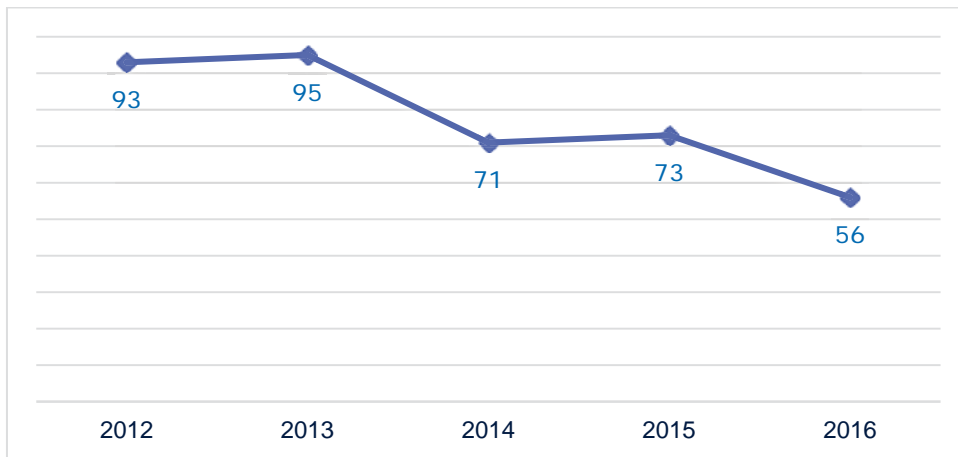
#### New own-initiative infringement cases

In 2016, the Commission opened own-initiative infringement cases concerning the Directives on:

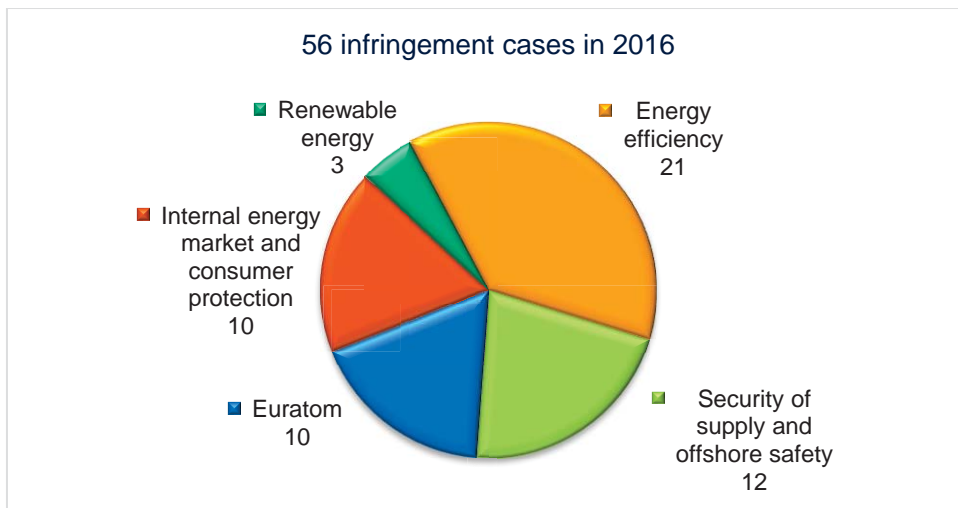
- the energy performance of buildings;<sup>1</sup>
- energy efficiency;<sup>2</sup>
- radioactive waste;<sup>3</sup>
- drinking water;<sup>4</sup>
- the Third Internal Energy Market Package.<sup>5</sup>

### IV. INFRINGEMENT CASES

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



#### 2. Infringement cases open on 31 December 2016: main policy sectors



<sup>1</sup> Directive [2010/31/EU](#).

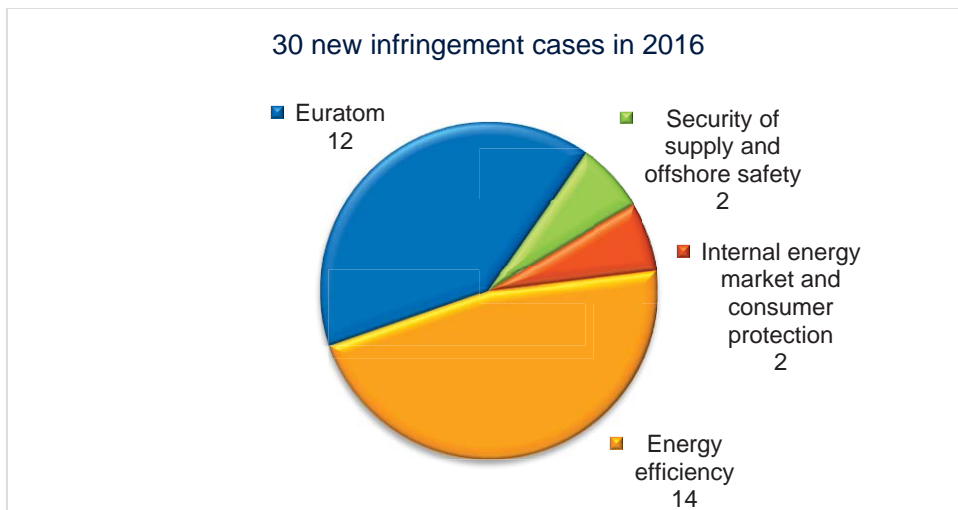
<sup>2</sup> Directive [2012/27/EU](#).

<sup>3</sup> Directive [2011/70/Euratom](#).

<sup>4</sup> Directive [2013/51/Euratom](#).

<sup>5</sup> Directives [2009/72/EC](#) and [2009/73/EC](#).

### 3. New infringement cases opened in 2016: main policy sectors



### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 30 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
- *Belgium, Germany, Spain, France, Croatia, Hungary, Austria*: failure to comply with the Third Internal Energy Market Package;<sup>6</sup>
  - *Bulgaria, Germany, Greece, Spain, Netherlands, Poland, Portugal, Romania, United Kingdom*: failure to fully transpose the Offshore Safety Directive;<sup>7</sup>
  - *Bulgaria, Spain, Slovenia*: failure to comply with the Energy Efficiency and Energy Performance of Buildings Directives;<sup>8</sup>
  - *Czech Republic*: failure to comply with the Security of Gas Supply Regulation;<sup>9</sup>
  - *Denmark, Estonia, Poland*: failure to fully transpose the Energy Efficiency Directive;<sup>10</sup>
  - *Latvia*: failure to fully transpose the Radioactive Waste Directive;<sup>11</sup>
  - *Poland, Portugal*: failure to comply with the requirements of the Renewable Energy Directive;<sup>12</sup>
  - *Romania*: failure to comply with the requirements of the Oil Stocks Directive.<sup>13</sup>
- b) The Commission referred one case to the Court under Article 258 TFEU. It concerned:
- *Greece*: non-compliance with the obligation to calculate the cost-optimal levels of minimum energy performance requirements for buildings.<sup>14</sup>
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

<sup>6</sup> Directives [2009/72/EC](#) and [2009/73/EC](#); [MEMO/16/319](#), [MEMO/16/1452](#), [MEMO/16/2490](#), [MEMO/16/3125](#), and [MEMO/16/4211](#).

<sup>7</sup> Directive [2013/30/EU](#); [MEMO/16/319](#), [MEMO/16/1452](#) and [MEMO/16/3644](#).

<sup>8</sup> Directive [2012/27/EU](#); Directive [2010/31/EU](#), [MEMO/16/3644](#), [MEMO/16/319](#) and [MEMO/16/2490](#).  
<sup>9</sup> Regulation (EU) [No 994/2010](#).

<sup>10</sup> Directive [2012/27/EU](#); [MEMO/16/3125](#) and [MEMO/16/1452](#).

<sup>11</sup> Directive [2011/70/Euratom](#); [MEMO/16/1452](#).

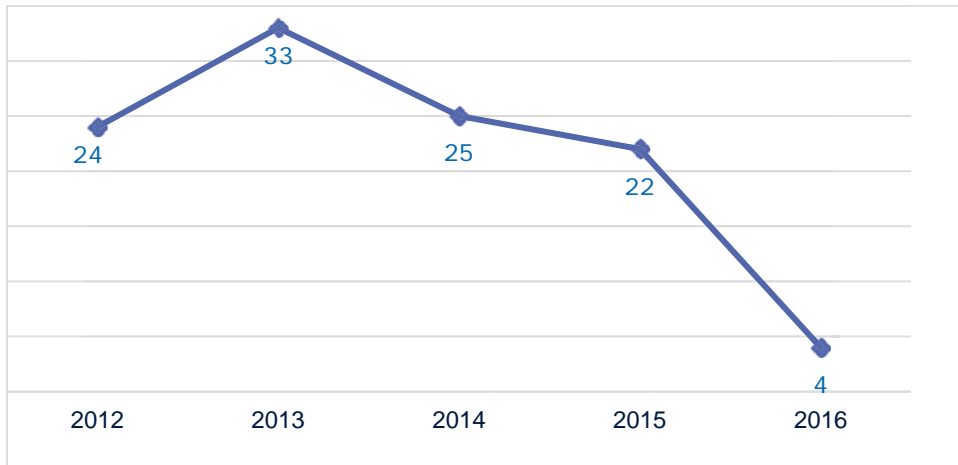
<sup>12</sup> Directive [2009/28/EC](#); [MEMO/16/1823](#) and [MEMO/16/1452](#).

<sup>13</sup> Directive [2009/119/EC](#); [MEMO/16/3644](#).

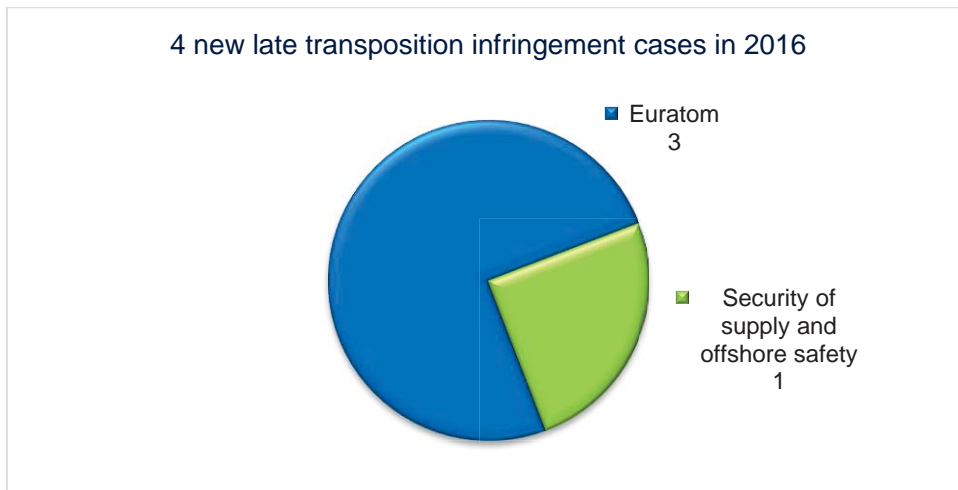
<sup>14</sup> Directive [2010/31/EU](#); *Commission v Greece*, [C-160/16](#); [IP/15/6007](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2012- 2016)



### 2. New late transposition infringement cases opened in 2016: main policy sectors



### 3. Key infringement cases and referrals to the Court

a) The Commission opened four cases for late transposition in 2016. They concern:

- the Drinking Water Directive (3 cases);<sup>15</sup>
- the Offshore Safety Directive (1 case).<sup>16</sup>

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

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

The Commission did not close any major infringement cases in 2016 in this area.

<sup>15</sup> Directive [2013/51/Euratom](#).

<sup>16</sup> Directive [2013/30/EU](#).

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>17</sup>

There were no major Court rulings in 2016 in this area.

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Belgium*: the exemption of distribution charges limited to green electricity produced in Flanders is incompatible with EU law. It fails to achieve the objective of increasing the production of green electricity and is thus considered non-proportionate discrimination against imported electricity;<sup>18</sup>
- *France*: security of supply and territorial cohesion might be objectives in the general economic interest which may justify state intervention in fixing the price of supply of natural gas to household customers. However, such intervention would be compatible with the Gas Directive<sup>19</sup> only if strict requirements were met, including proportionality and non-discrimination.<sup>20</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- performing transposition and conformity checks where needed, for example for the Directives:
  - establishing a Community framework for the nuclear safety of nuclear installations;<sup>21</sup>
  - on the quality of petrol and diesel fuels (Indirect Land-Use Change);<sup>22</sup>
- following up on non-conformity issues related to the Third Energy Package Directives and the Energy Performance of Buildings Directive;<sup>23</sup>
- checking compliance with the Energy Efficiency and Offshore Safety Directives;<sup>24</sup>
- following up a Court judgment expected on the applicability of the Aarhus Regulation in the field covered by the Euratom Treaty.<sup>25</sup>

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<sup>17</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>18</sup> *Essent Belgium NV v Vlaams Gewest and Others*, [C-492/14](#).

<sup>19</sup> Directive [2009/72/EC](#).

<sup>20</sup> ANODE, [C-121/15](#), Court press release [No 88/2016](#).

<sup>21</sup> Directive [2014/87/Euratom](#).

<sup>22</sup> Directive [2015/1513/EU](#).

<sup>23</sup> Directives [2009/72/EC](#), [2009/73/EC](#) and [2010/31/EU](#).

<sup>24</sup> Directives [2012/27/EU](#) and [2013/30/EU](#).

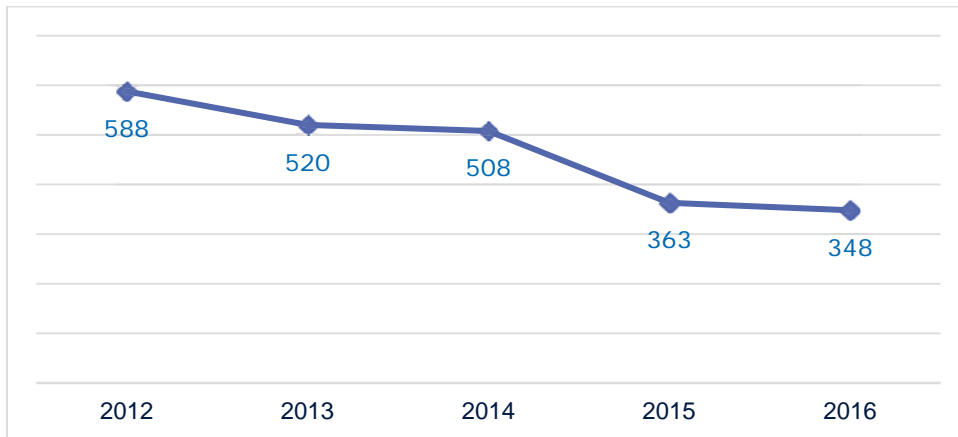
<sup>25</sup> Regulation (EU) No [1367/2006](#), case [T-307/16](#).

## Environment

New complaints in the area of environment policy continued to decrease in 2016, reaching the lowest level in 6 years. The same goes for infringement cases open at the end of the year and new late transposition cases. In contrast, the number of new EU Pilot files jumped, while remaining below its 2012-2014 levels.

### I. COMPLAINTS

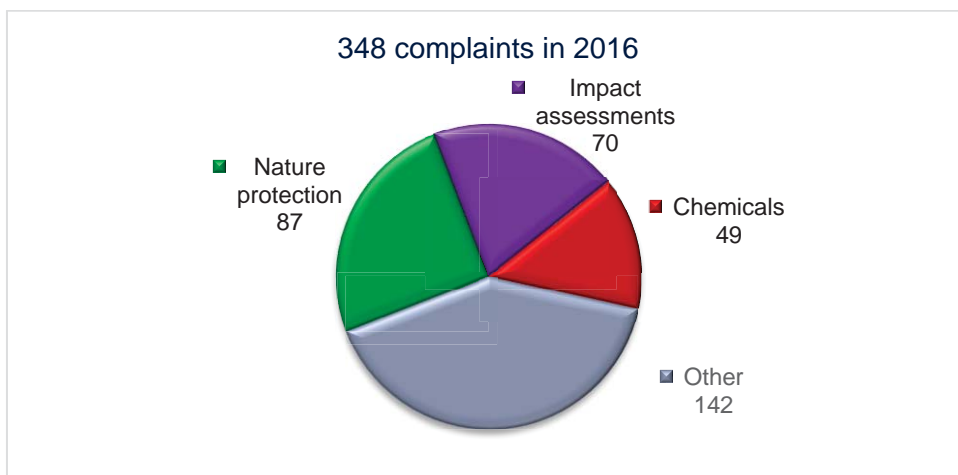
#### 1. New complaints received from members of the public (2012-2016)



#### 2. Public complaints open a year-end

434	>	Complaints open at end-2015
348	>	New complaints registered in 2016
311	>	Complaints handled in 2016
<hr/>		
= 471	>	Complaints open at end-2016

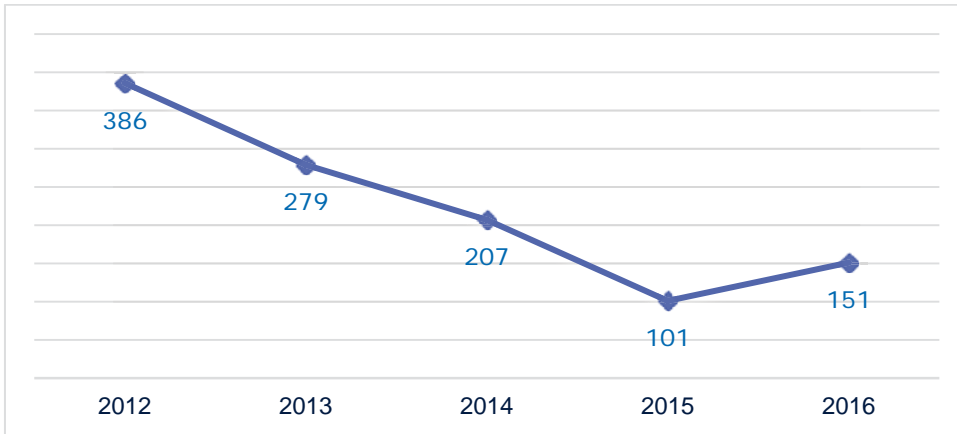
#### 3. New complaints registered in 2016: main policy sectors





## II. EU PILOT

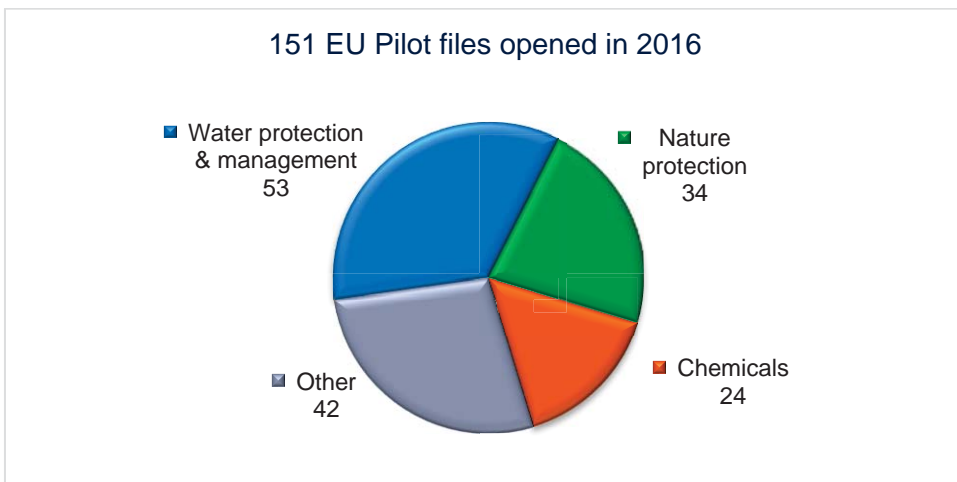
### 1. New EU Pilot files (2012-2016)



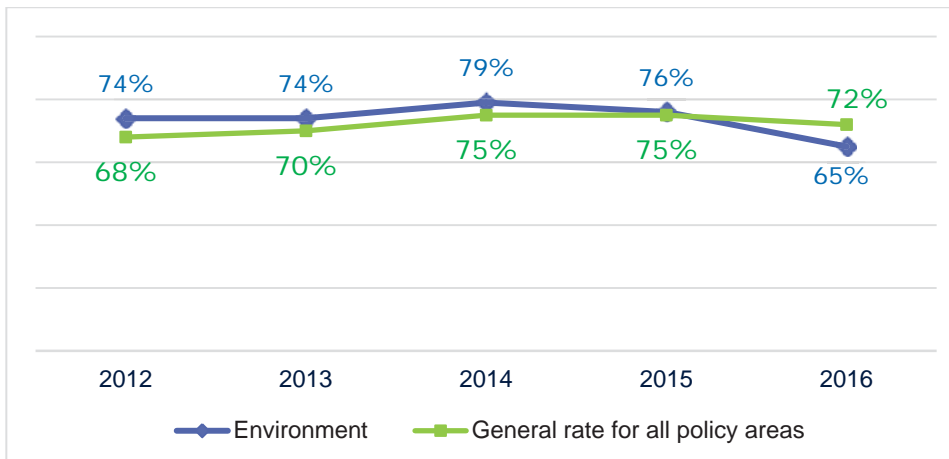
### 2. EU Pilot files open at year-end

At the end of 2016, 294 EU Pilot files remained open.

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



### 4. EU Pilot files: resolution rate for policies (2012-2016)



### III. OWN-INITIATIVE CASES

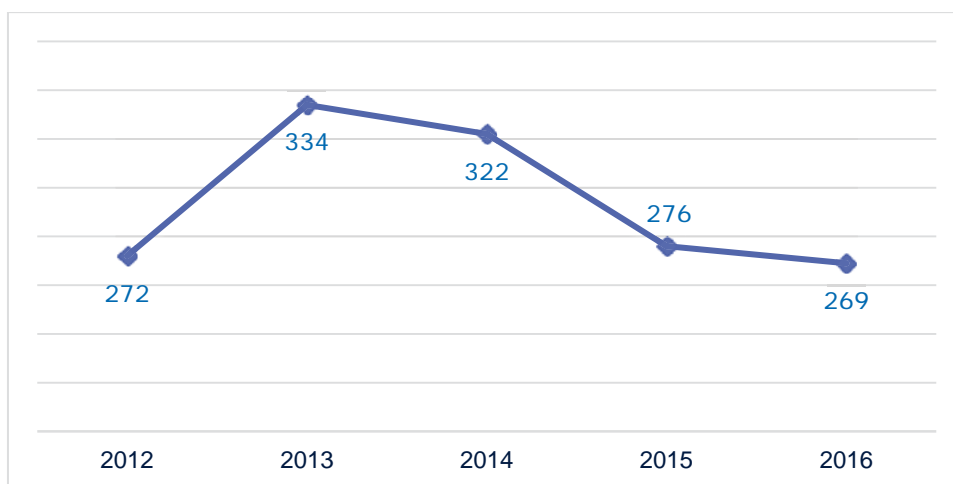
#### New own-initiative infringement cases

In 2016, the Commission opened own-initiative infringement cases over:

- shortcomings in the completion of the Natura 2000 network of nature protection areas;
- insufficient designation and conservation measures regarding special areas of conservation under the Habitats Directive;<sup>1</sup>
- non-compliance with the requirements of the Waste Framework Directive<sup>2</sup> and the Landfill Directive;<sup>3</sup>
- non-compliance with the Water Framework Directive;<sup>4</sup>
- incorrect transposition and application of the Floods Directive;<sup>5</sup>
- incorrect transposition of the Groundwater Directive;<sup>6</sup>
- incorrect transposition and application of the Marine Strategy Framework Directive;<sup>7</sup>
- shortcomings in the application of the Environmental Noise Directive;<sup>8</sup>
- incorrect transposition of the Industrial Emissions Directive;<sup>9</sup>
- incorrect transposition of the Environmental Liability Directive<sup>10</sup> and
- non-respect of air quality limit values set by the Air Quality Directive.<sup>11</sup>

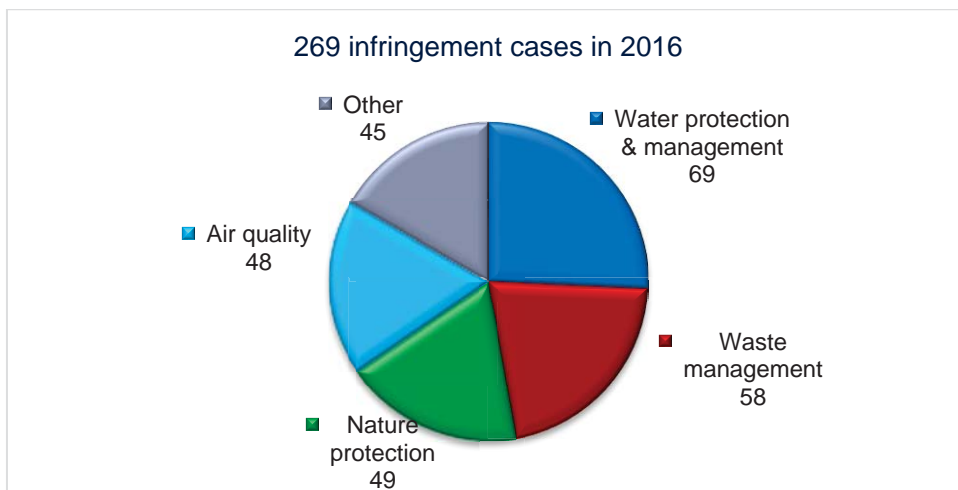
### IV. INFRINGEMENT CASES

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

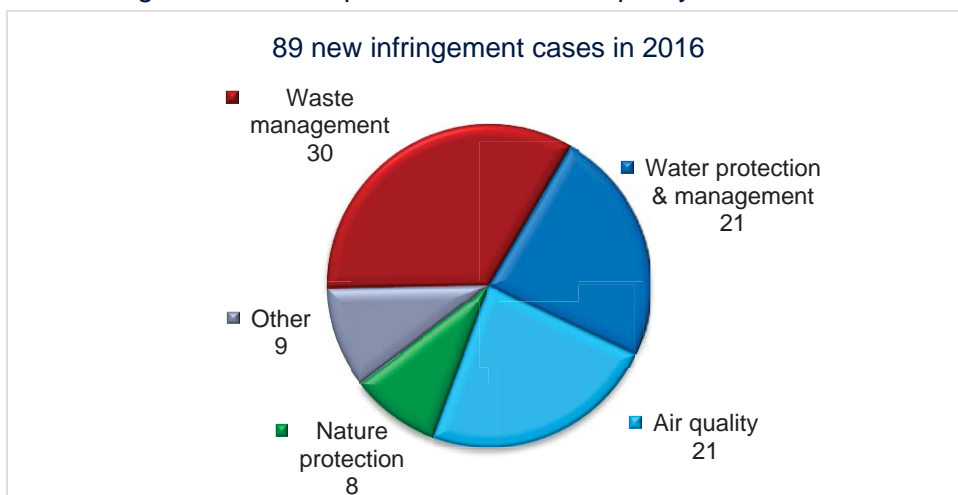


#### 2. Infringement cases open on 31 December 2016: main policy sectors

<sup>1</sup> Directive [92/43/EEC](#).  
<sup>2</sup> Directive [2008/98/EC](#).  
<sup>3</sup> Directive [1999/31/EC](#).  
<sup>4</sup> Directive [2000/60/EC](#).  
<sup>5</sup> Directive [2007/60/EC](#).  
<sup>6</sup> Directive [2006/118/EC](#).  
<sup>7</sup> Directive [2008/56/EC](#).  
<sup>8</sup> Directive [2002/49/EC](#).  
<sup>9</sup> Directive [2010/75/EU](#).  
<sup>10</sup> Directive [2004/35/EC](#).  
<sup>11</sup> Directive [2008/50/EC](#).



### 3. New infringement cases opened in 2016: main policy sectors



### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 89 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
- *Belgium, Spain, France,<sup>12</sup> Croatia,<sup>13</sup> Cyprus,<sup>14</sup> Romania<sup>15</sup>*: lack of waste management plans and waste prevention programmes required under the Waste Framework Directive;<sup>16</sup>
  - *Belgium, Czech Republic, Estonia, Ireland,<sup>17</sup> Spain, Malta and Portugal*: inadequate urban waste water treatment;
  - *Belgium, Czech Republic, Denmark, Hungary, Austria and Poland*: non-respect of NO<sub>2</sub> limit values set by the Air Quality Directive;<sup>18</sup>
  - *Belgium, Czech Republic and Denmark*: non-compliant transposition of the Environmental Liability Directive;<sup>19</sup>
  - *Germany, Spain, Italy, Hungary, Slovenia and Slovakia*: lack of strategic noise maps and/or action plans required by the Environmental Noise Directive;<sup>20</sup>

<sup>12</sup> [MEMO/16/3644](#).

<sup>13</sup> [MEMO/16/1452](#).

<sup>14</sup> [MEMO/16/4211](#).

<sup>15</sup> [MEMO/16/1823](#).

<sup>16</sup> Directive [2008/98/EC](#).

<sup>17</sup> [MEMO/16/3125](#).

<sup>18</sup> Directive [2008/50/EC](#).

<sup>19</sup> Directive [2004/35/EC](#).

- *Ireland*<sup>21</sup>, *Greece*,<sup>22</sup> and *Portugal*.<sup>23</sup> bad application of the Habitats Directive as regards designation of special areas of conservation and establishment of the necessary conservation measures,<sup>24</sup>
  - *Greece*: failure to notify flood hazard and risk maps required under the Floods Directive,<sup>25</sup>
  - *Spain and Slovenia*<sup>26</sup>: failure to ensure that waste landfills operate in compliance with EU standards;
  - *France*: non-compliant transposition of the Mining Waste Directive;<sup>27</sup>
  - *Croatia*,<sup>28</sup> *Finland and Sweden*: non-compliant transposition of the Waste Framework Directive,<sup>29</sup>
  - *Italy*: non-respect of the PM<sub>10</sub><sup>30</sup> limit values set by the Air Quality Directive,<sup>31</sup>
  - *Slovakia*: non-compliance with the EU Timber Regulation.<sup>32</sup>
  - *Sweden*: non-compliant transposition of the Water Framework Directive.<sup>33</sup>
- b) The Commission referred six cases to the Court under Article 258 TFEU. They concern:
- *Germany*: failure to correctly apply the requirements of the Habitats Directive in relation to the authorisation of a coal power plant in Hamburg/Moorburg;<sup>34</sup>
  - *Germany*: failure to take sufficient measures to combat water pollution caused by nitrates from agricultural sources;<sup>35</sup>
  - *Greece*: poor management of the Temploni waste landfill on the island of Corfu;<sup>36</sup>
  - *Poland*: widespread non-respect of the PM<sub>10</sub> limit values set by the Air Quality Directive;<sup>37</sup>
  - *Poland*: failure to ensure that the environmental impacts of exploratory mining drillings are properly assessed;<sup>38</sup>
  - *Slovenia*: inappropriate treatment of waste tyres in Lovrenc na Dravskem polju.<sup>39</sup>
- c) The Commission referred two cases to the Court under Article 260(2) TFEU. They concern:
- *Greece*: failure to implement a Court judgment that Greece was failing to adequately collect and treat waste water discharged into the Gulf of Elefsina. The Commission proposed to the Court to impose a lump sum payment of EUR 15 943 620 and a daily penalty payment of EUR 34 974 until full compliance with EU law is ensured;<sup>40</sup>
  - *Slovakia*: 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

<sup>20</sup> Directive [2002/49/EC](#).

<sup>21</sup> [MEMO/16/1452](#).

<sup>22</sup> [MEMO/16/319](#).

<sup>23</sup> [MEMO/16/1823](#).

<sup>24</sup> Directive [92/43/EEC](#).

<sup>25</sup> Directive [2007/60/EC](#), [MEMO/16/3644](#).

<sup>26</sup> [MEMO/16/1452](#).

<sup>27</sup> Directive [2006/21/EC](#).

<sup>28</sup> [MEMO/16/2490](#).

<sup>29</sup> Directive [2008/98/EC](#).

<sup>30</sup> PM<sub>10</sub> is an air pollutant consisting of small particles with an aerodynamic diameter less than or equal to a nominal 10 micrometres. The particles' small size allows them to penetrate deep into the lungs where they may be deposited and cause adverse health effects. (Source: [European Environment Agency](#)).

<sup>31</sup> Directive [2008/50/EC](#).

<sup>32</sup> Regulation (EU) [No 995/2010](#).

<sup>33</sup> Directive [2000/60/EC](#).

<sup>34</sup> Directive [92/43/EEC](#), *Commission v Germany*, [C-142/16](#) ; [IP/15/4669](#).

*Commission v Germany*, [C-543/16](#); [IP/16/1453](#).

<sup>36</sup> *Commission v Greece*, [C-202/16](#); [IP/15/6224](#).

<sup>37</sup> Directive [2008/50/EC](#), *Commission v Poland*, [C-336/16](#); [IP/15/6225](#).

<sup>38</sup> *Commission v Poland*, [C-526/16](#); [IP/16/1454](#).

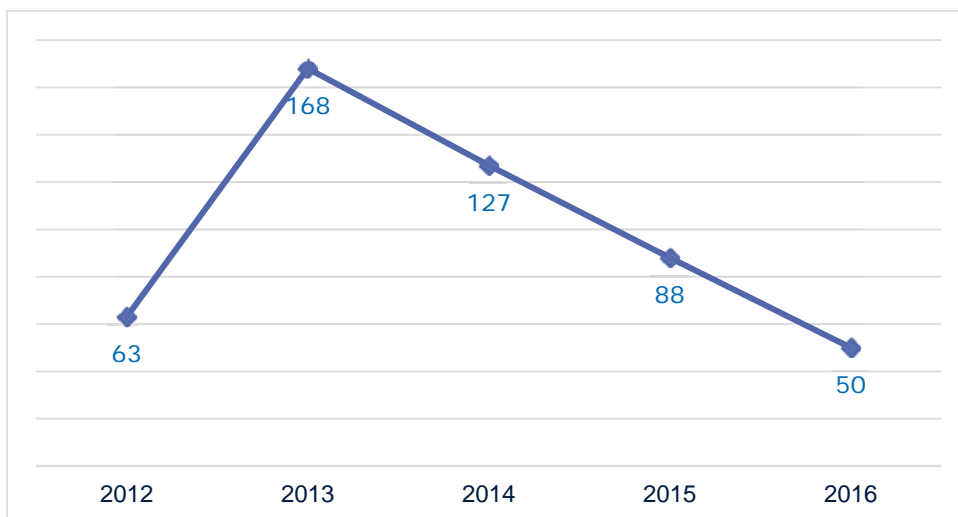
<sup>39</sup> *Commission v Slovenia*, [C-153/16](#); [IP/15/4671](#).

<sup>40</sup> *Commission v Greece*, [C-328/16](#); [IP/15/6009](#).

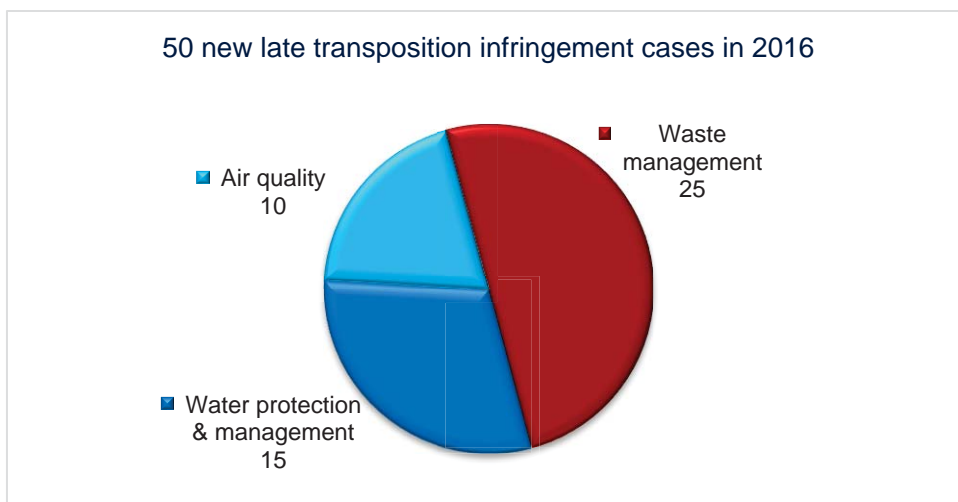
Court to impose a lump sum payment of EUR 939 000 and a daily penalty payment of EUR 6 793.80 until full compliance with EU law is ensured.<sup>41</sup>

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2012- 2016)



### 2. New late transposition infringement cases opened in 2016: main policy sectors



### 3. Key infringement cases and referrals to the Court

a) The Commission opened 50 cases for late transposition in 2016. Most concern:

- a Commission Directive<sup>42</sup> amending the Waste Framework Directive<sup>43</sup> (11 Member States);
- a Commission Directive<sup>44</sup> amending the Stage II Petrol Vapour Recovery Directive<sup>45</sup> (10 Member States);
- a Commission Directive<sup>46</sup> amending the Groundwater Directive<sup>47</sup> (nine Member States).

<sup>41</sup> Commission v Slovakia, [C-626/16](#); [IP/16/2099](#).

<sup>42</sup> Directive [2015/1127/EU](#).

<sup>43</sup> Directive [2008/98/EC](#).

<sup>44</sup> Directive [2014/99/EU](#).

<sup>45</sup> Directive [2009/126/EC](#).

- b) The Commission referred one case to the Court under Articles 258 and 260(3) TFEU. It concerned:
- *Romania*: failure to transpose the Directive on the sulphur content of marine fuels.<sup>48</sup>

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

These concerned:

- *Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Greece, Latvia, Lithuania, Luxembourg, Romania, Slovenia, Spain and United Kingdom*: non-communication of national measures transposing the Seveso III Directive;<sup>49</sup>
- *Czech Republic*: non-compliant transposition of the Waste Framework Directive;<sup>50</sup>
- *Czech Republic*: incorrect transposition of the Groundwater Directive;<sup>51</sup>
- *Czech Republic*: incorrect transposition of the Environmental Quality Standards Directive;<sup>52</sup>
- *Greece*: operation of the landfill of Mesolonghi in breach of the Landfill Directive and the Waste Framework Directive;<sup>53</sup>
- *Spain*: incorrect transposition of the Environmental Impact Assessment Directive by the Tourism Act in the Balearic Islands;<sup>54</sup>
- *Italy*: bad application of the Birds Directive in relation to the trapping of live decoys using nets;<sup>55</sup>
- *Italy and Cyprus*: non-communication of national measures transposing the new Batteries Directive;<sup>56</sup>
- *Cyprus*: non-communication of national measures transposing the Directive on priority substances in the field of water policy;<sup>57</sup>
- *Hungary and Romania*: failure to implement the EU Timber Regulation and the Forest Law Enforcement, Governance and Trade Regulation.<sup>58</sup>
- *Austria and Slovenia*: non-communication of national measures transposing the Industrial Emissions Directive;<sup>59</sup>
- *Poland*: incorrect transposition of the Environmental Impact Assessment Directive and the Habitats Directive in relation to maintenance works;<sup>60</sup>
- *Poland*: non-communication of national measures transposing the Directive on waste electrical and electronic equipment;<sup>61</sup>
- *Portugal*: illegal landfills operated in breach of the Landfill Directive;<sup>62</sup>
- *Romania*: incorrect application of the Environmental Impact Assessment Directive in relation to the operation of the FCN Pitesti nuclear power plant;<sup>63</sup>

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<sup>46</sup> Directive [2014/80/EU](#).

<sup>47</sup> Directive [2006/118/EC](#).

<sup>48</sup> 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.

<sup>49</sup> Directive [2012/18/EU](#).

<sup>50</sup> Directive [2008/98/EC](#).

<sup>51</sup> Directive [2006/118/EC](#).

<sup>52</sup> Directive [2008/105/EC](#).

<sup>53</sup> Directives [1999/31/EC](#) and [2008/98/EC](#).

<sup>54</sup> Directive [2011/92/EU](#).

<sup>55</sup> Directive [2009/147/EC](#).

<sup>56</sup> Directive [2013/56/EU](#).

<sup>57</sup> Directive [2013/39/EU](#).

<sup>58</sup> Regulation (EU) No [995/2010](#) and Regulation (EC) No [2173/2005](#).

<sup>59</sup> Directive [2010/75/EU](#).

<sup>60</sup> Directives [2011/92/EU](#) and [92/43/EEC](#).

<sup>61</sup> Directive [2012/19/EU](#).

<sup>62</sup> Directive [1999/31/EC](#).

<sup>63</sup> Directive [2011/92/EU](#).

- *Slovenia*: failure to adopt a national waste management plan and a waste prevention programme as required under the Waste Framework Directive;<sup>64</sup>
- *Slovakia*: failure to ensure adequate protection of wolves, in line with the Habitats Directive;<sup>65</sup>
- *Slovakia*: incorrect transposition of the Floods Directive;<sup>66</sup>
- *Finland*: incorrect transposition of the Water Framework Directive;<sup>67</sup>
- *Sweden*: lack of access to justice in relation to hunting decisions taken by the County Administrative Boards;
- *United Kingdom*: incorrect application of the Industrial Emissions Directive by excluding small waste oil burners from the scope of the definition of waste incineration plants;<sup>68</sup>
- *United Kingdom*: failure to comply with the Habitats Directive as regards protection of wild salmon in Scotland.<sup>69</sup>

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>70</sup>

The Court ruled that:

- *Bulgaria* has failed to protect unique habitats and endangered species in the Kaliakra region, in violation of the Birds Directive, the Habitats Directive and the Environmental Impact Assessment Directive;<sup>71</sup>
- *Greece* has failed to comply with the Habitats Directive by not providing adequate protection for the endangered sea turtle *Caretta caretta* in the Bay of Kyparissia;<sup>72</sup>
- *Greece* has failed to take all the necessary measures to comply with the Court's 2009 judgment that Greece was not ensuring adequate management of hazardous waste. The Court ordered Greece to pay a lump sum of EUR 10 million and a daily penalty payment of EUR 30 000;<sup>73</sup>
- *Spain* has failed to ensure the adequate treatment of urban waste water from four agglomerations discharging into sensitive areas;<sup>74</sup>
- *Spain* has not fulfilled its obligations under the Birds Directive and the Habitats Directive in relation to a project to build a high-speed railway line between Seville and Almeria;<sup>75</sup>
- *Spain* has infringed the Landfill Directive as it has not taken the necessary measures to ensure that landfills do not continue to operate unless they satisfy the requirements of the Directive;<sup>76</sup>
- *France* has failed to provide adequate treatment of urban waste water in several smaller agglomerations;<sup>77</sup>
- the action brought by the Commission against *Austria* for its 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;<sup>78</sup>
- *Poland* has failed to transpose correctly or completely into its national legal framework several provisions of the Water Framework Directive;<sup>79</sup>

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<sup>64</sup> Directive [2008/98/EC](#).

<sup>65</sup> Directive [92/43/EEC](#).

<sup>66</sup> Directive [2007/60/EC](#).

<sup>67</sup> Directive [2000/60/EC](#).

<sup>68</sup> Directive [2010/75/EU](#).

<sup>69</sup> Directive [92/43/EEC](#).

<sup>70</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>71</sup> Directives [2009/147/EC](#), [92/43/EEC](#) and [2011/92/EU](#), Commission v Bulgaria, [C-141/14](#).

<sup>72</sup> Directive [92/43/EEC](#), Commission v Greece, [C-504/14](#).

<sup>73</sup> Commission v Greece, [C-584/14](#) and Court press release [No 87/16](#).

<sup>74</sup> Directive [91/271/EEC](#), Commission v Spain, [C-38/15](#).

<sup>75</sup> Directives [2009/147/EC](#) and [92/43/EEC](#), Commission v Spain, [C-461/14](#).

<sup>76</sup> Directive [1999/31/EC](#), Commission v Spain, [C-454/14](#).

<sup>77</sup> Directive [91/271/EEC](#), Commission v France, [C-314/15](#).

<sup>78</sup> Directive [2000/60/EC](#), Commission v Austria, [C-346/14](#).

<sup>79</sup> Directive [2000/60/EC](#), Commission v Poland, [C-648/13](#).

- *Portugal* has failed to execute in full the Court's 2009 judgment 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 daily penalty payment of EUR 8 000;<sup>80</sup>
- *Portugal* has failed to ensure adequate treatment of urban waste water in several smaller agglomerations;<sup>81</sup>
- *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;<sup>82</sup>
- *United Kingdom* has incorrectly applied the Large Combustion Plants Directive in relation to the Aberthaw Power Station in Wales, by not respecting the emission limit value for nitrogen oxides (NOx).<sup>83</sup>

## 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Belgium*: measures contained in a plan or project not directly connected with the management of a site of Community importance which, before the occurrence of adverse effects on a natural habitat type present on it, are providing for the future creation of an area of that type may not be taken into account in the assessment of the effects of the plan or project on the site when that assessment precedes the completion of the respective area. Qualifying such measures as 'compensatory measures' under the Habitats Directive is strictly subject to the conditions it lays down;<sup>84</sup>
- *Belgium*: a regulatory order containing provisions on the installation of wind turbines which must be complied with when administrative consent is granted for the installation and operation of such installations comes within the notion of 'plans and programmes' under the Strategic Environmental Assessment Directive;<sup>85</sup>
- *Germany*: when a plan or project not directly connected with the management of a nature site was authorised following a study not meeting the requirements of the Habitats Directive, and before the inclusion of this site in the list of sites of Community importance, a subsequent review of its effects is required if that is the only appropriate step to prevent significant deterioration or disturbance of the habitat due to implementation of the respective plan or project. A review of the effects of a plan or project put in hand after the inclusion of a site in the list of sites of Community importance must meet the requirements of the Habitats Directive and take into account all factors existing at the date of that inclusion, as well as all implications arising from the implementation of the plan or project after that date;<sup>86</sup>
- *Germany*: a road development project which concerns a stretch of road under 10 km in length is not, solely because of its nature, among the projects subject to a systematic environmental impact assessment, even though it consists in the widening or development of an existing road with four or more lanes. 'Express roads' are roads complying with the technical characteristics set out in Annex II to the European Agreement on Main International Traffic Arteries, even if those roads do not form part of the network of main international traffic arteries or are located in urban areas. The concept of 'construction' covers the carrying-out of works not previously existing or the physical alteration of existing installations;<sup>87</sup>
- *France*: roll cores in the form of rolls, tubes or cylinders, around which flexible material is wound and sold to consumers, constitute 'packaging' under the Packaging Directive;<sup>88</sup>

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<sup>80</sup> Directive [91/271/EEC](#), Commission v Portugal, [C-557/14](#) and Court press release [No 67/16](#).

<sup>81</sup> Directive [91/271/EEC](#), Commission v Portugal, [C-398/14](#).

<sup>82</sup> Directive [2006/21/EC](#), Commission v Romania, [C-104/15](#).

<sup>83</sup> Directive [2001/80/EC](#), Commission v United Kingdom, [C-304/15](#).

<sup>84</sup> Directive [92/43/EEC](#), Orleans and Others, joined cases [C-387/15](#) and [C-388/15](#).

<sup>85</sup> Directive [2001/42/EC](#), D'Oultremont and Others, [C-290/15](#).

<sup>86</sup> Directive [92/43/EEC](#), Grüne Liga Sachsen and Others, [C-399/14](#).

<sup>87</sup> Bund Naturschutz in Bayern and Wilde, [C-645/15](#).

<sup>88</sup> Directive [94/62/EC](#), Eco-Emballages, joined cases [C-313/15](#) and [C-530/15](#).



- *France*: a national court may, exceptionally and on a case-by-case basis, limit in time the effects of a declaration of the illegality of a national provision adopted in disregard of the Strategic Environmental Assessment Directive, provided that such a limitation is dictated by an overriding consideration linked to environmental protection and having regard to the specific circumstances of the case. However, this power may be exercised only if the following conditions are satisfied:
  - the contested national provision is a measure correctly transposing EU environmental law;
  - a new national provision would not avoid damage to the environment arising from annulment of the contested provision;
  - annulment of the contested provision would create a legal vacuum in the transposition of EU environmental law which would be more damaging to the environment; and,
  - the effects of the contested provision are maintained only for the period strictly necessary to adopt the measures remedying the irregularity;<sup>89</sup>
- *Croatia*: a national legislation which provides that the price of water services invoiced to the consumer includes not only a variable component calculated according to the volume of water actually consumed by the person concerned, but also a fixed component not connected with that volume, is compatible with the Water Framework Directive;<sup>90</sup>
- *Italy*: the Mining Waste Directive does not have the effect of making subject to the requirements of the Landfill Directive an operation which entails the backfilling of a quarry with waste other than extractive waste, if that operation does not amount to a disposal but to a recovery of waste;<sup>91</sup>
- *Italy*: the term ‘small areas at local level’, under the Strategic Environmental Assessment Directive, refers to areas under the territorial jurisdiction of the local authority preparing and/or adopting the plan or programme concerned, and which are small in size relative to that territorial jurisdiction;<sup>92</sup>
- *Hungary*: 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;<sup>93</sup>
- *Netherlands*: 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’;<sup>94</sup>
- *Austria*: 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

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<sup>89</sup> Directive [2001/42/EC](#), Association France Nature Environnement, [C-379/15](#).

<sup>90</sup> Directive [2000/60/EC](#), Vodoopskrba i odvodnja, [C-686/15](#).

<sup>91</sup> Directives [2006/21/EC](#) and [1999/31/EC](#), Edilizia Mastrodonato, [C-147/15](#).

<sup>92</sup> Directive [2001/42/EC](#), Associazione Italia Nostra Onlus, [C-444/15](#).

<sup>93</sup> Regulation (EC) No [1013/2006](#), Nutrivet, [C-69/15](#).

<sup>94</sup> Bayer CropScience and Stichting De Bijenstichting, [C-442/14](#) and Court press release [No 128/16](#).

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,<sup>95</sup>

- *Slovakia*: 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.<sup>96</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- pursuing legal action against Member States which have failed to transpose the Directive on reducing the consumption of lightweight plastic carrier bags;<sup>97</sup>
- carrying out a comprehensive check on Member States' compliance with EU waste targets and key obligations;
- pursuing legal action against Member States that have failed to fulfil their obligations under the Habitats Directive regarding the completion of the Natura 2000 network and the designation and conservation of special areas of conservation;<sup>98</sup>
- following up on the timely transposition by Member States of the Directive<sup>99</sup> amending the Environmental Impact Assessment Directive<sup>100</sup> and issuing new guidance on the screening, scoping and the environmental report;
- following closely the notifications submitted by Member States on exemptions from the assessment procedure under the Environmental Impact Assessment Directive;<sup>101</sup>
- presenting to the European Parliament and the Council the second report on the application and effectiveness of the Strategic Environmental Assessment Directive, as well as launching work on its REFIT evaluation;<sup>102</sup>
- enforcing the adoption of the second round of river basin management plans required under the Water Framework Directive and assessing compliance of these plans with EU requirements;<sup>103</sup>
- following up on situations of inadequate treatment of urban waste water;
- pursuing legal action against Member States not respecting the PM<sub>10</sub><sup>104</sup> and NO<sub>2</sub> limit values in the Air Quality Directive;<sup>105</sup>
- pursuing legal action against Member States which have failed to establish noise maps and action plans required under the Environmental Noise Directive;<sup>106</sup>
- continue checking compliance of national measures with the Industrial Emissions Directive;<sup>107</sup>

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<sup>95</sup> Directive [85/337/EEC](#) amended by Directive [97/11/EC](#), Stadt Wiener Neustadt, [C-348/15](#).

<sup>96</sup> Lesoochránárske zoskupenie VLK, [C-243/15](#).

<sup>97</sup> Directive (EU) [2015/720](#) amending Directive [94/62/EC](#).

<sup>98</sup> Directive [92/43/EEC](#).

<sup>99</sup> Directive [2014/52/EU](#).

<sup>100</sup> Directive [2011/92/EU](#).

<sup>101</sup> Directive [2011/92/EU](#). In 2016, Spain, Greece and Cyprus submitted in total 20 notifications concerning exemptions of certain projects. 15 notifications concerned projects aimed at responding to civil emergencies resulting from natural disasters. Out of the other five notifications, one concerned erection of windfarms (Spain), two concerned waste management projects (Spain and Greece), one concerned a liquefied natural gas plant (Spain) and one concerned road improvements (Cyprus). For 18 notifications the conditions on exemptions under the Directive were met. For two notifications the Commission is in contact with the respective Member States to verify if the conditions for exemptions were properly applied.

<sup>102</sup> Directive [2001/42/EC](#).

<sup>103</sup> Directive [2000/60/EC](#).

<sup>104</sup> PM<sub>10</sub> is an air pollutant consisting of small particles with an aerodynamic diameter less than or equal to a nominal 10 micrometres. The particles' small size allows them to penetrate deep into the lungs where they may be deposited and cause adverse health effects. (Source: [European Environment Agency](#)).

<sup>105</sup> Directive [2008/50/EC](#).

<sup>106</sup> Directive [2002/49/EC](#).

<sup>107</sup> Directive [2010/75/EU](#).

- following up on the second implementation report and on the REFIT evaluation of the Environmental Liability Directive.<sup>108</sup>

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<sup>108</sup> Directive [2004/35/EC](#).

## Financial stability, financial services and capital markets union

*In 2016 the Commission received 88 complaints in the area of financial stability, financial services and capital markets union, well down on the 139 seen the previous year. It opened 12 new EU Pilot files, less than a third the level of 2015. Infringement cases pending at the end of 2015 totalled 230, up from 172 a year earlier. The number of new infringement procedures for late transposition opened during the year was 116, against 125 launched in 2015.<sup>1</sup>*

### I. COMPLAINTS

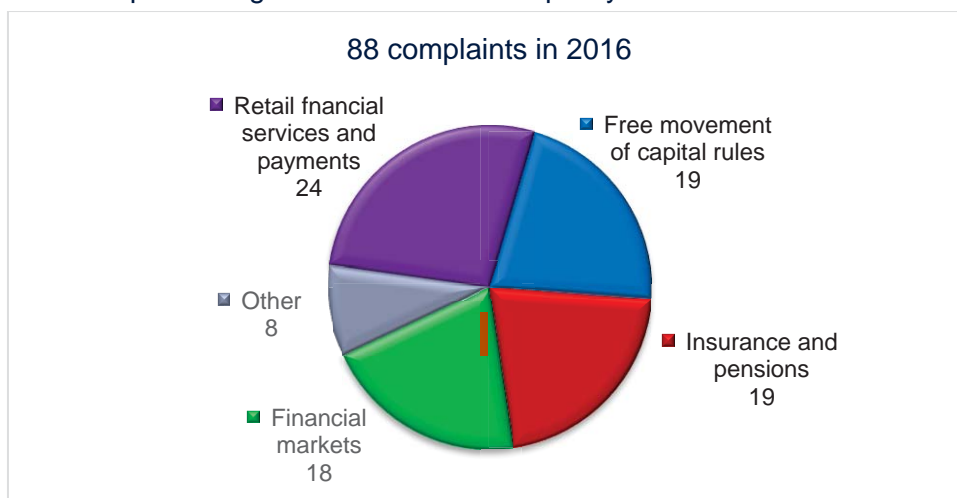
#### 1. New complaints received from members of the public in 2016

The Commission received 88 complaints from members of the public in 2016 in this area (139 new complaints were submitted in 2015).

#### 2. Public complaints open at year-end

158	>	Complaints open at end-2015
88	>	New complaints registered in 2016
189	>	Complaints handled in 2016
<u>57</u>	>	Complaints open at end-2016

#### 3. New complaints registered in 2016: main policy sectors



### II. EU PILOT

#### 1. New EU Pilot files (2015-2016)

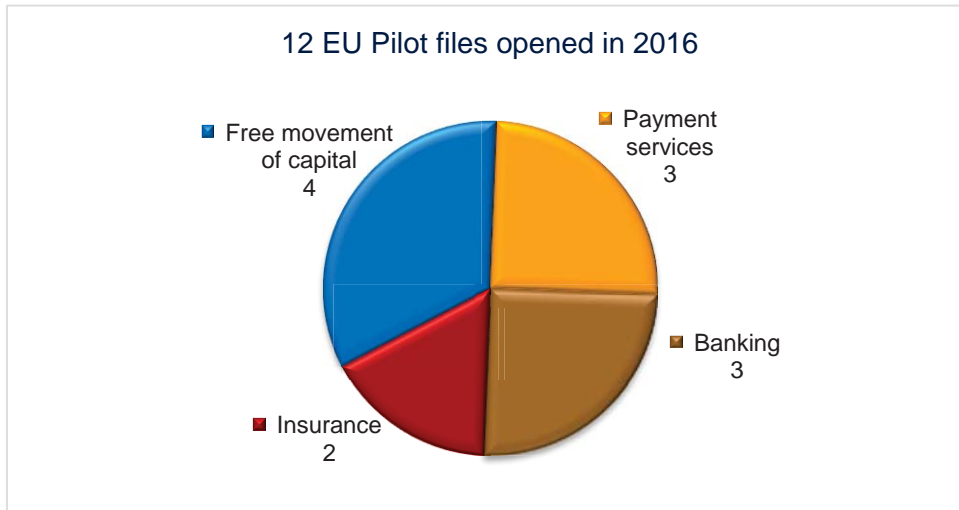
The Commission opened 12 new EU Pilot files in this area. In 2015, there were 42 new EU Pilot files.

#### 2. EU Pilot files open at year-end

There were 21 EU Pilot files open at end-2016.

<sup>1</sup> The Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) was created on 1 January 2015 as part of a reorganisation of the Commission. Consequently historical data for this area are available only from the above date.

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



### 4. EU Pilot files: policies' combined resolution rate in 2015-2016

The combined resolution rate for financial stability, financial services and capital markets union in 2016 was 54 %. The general rate for all policy areas was 72 %.

## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases in 2016

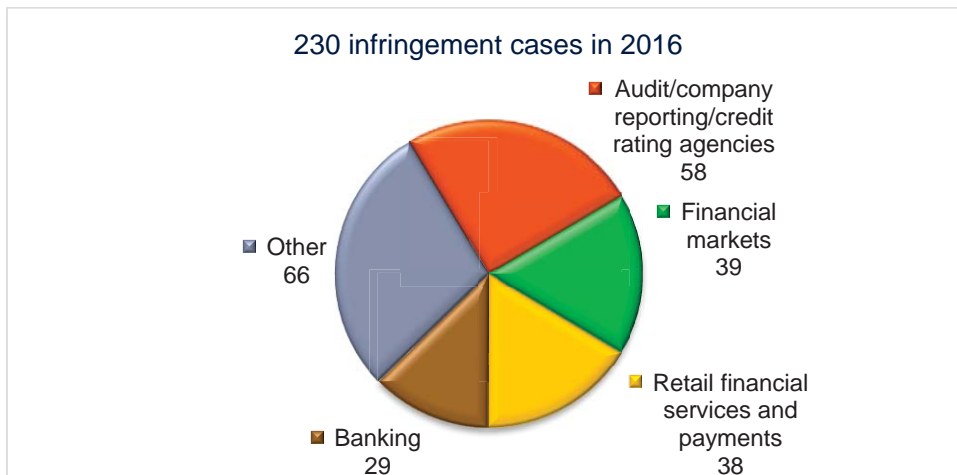
The Commission did not open any own-initiative infringement cases in this area in 2016.

## IV. INFRINGEMENT CASES

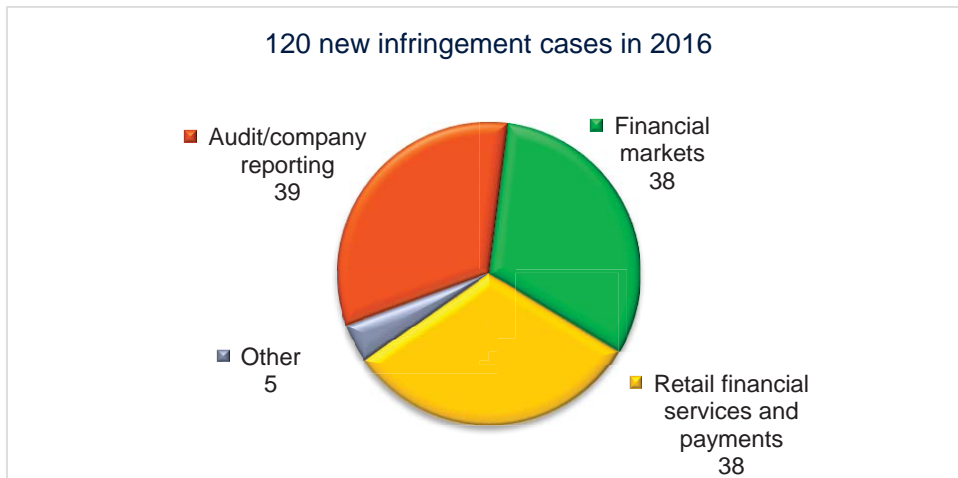
### 1. Infringement cases open on 31 December (2015-2016)

There were 230 infringement cases open on 31 December 2016 in this area.

### 2. Infringement cases open on 31 December 2016: main policy sectors



### 3. New infringement cases opened in 2016: main policy sectors



### 4. Key infringement cases and referrals to the Court

a) The Commission opened 120 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:

- *Belgium and Slovenia*: failure to communicate all national measures transposing the Bank Recovery and Resolution Directive.<sup>2</sup>
- *Belgium, Latvia, Netherlands and Slovakia*: failure to communicate all national measures transposing the Capital Requirements Directive.<sup>3</sup>
- *Bulgaria, Ireland and Cyprus*: failure to communicate all national measures transposing the Accounting Directive.<sup>4</sup>
- *Bulgaria, Latvia, Lithuania Hungary and Slovakia*: 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.<sup>5</sup>
- *Ireland, Spain, Latvia, Portugal and Romania*: failure to communicate all national measures transposing the Transparency Directive.<sup>6</sup>
- *Greece*: failure to communicate all national measures transposing the Audit Directive.<sup>7</sup>
- *Greece, Spain, Croatia, Cyprus, Luxembourg, Poland, Portugal, Slovenia, Finland and Sweden*: failure to communicate all national measures transposing the Mortgage Credit Directive.<sup>8</sup>
- *Croatia*: the special powers reserved for the state in the main energy company, INA (Industrija Nafta d.d.), following its privatisation. These may restrict the free movement of capital and freedom of establishment under the TFEU;<sup>9</sup>
- *Netherlands, Austria, Romania, Slovakia and Sweden*: 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.<sup>10</sup>

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.

<sup>2</sup> Directive [2014/59/EU](#) and press release [MEMO/16/1452](#).

<sup>3</sup> Directive [2013/36/EU](#) and press release [MEMO/16/1452](#).

<sup>4</sup> Directive [2013/34/EU](#), and press releases [MEMO/16/2097](#) and [MEMO/16/3644](#).

<sup>5</sup> Press releases [IP/16/1827](#) and [MEMO/16/1823](#).

<sup>6</sup> Directive [2013/50/EU](#) and press release [MEMO/16/3644](#).

<sup>7</sup> Directive [2014/56/EU](#) and press release [MEMO/16/3644](#).

<sup>8</sup> Directive [2014/17/EU](#), and press releases [MEMO/16/3644](#) and [MEMO/16/4211](#).

<sup>9</sup> Press release [MEMO/16/4211](#).

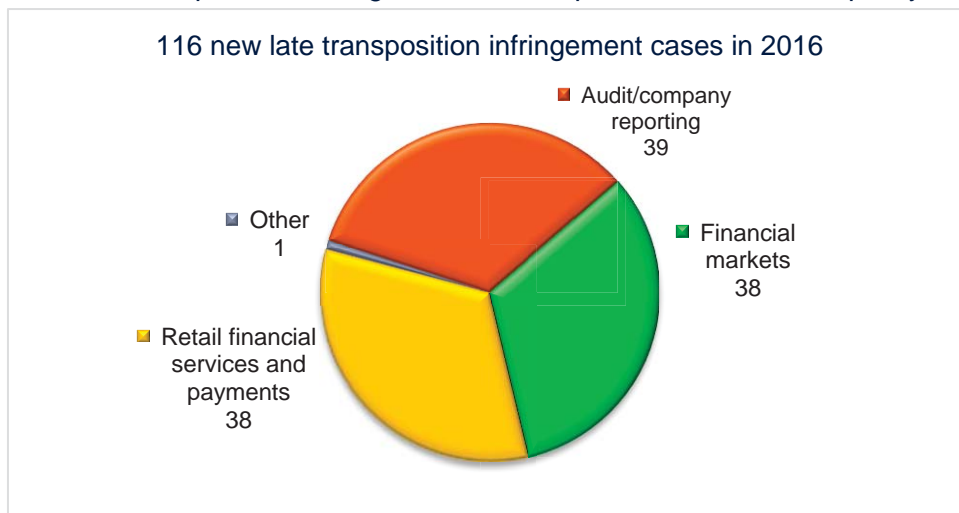
<sup>10</sup> Press release [MEMO/16/3125](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2015- 2016)

The Commission opened 116 new late transposition infringement cases in 2016.

### 2. New late transposition infringement cases opened in 2016: main policy sectors



### 3. Key infringement cases and referrals to the Court

a) The Commission opened 116 cases for late transposition in 2016. Most concern:

- the Directive modifying the rules on harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Transparency Directive);<sup>11</sup>
- the Directive modifying the rules on undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions;<sup>12</sup>
- the Directive on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive);<sup>13</sup> and
- the Directive amending EU rules on statutory audits of annual accounts and consolidated accounts (Audit Directive)<sup>14</sup>; and
- the Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (Payment Accounts Directive)<sup>15</sup>.

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

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016

These concerned:

<sup>11</sup> Directive [2013/50/EU](#).

<sup>12</sup> Directive [2014/91/EU](#) (so-called UCITS V).

<sup>13</sup> Directive [2014/17/EU](#).

<sup>14</sup> Directive [2014/56/EU](#).

<sup>15</sup> Directive [2014/92/EU](#).

- *Bulgaria, Estonia, Ireland, France, Italy, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Finland, Sweden and United Kingdom*: completing the notification of all national measures necessary to transpose the Capital Requirements Directive;<sup>16</sup>
- *Bulgaria, the Czech Republic, Estonia, Ireland, Greece, Spain, France, Croatia, Latvia, Luxembourg, Hungary, Malta, Portugal, Romania, Slovakia and Finland*,: notification of all national measures necessary to transpose the Bank Resolution and Recovery Directive;<sup>17</sup>
- *Czech Republic, Estonia, Ireland, Greece, Spain France, Luxembourg, Netherlands, Romania and Slovakia*: completing the notification of all national measures necessary to transpose the Deposit Guarantee Schemes Directive.<sup>18</sup>

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>19</sup>

There were no major Court rulings in 2016 in this area.

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Latvia*: monies deposited in the current account that are pledged to the bank as financial collateral to cover all the account holder's debts fall within the scope of the Directive<sup>20</sup> on financial collateral arrangements, if those monies have been 'provided' to the bank. That is to say, the collateral provider must be prevented from disposing of such monies lodged in the ordinary bank account. The Court also confirmed that the collateral does not normally fall within the scope of the Directive if it was provided after the launch of an insolvency procedure, but can be enforceable in exceptional circumstances.<sup>21</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- focusing on the transposition of the financial regulatory framework. This includes following up on Member States' measures transposing directives whose deadline expired in 2016:
  - the Directive modifying the rules on undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions;<sup>22</sup>
  - the Directive on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive);<sup>23</sup>
  - the Payment Accounts Directive;<sup>24</sup>
  - the Directive amending EU rules on statutory audits of annual accounts and consolidated accounts (Audit Directive);<sup>25</sup>
  - certain provisions of the Deposit Guarantee Schemes Directive;<sup>26</sup>
  - the Directive amending EU rules as regards disclosure of non-financial and diversity information by certain large undertakings and groups.<sup>27</sup>

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<sup>16</sup> Directive [2013/36/EU](#).

<sup>17</sup> Directive [2014/59/EU](#).

<sup>18</sup> Directive [2014/49/EU](#).

<sup>19</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>20</sup> Directive [2002/47/EC](#).

<sup>21</sup> Private Equity Insurance Group, [C-156/15](#).

<sup>22</sup> Directive [2014/91/EU](#) (so-called UCITS V).

<sup>23</sup> Directive [2014/17/EU](#).

<sup>24</sup> Directive [2014/92/EU](#).

<sup>25</sup> Directive [2014/56/EU](#).

<sup>26</sup> Directive [2014/49/EU](#).

<sup>27</sup> Directive [2014/95/EU](#).

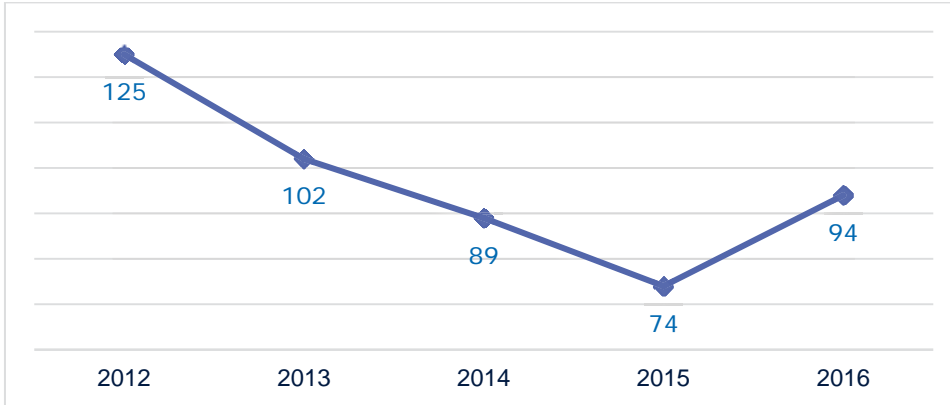


## Health and food safety

New complaints in the area of health and food safety rose in 2016 after falling for 4 years. Both the number of infringement cases pending at the end of the year and new late transposition cases jumped to five-year highs. By contrast, new EU Pilot files fell further to their lowest level ever.

### I. COMPLAINTS

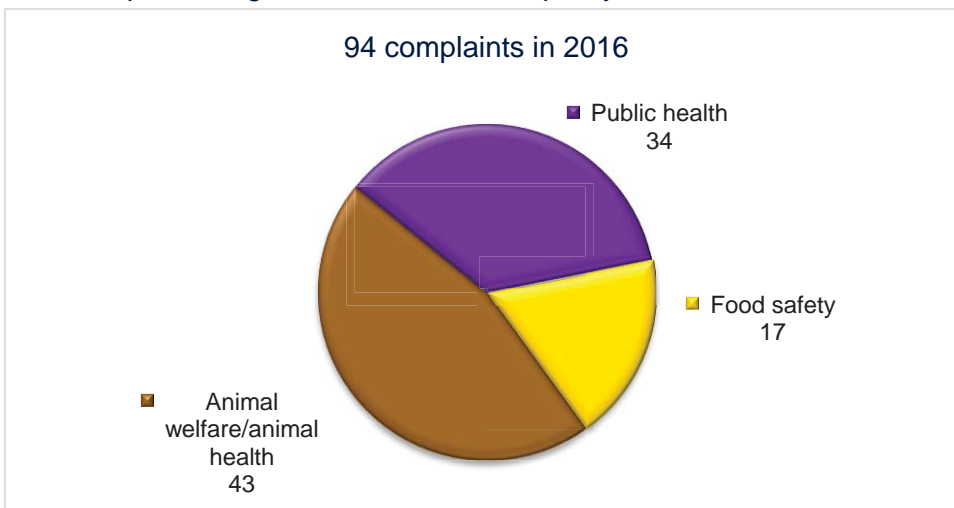
#### 1. New complaints received from members of the public (2012-2016)



#### 2. Public complaints open a year-end

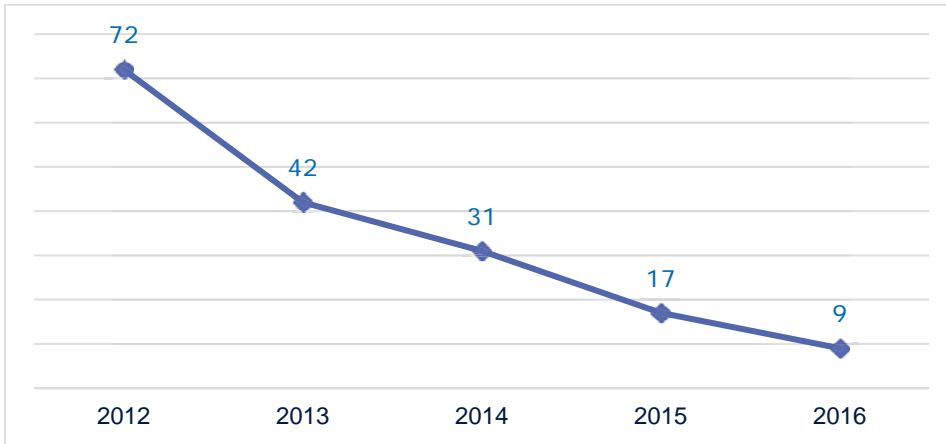
66	>	Complaints open at end-2015
94	>	New complaints registered in 2016
68	>	Complaints handled in 2016
<b>= 92</b>	>	<b>Complaints open at end-2016</b>

#### 3. New complaints registered in 2016: main policy sectors



## II. EU PILOT

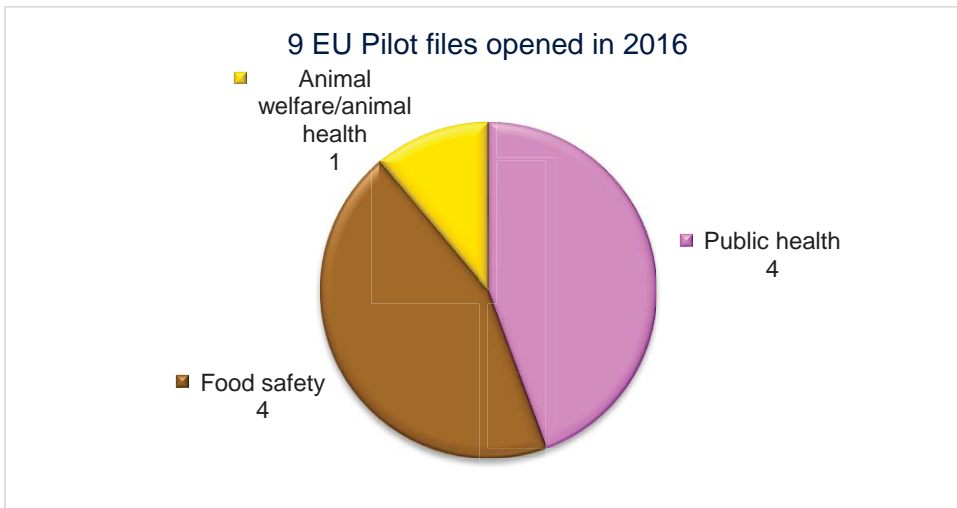
### 1. New EU Pilot files (2012-2016)



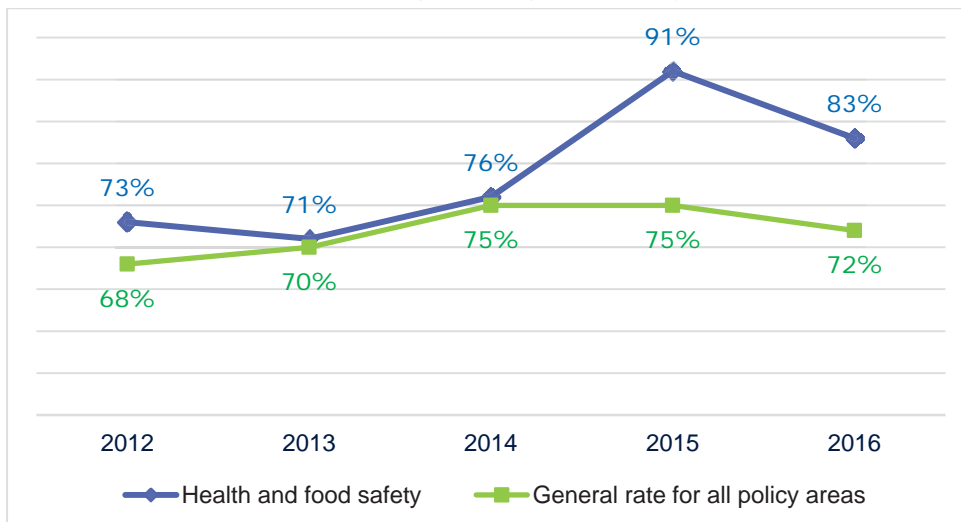
### 2. EU Pilot open at year-end

At the end of 2016, 31 EU Pilot files remained open.

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



### 4. EU Pilot files: resolution rate for policies (2012-2016)



### III. OWN-INITIATIVE CASES

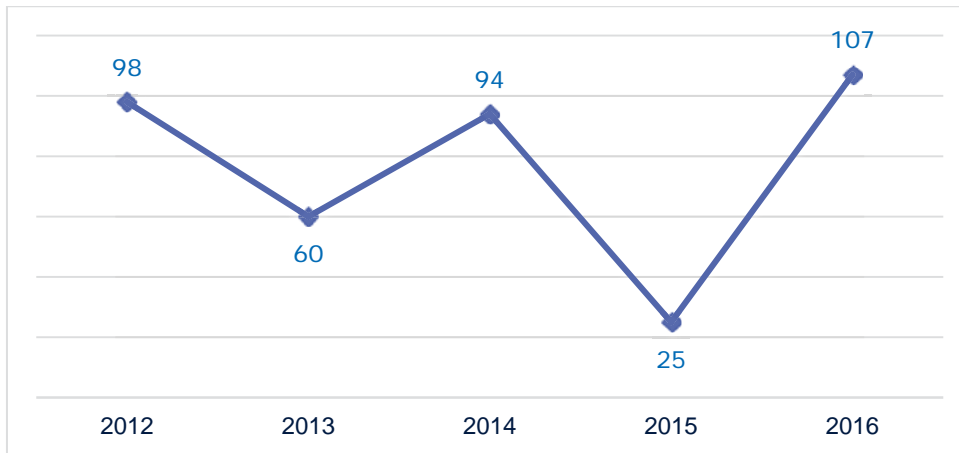
#### New own-initiative infringement cases

In 2016, the Commission opened own-initiative infringement cases over:

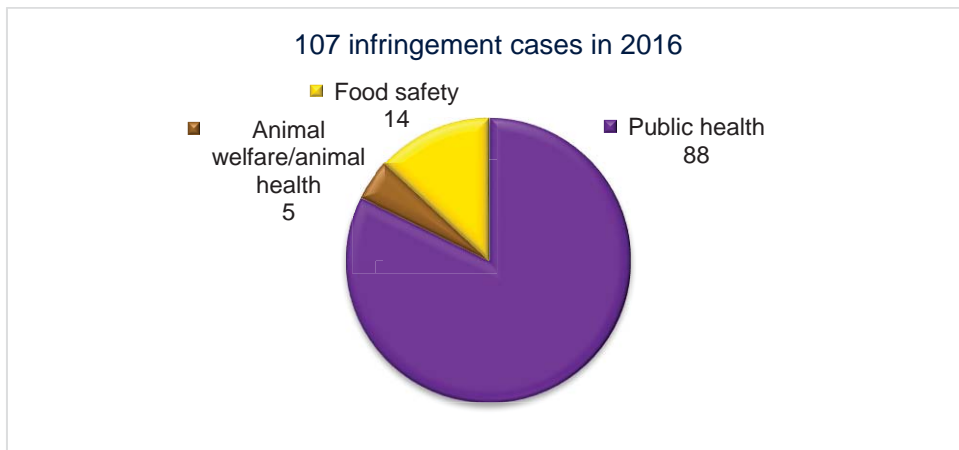
- public health
- food safety
- plant health.

### IV. INFRINGEMENT CASES

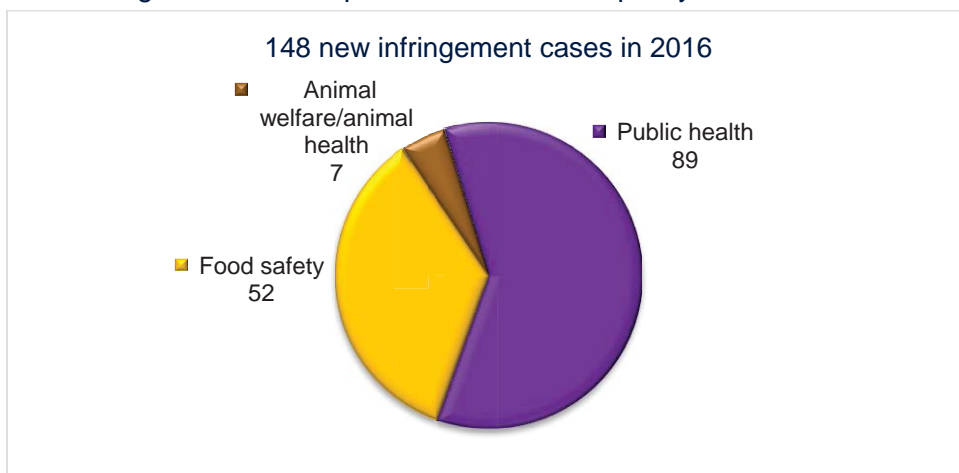
#### 1. Infringement cases open on 31 December (2012-2016)



#### 2. Infringement cases open on 31 December 2016: main policy sectors



#### 3. New infringement cases opened in 2016: main policy sectors

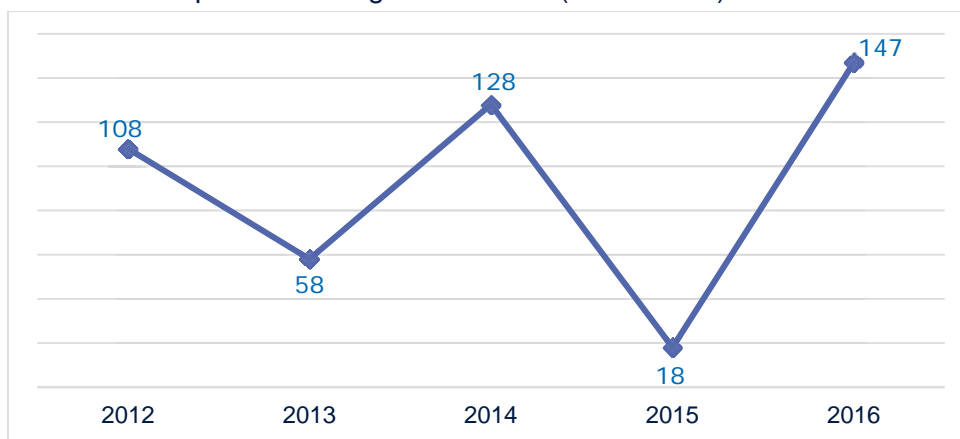


#### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 148 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
- *Ireland*: non-compliance of the national food safety control system as regards the production and marketing of live bivalve molluscs with the EU health standards;<sup>1</sup>
  - *Spain, Croatia, Cyprus, Luxembourg, Slovenia and Sweden*: failure to notify transposition measures for the Tobacco Directive;<sup>2</sup>
  - *Italy*: non-compliance with the Commission's Decision<sup>3</sup> on measures to prevent the introduction into and the spread within the EU of the plant bacterium *Xylella fastidiosa*;<sup>4</sup>
  - *Finland*: non-conformity of national legislation with the Directive on patients' rights in cross-border healthcare. The cases relates to the level of costs reimbursed by the Member State of affiliation to an insured person who receives cross-border healthcare.<sup>5</sup>
- 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.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2012- 2016)



<sup>1</sup> Regulation No [853/2004](#) and in Regulation No [854/2004](#).

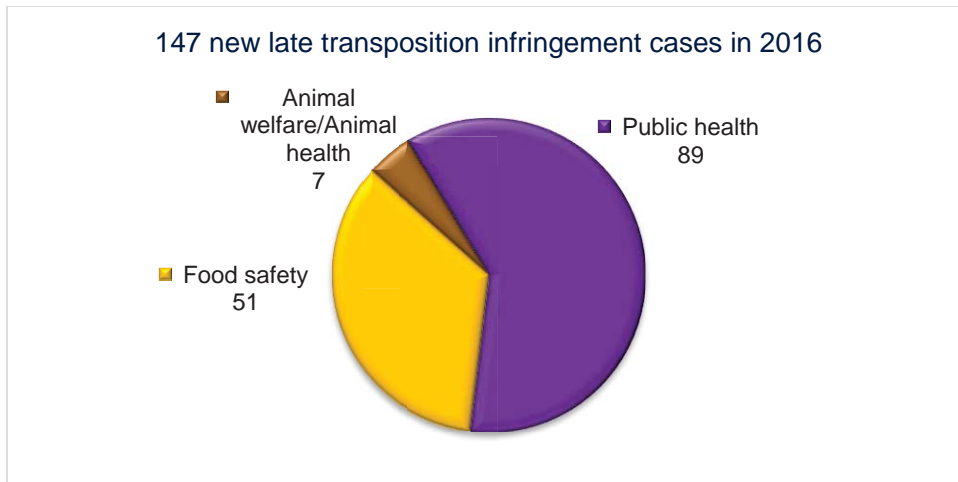
<sup>2</sup> Directive [2014/40/EU](#); [MEMO/16/4211](#).

<sup>3</sup> Commission Implementing [Decision \(EU\) 2015/789](#).

<sup>4</sup> *Xylella fastidiosa* is one of the most dangerous plant bacteria worldwide, causing a variety of diseases, with huge economic impact for agriculture; [MEMO/16/2490](#).

<sup>5</sup> Directive [2011/24/EU](#); [MEMO/16/1452](#).

## 2. New late transposition infringement cases opened in 2016: main policy sectors



## 3. Key infringement cases and referrals to the Court

- a) The Commission opened 147 cases for late transposition in 2016. Most concern:
  - the Directives on the quality and safety of imported human tissues and cells (52 cases);<sup>6</sup>
  - the Tobacco Products Directives (31 cases).<sup>7</sup>
- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

These concerned:

- *Poland*: non-conformity of national legislation with the Directive on the quality and safety of blood and blood components;<sup>8</sup>
- *Portugal and Finland*: failure to apply correctly the Directive on the protection of pigs as regards group housing of sows.<sup>9</sup>

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>10</sup>

There were no major Court rulings in 2016 in this area.

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Italy*: The Commission may require Member States to remove all plants capable of being infected by the *Xylella fastidiosa* bacterium, even when there are no symptoms of infection, when such plants are in the vicinity of plants already affected by the bacterium. This measure is proportionate to the objective of protecting plant health in the EU and is justified by the precautionary principle, taking into consideration the scientific evidence available to the Commission when the measure was adopted<sup>11</sup>;

<sup>6</sup> Directives [2015/565/EU](#) and [2015/566/EU](#).

<sup>7</sup> Directives [2014/40/EU](#); [2014/109/EU](#).

<sup>8</sup> Directive [2002/98/EC](#).

<sup>9</sup> Directive [2008/120/EC](#).

<sup>10</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>11</sup> Joined cases *Pesce and Others*, [C-78/16](#).

- *Germany*: The labelling, presentation and advertising of foodstuffs Directive<sup>12</sup> must be interpreted as meaning that each of the individual portions of honey presented in the form of portion-cups closed by an aluminium seal and packed in cartons supplied to mass caterers constitutes a 'pre-packaged foodstuff' where the mass caterers sell those portions separately or offer them for sale to the ultimate consumer as part of pre-prepared meals for an all-inclusive price<sup>13</sup>; and
- *Germany*: Regulation (EC) No 258/97 concerning novel foods and novel food ingredients, must be interpreted as meaning that the expression 'new primary molecular structure' relates to foods or food ingredients which were not used for human consumption in the territory of the European Union before 15 May 1997.<sup>14</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- checking the compliance of national transposition measures with the Cross-Border Healthcare and Tobacco Products Directives;<sup>15</sup>
- continuing to monitor plant health-related cases, in particular *Xylella fastidiosa* in Italy and the *Pinewood Nematode* in Portugal.

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<sup>12</sup> Directive [2000/13/EC](#).

<sup>13</sup> Breitsamer und Ulrich, [C-113/15](#).

<sup>14</sup> Davitas, [C-448/14](#).

<sup>15</sup> Directives [2011/24/EU](#) and [2014/40/EU](#).

## Internal market, industry, entrepreneurship and SMEs

*In 2016 new complaints received in the area of internal market, industry entrepreneurship and SMEs fell, while the number of new EU Pilot files was broadly stable. Infringement cases pending at the end of 2016 were more than double the level of a year earlier, with a parallel increase in new infringement procedures opened for late transposition of directives.<sup>1</sup>*

### I. COMPLAINTS

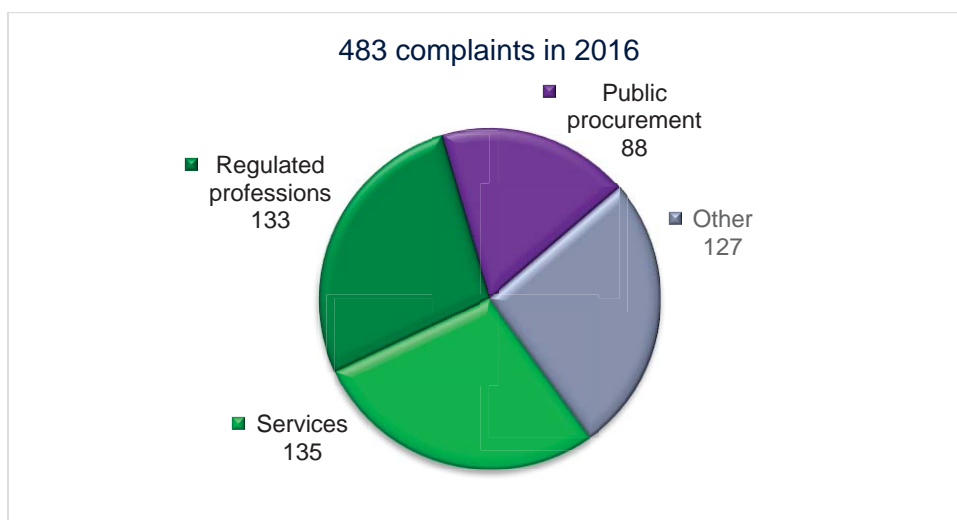
#### 1. New complaints received from members of the public (2015-2016)

The Commission received 483 complaints from the members of the public in the area of internal market, industry, entrepreneurship and SMEs.

#### 2. Public complaints open a year-end

527	>	Complaints open at end-2015
483	>	New complaints registered in 2016
379	>	Complaints handled in 2016
631	>	Complaints open at end-2016

#### 3. New complaints registered in 2016: main policy sectors



### II. EU PILOT

#### 1. New EU Pilot files (2015-2016)

In 2016 the Commission opened 111 new EU Pilot files in this area, against 107 in 2015.

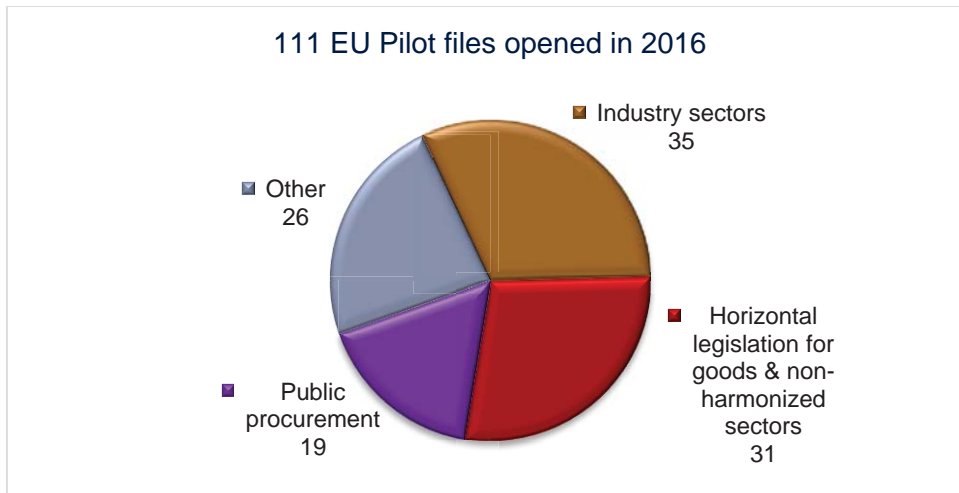
#### 2. EU Pilot files open at year-end<sup>2</sup>

At the end of 2016, 143 EU Pilot files remained open.

<sup>1</sup> The Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) was created on 1 January 2015 as part of a reorganisation of the Commission. Consequently historical data for this area are not available. An overview of the practical management of the Single Market is available at: [http://ec.europa.eu/internal\\_market/scoreboard/](http://ec.europa.eu/internal_market/scoreboard/).

<sup>2</sup> See footnote 1.

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



### 4. EU Pilot files: resolution rate for policies (2015-2016)

The combined resolution rate for internal market, industry, entrepreneurship and SMEs in 2016 was 62 %. The general rate for all policy areas was 72 %.

## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2016, the Commission opened own-initiative infringement cases over:

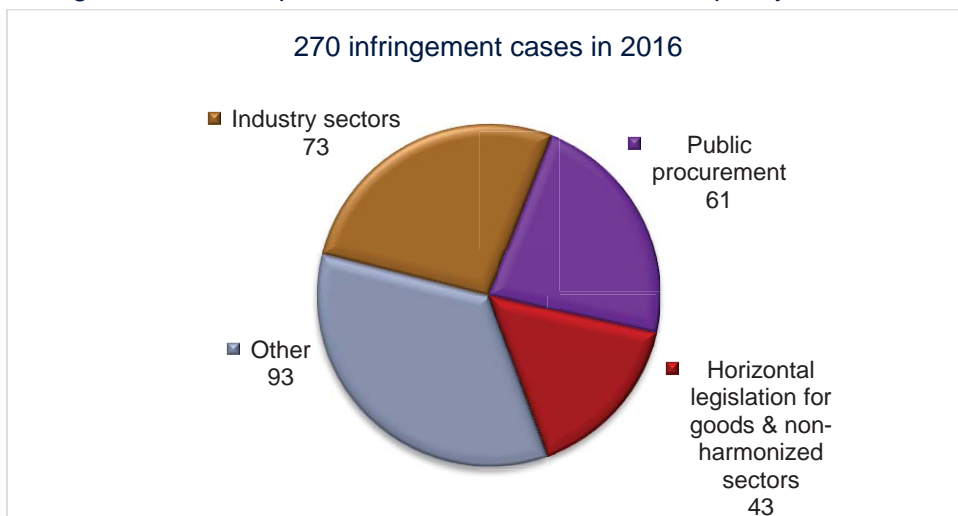
- the automotive and mobility industries (7 cases);<sup>3</sup>
- horizontal legislation for goods and non-harmonised sectors on mutual recognition and surveillance (1 case).

## IV. INFRINGEMENT CASES

### 1. Infringement cases open on 31 December (2015-2016)

There were 270 infringement cases open on 31 December 2016 in this area.

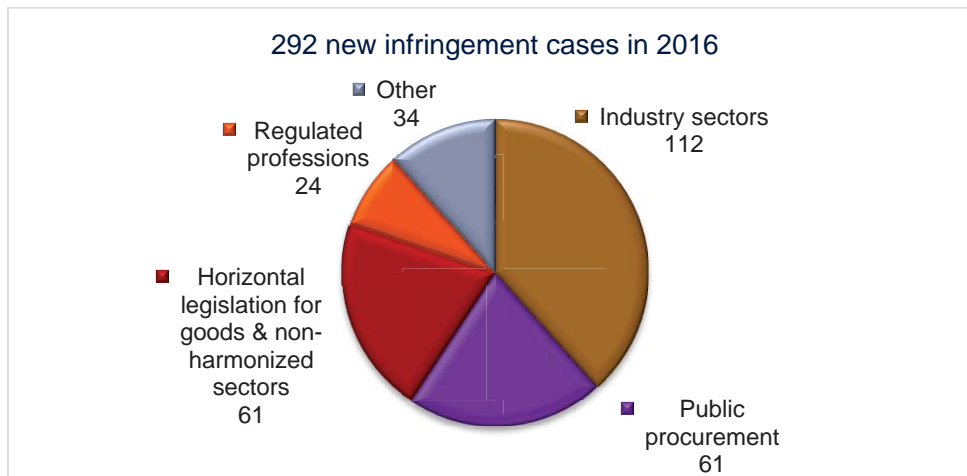
### 2. Infringement cases open on 31 December 2016: main policy sectors



<sup>3</sup> Directive [2007/46/EC](#) and Regulation [715/2007](#).



### 3. New infringement cases opened in 2016: main policy sectors



### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 292 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
- *Belgium, Denmark, Germany, Greece, Spain, Italy, Cyprus, Lithuania, Hungary, Austria, Poland*: excessive and unjustified obstacles in the area of professional services that run counter to the Services Directive;<sup>4</sup>
  - *Belgium, Bulgaria, the Czech Republic, Estonia, Spain, Ireland, Greece,, Croatia, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Finland, Sweden*: failure to transpose in full one or more of the three Directives on public procurement and concessions;<sup>5</sup>
  - *Czech Republic, Germany, Greece, Spain, Lithuania, Luxembourg, United Kingdom*: failure to fulfil the obligations under EU vehicle type approval legislation;<sup>6</sup>
  - *Germany*: limitation of approving certain motor vehicles to two specific technical testing centres, contrary to the Services Directive;<sup>7</sup>
  - *Greece*: excessive delays in the examination of applications for recognition of qualifications from other Member States;<sup>8</sup>
  - *Croatia*: discriminatory framework for the purchase of sport fishing licences to the disadvantage of non-residents, in breach of the Services Directive;<sup>9</sup>
  - *Slovakia*: incorrect implementation of the Remedies Directive.<sup>10</sup>
- b) The Commission referred two cases to the Court under Article 258 TFEU. They concern:
- *Czech Republic*: the condition of nationality laid down for the exercise of the profession of notary in the Czech legal system is discriminatory and constitutes a disproportionate restriction of the freedom of establishment.<sup>11</sup>
  - *Austria*: direct award of the security printing of official documents (such as passports, ID-cards, residence permits, driving licences) to the Austrian State

<sup>4</sup> Directive [2006/123/EC](#); [IP/16/323](#), [MEMO/16/319](#), [IP/16/3646](#) and [MEMO/16/3644](#).

<sup>5</sup> Directives [2014/23/EU](#), [2014/24/EU](#) and [2014/25/EU](#); [MEMO/16/1823](#).

<sup>6</sup> Directive [2007/46/EC](#) and Regulation [2007/715/EC](#); [IP/16/4214](#).

<sup>7</sup> Directive [2006/123/EC](#).

<sup>8</sup> Directive [2005/36/EC](#).

<sup>9</sup> Directive [2006/123/EC](#); [MEMO/16/3125](#).

<sup>10</sup> Directive [92/13/EEC](#); [MEMO/16/3125](#).

<sup>11</sup> *Commission v Czech Republic*, [C-575/16](#); [IP/16/322](#) and [MEMO/16/319](#).

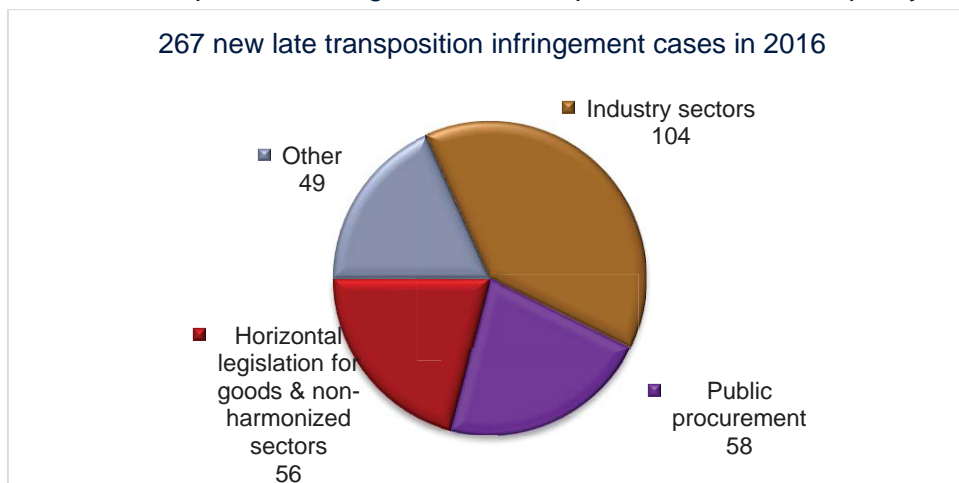
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2015- 2016)

There were 267 new late transposition infringement cases opened in 2016.

### 2. New late transposition infringement cases opened in 2016: main policy sectors



### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 267 cases for late transposition in 2016. Most concern:
- the three Directives on public procurement and concessions;<sup>13</sup>
  - legal metrology Directives;<sup>14</sup>
  - EU legislation on advanced engineering and manufacturing systems;<sup>15</sup>
  - EU legislation on explosives for civil use and defence-related products;<sup>16</sup>
  - the Directive amending EU legislation on the recognition of professional qualifications and the Internal Market Information System.<sup>17</sup>
- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

The Commission did not close any major infringement cases in 2016 in this area.

<sup>12</sup> Directives [92/50/EC](#) and [2004/18/EC](#); Commission v Austria, [C-187/16](#); [IP/15/6226](#).

<sup>13</sup> Directives [2014/23/EU](#), [2014/24/EU](#) and [2014/25/EU](#); [MEMO/16/1823](#).

<sup>14</sup> Directives [2014/31/EU](#), [2014/32/EU](#) and [2015/13/EU](#).

<sup>15</sup> Directives [2013/53/EU](#), [2014/29/EU](#), [2014/30/EU](#), [2014/33/EU](#), [2014/34/EU](#), [2014/35/EU](#), [2014/53/EU](#) and [2014/68/EU](#).

<sup>16</sup> Directives [2014/28/EU](#) and [2016/970/EU](#).

<sup>17</sup> Directive [2013/55/EU](#).

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>18</sup>

The Court ruled that:

- *Czech Republic* failed to fulfil its obligations concerning the free movement of goods by refusing to recognise the hallmarks of Waarborg Holland, the Netherlands' independent assay office for precious metals. Although in some cases the Member State is entitled not to recognise hallmarks affixed outside the EU by that assay office, a general and systematic refusal to recognise any of that office's hallmarks is a disproportionate measure;<sup>19</sup>
- *Germany* failed to fulfil its obligations under the Directive on the placing on the market of pyrotechnic articles.<sup>20</sup> This was because Germany provided, over and above the requirements of the Directive and notwithstanding a previous conformity assessment of pyrotechnic articles, that (i) those articles are to be subject to a specific national procedure ('the SprengV') before being placed on the market; and that (ii) pursuant to the SprengV, a national body is to have the power to review and, where required, to modify their instructions for use;<sup>21</sup>
- *Hungary*: 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,<sup>22</sup> unless the measure satisfies the cumulative conditions of non-discrimination, necessity and proportionality.<sup>23</sup>

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Belgium*: national legislation which prohibits retailers from selling tobacco products at a unit price lower than the price indicated by the manufacturer or importer on the revenue stamp affixed to those products, in so far as that price has been freely determined by the importer, is compatible with EU law;<sup>24</sup>
- *Belgium*: national legislation by a federated entity of a Member State is incompatible with EU law if it requires every undertaking established within the territory of that entity to draw up all the details on invoices relating to cross-border transactions exclusively in the official language of that entity, failing which those invoices are to be declared null and void by the national courts of their own motion.<sup>25</sup>
- *Germany*: imposing fixed prices for the sale by pharmacies of prescription-only medicines restricts the free movement of goods because of its greater impact on pharmacies established in other Member States. Imposing such price-fixing on foreign pharmacies is thus incompatible with EU law on the free movement of goods. It is not justified as it could not be proven to be an appropriate means to achieve the objective of protecting human health and life by ensuring a safe and high-quality supply of medicinal products;<sup>26</sup>
- *Greece*: in principle, EU law allows national authorities to prohibit collective redundancies. However, these rules must strike a fair balance between the protection of workers and employers' freedom to conduct a business. The legal criteria on the basis of which the authorities may oppose planned collective redundancies must therefore be formulated in

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<sup>18</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>19</sup> *Commission v Czech Republic*, [C-525/14](#).

<sup>20</sup> Directive [2007/23/EC](#).

<sup>21</sup> *Commission v Germany*, [C-220/15](#).

<sup>22</sup> Directive [2006/123/EC](#).

<sup>23</sup> *Commission v Hungary*, [C-179/14](#).

<sup>24</sup> *Etablissements Fr. Colruyt*, [C-221/15](#).

<sup>25</sup> *New Valmar*, [C-15/15](#), Court press release No [66/2016](#).

<sup>26</sup> *Deutsche Parkinson Vereinigung*, [C-148/15](#), Court press release No [113/2016](#).

specific and precise terms. Thus a national authorisation regime for collective redundancies would be incompatible with the Collective Redundancies Directive<sup>27</sup> if it deprived the Directive of its practical effect;<sup>28</sup>

- *Italy*: the Services Directive<sup>29</sup> also applies to maritime concessions;<sup>30</sup>
- *Austria*: 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 the respect of working conditions and requirements on quality, availability and performance;<sup>31</sup>
- *Poland*: 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;<sup>32</sup>
- *Slovenia*: when defining the concept of ‘undertaking’ under the Late Payment Directive<sup>33</sup> 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’ under 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 interests;<sup>34</sup>
- *United Kingdom*: the fee demanded for services licences was too high and 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;<sup>35</sup>
- *United Kingdom*: 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.<sup>36</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- monitoring the transposition of important Directives:
  - on the safety of toys, as regards formamide,<sup>37</sup> benzisothiazolinone,<sup>38</sup> and chloromethylisothiazolinone and methylisothiazolinone;<sup>39</sup>
  - on the maximum allowable pressure of aerosol dispensers;<sup>40</sup>
- following up expected Court judgments on the Late Payment Directive;<sup>41</sup>
- continuing to follow very closely national authorities’ enforcement of currently applicable EU rules in the automobile sector.

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<sup>27</sup> Directive [98/59/EC](#).

<sup>28</sup> AGET Iraklis, [C-201/15](#) and Court press release No [143/2016](#).

<sup>29</sup> Directive [2006/123/EC](#).

<sup>30</sup> Joined cases Promoimpresa, [C-458/14](#) and Melis and Others, [C-67/15](#), Court press release No [77/2016](#).

<sup>31</sup> Directive [97/67/EC](#), DHL Express (Austria), [C-2/15](#).

<sup>32</sup> Directive [2015/1535/EU](#), M. and S., [C-303/15](#).

<sup>33</sup> Directive [2000/35/EC](#).

<sup>34</sup> Nemec, [C-256/15](#).

<sup>35</sup> [2006/123/EC](#), Hemming and Others, [C-316/15](#), Court press release No [127/2016](#).

<sup>36</sup> European Federation for Cosmetic Ingredients, [C-592/14](#), Court press release No [105/2016](#).

<sup>37</sup> Directive [2015/2115/EU](#).

<sup>38</sup> Directive [2015/2116/EU](#).

<sup>39</sup> Directive [2015/2117/EU](#).

<sup>40</sup> Directive [2016/2037/EU](#).

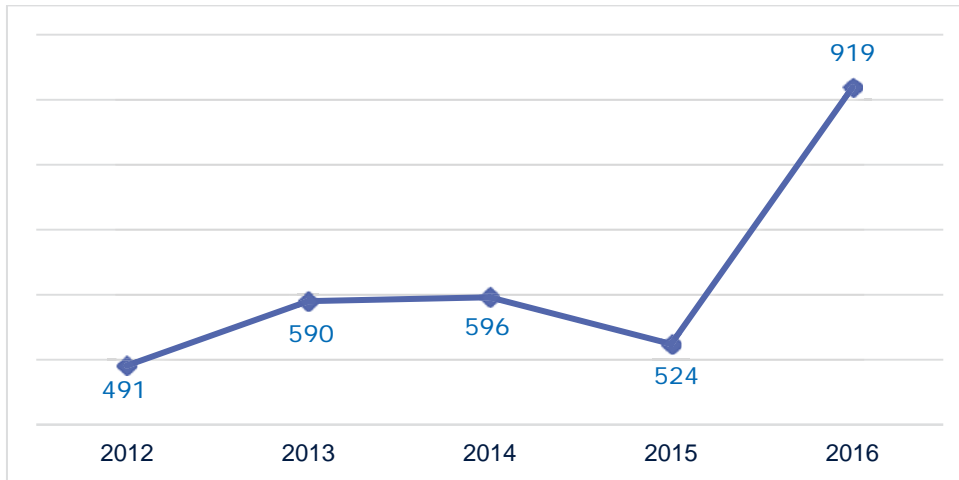
<sup>41</sup> Directive [2000/35](#), IOS Finance EFC, [C-555/14](#) and [C-229/16](#).

Justice and consumers

*In 2016 complaints in the area of justice and consumers jumped to their highest level ever. Infringement cases pending at the end of the year and new late transposition cases rose again after easing back in 2015. By contrast, new EU Pilot files fell by more than half to their lowest level in 5 years.*

I. COMPLAINTS

1. New complaints received from members of the public (2012-2016)



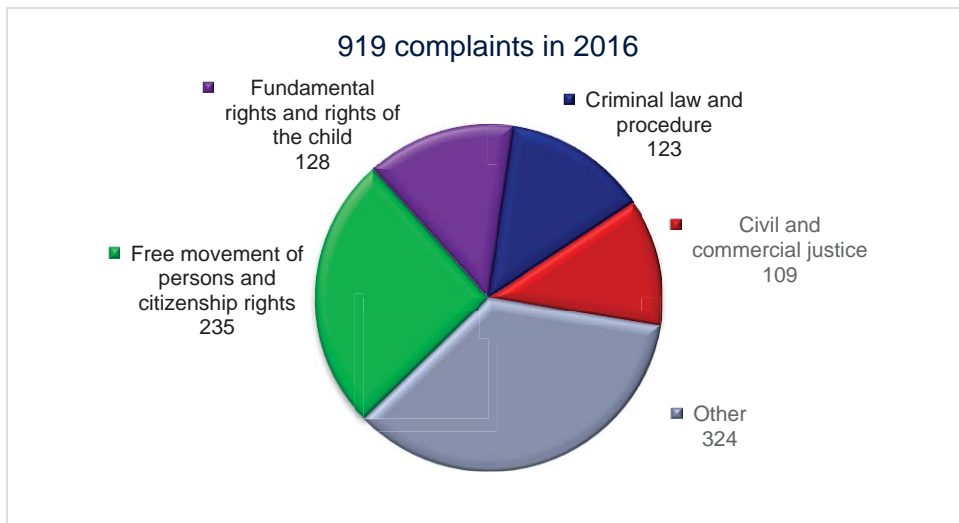
2. Public complaints open a year-end

- 557 > Complaints open at end-2015
- 919 > New complaints registered in 2016
- 754 > Complaints handled in 2016

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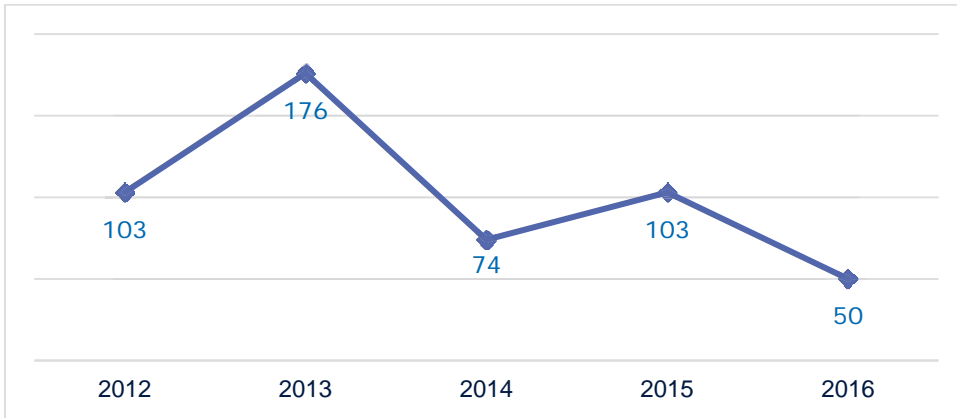
- = 722 > Complaints open at end-2016

3. New complaints registered in 2016: main policy sectors



## II. EU PILOT

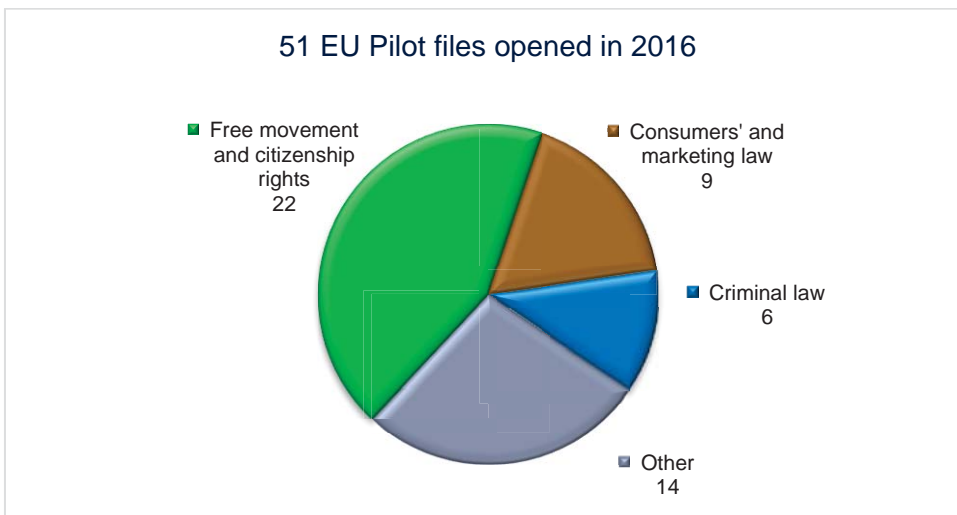
### 1. New EU Pilot files (2012-2016)



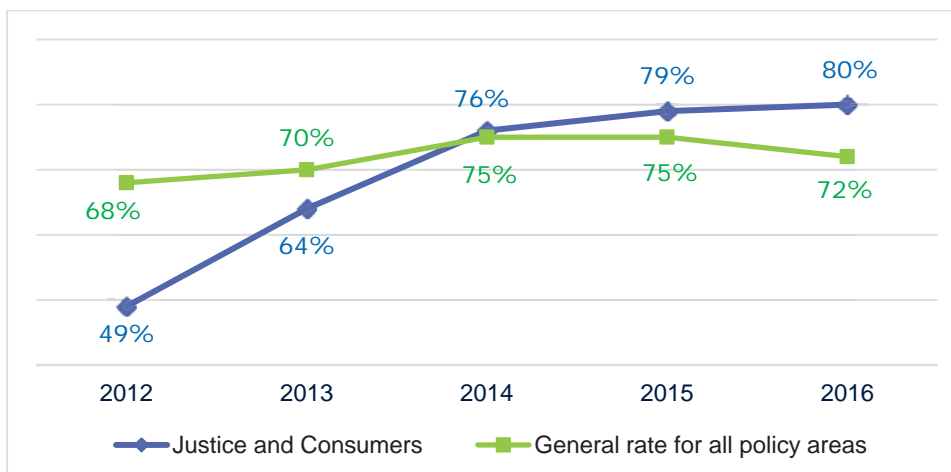
### 2. EU Pilot files open at year-end

At the end of 2016, 157 EU Pilot files remained open.

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



### 4. EU Pilot files: resolution rate for policies (2012-2016)



### III. OWN-INITIATIVE CASES

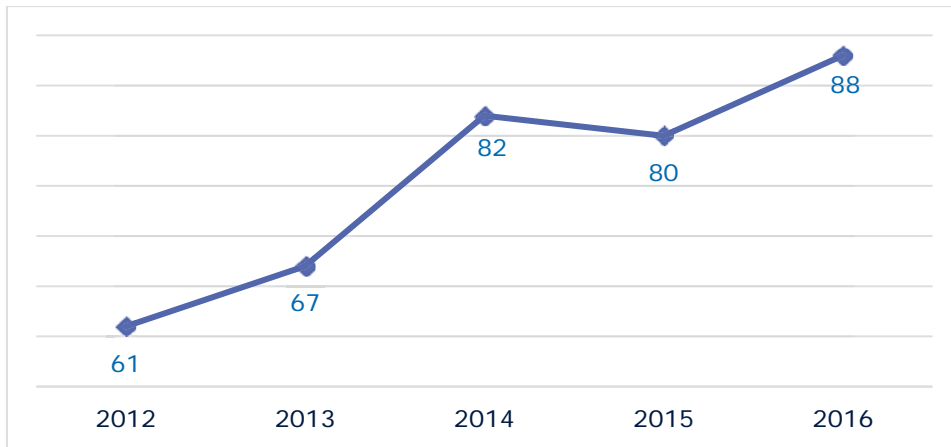
#### New own-initiative infringement cases

In 2016, the Commission opened own-initiative infringement cases over:

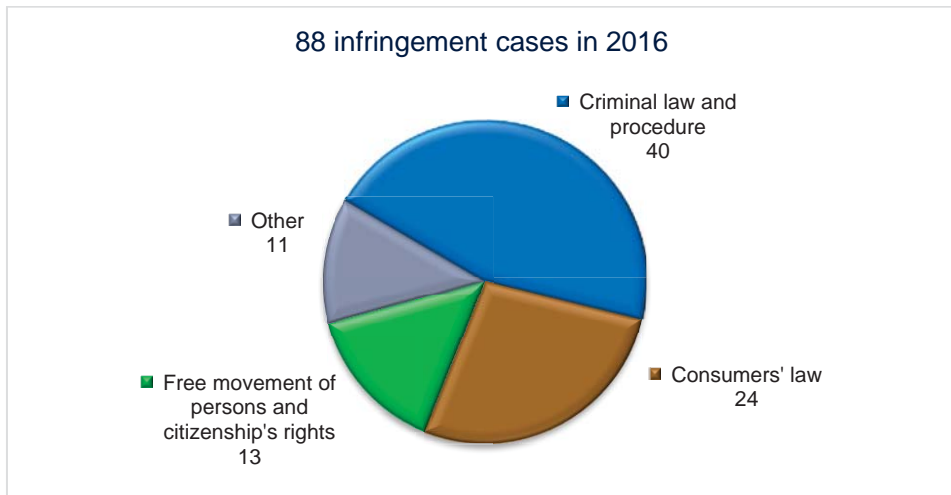
- incomplete or incorrect transposition of the Unfair Commercial Practices Directive,<sup>1</sup> the Consumer Rights Directive<sup>2</sup> and the Directive on alternative dispute settlement in consumer cases;<sup>3</sup>
- discrimination against Roma children in education.

### IV. INFRINGEMENT CASES

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

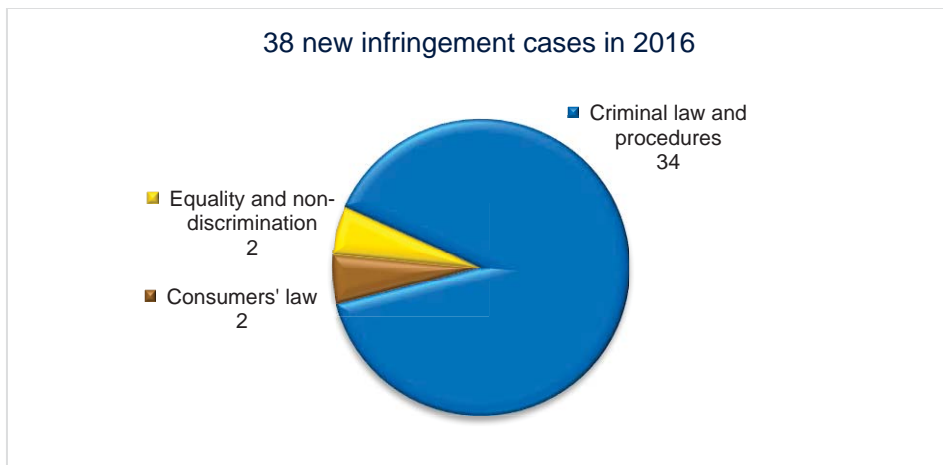


#### 2. Infringement cases open on 31 December 2016: main policy sectors



<sup>1</sup> Directive [2005/29/EC](#).  
<sup>2</sup> Directive [2011/83/EU](#).  
<sup>3</sup> Directive [2013/11/EU](#).

### 3. New infringement cases opened in 2016: main policy sectors

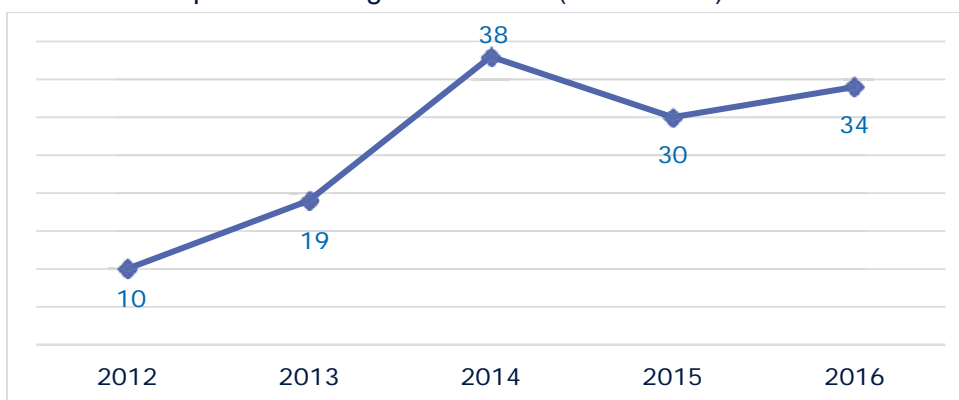


### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 38 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
- *Belgium*: non-communication of national measures transposing the European Protection Order Directive;<sup>4</sup>
  - *Spain*: non-compliance of the national rules and the case law of the Spanish Supreme Court on mortgage enforcement with the Directive on unfair terms in consumer contracts;<sup>5</sup>
  - *Italy*: non-conformity with the Directive on equal treatment for men and women;<sup>6</sup> the national legislation provides for 'early retirement' after a number of years of financial contributions, which differ depending on the sex of the worker;
  - *Lithuania*: non-communication of national measures transposing the Directive on interpretation and translation during criminal proceedings;<sup>7</sup>
  - *Hungary*: discrimination against Roma children in education.<sup>8</sup>
- 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.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2012- 2016)



<sup>4</sup> Directive [2011/99/EU](#); [MEMO/16/2490](#).

<sup>5</sup> Directive [93/13/EEC](#); [MEMO/16/1452](#).

<sup>6</sup> Directive [79/7/EEC](#).

<sup>7</sup> Directive [2010/64/EU](#); [MEMO/16/3644](#).

<sup>8</sup> [MEMO/16/1823](#).



2. New late transposition infringement cases opened in 2016: main policy sectors  
All 34 new late transposition cases were opened in criminal law and procedures sector.
3. Key infringement cases and referrals to the Court
  - a) The Commission opened 34 cases for late transposition in 2016. They concern:
    - the Directive on sanctions for market abuse (18 cases);<sup>9</sup>
    - the Victims' Rights Directive (16 cases).<sup>10</sup>
  - b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

These concerned:

- *Belgium*: refusal to register the double surname for children born to a parent of Belgian nationality and a parent with another EU nationality;
- *Malta*: discriminatory application of water and energy tariffs;
- *Slovenia*: the independence of the national equality body;<sup>11</sup>
- *Slovakia* and *Spain*: 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.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>12</sup>

The Court ruled that:

- *Italy* has failed to fulfil its obligations under EU law by failing to guarantee just and appropriate compensation for victims of all violent intentional crimes committed in cross-border situations. The Directive on compensation to victims of crime<sup>13</sup> requires that all violent intentional crimes, as defined in the national legislation of each Member State, should give access to compensation from the state. Member States may not limit the scope of the compensation scheme for victims to only certain violent intentional crimes. The Court also confirmed that the principle of the prohibition of discrimination on the basis of nationality should be observed as regards access to compensation for the victims of crime in cross-border situations.<sup>14</sup>

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Belgium*: under the Consumer Sales Directive,<sup>15</sup> the concept of 'seller' also covers a trader acting as an intermediary on behalf of a private individual if the trader has not duly informed the consumer of the fact that the owner of the goods sold is a private individual. The Court's clarifications on intermediaries seem relevant for other areas of consumer law as well;<sup>16</sup>
- *Bulgaria*: the custodial sentence of a prisoner may not be reduced, when he is transferred from one Member State to another, by reason of time spent working in prison in the first

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<sup>9</sup> Directive [2014/57/EU](#).

<sup>10</sup> Directive [2012/29/EU](#).

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

<sup>12</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>13</sup> Directive [2004/80/EC](#).

<sup>14</sup> Commission v Italy, [C-601/14](#) and Court press release [No 109/16](#).

<sup>15</sup> Directive [1999/44/EC](#).

<sup>16</sup> Wathelet, [C-149/15](#).

Member State if that Member State has not, under its national law, granted such a reduction in sentence;<sup>17</sup>

- *Germany*: Member States may exclude nationals of other Member States from social assistance during the first 3 months of residence. Such a refusal does not presuppose an assessment of the individual situation of the person concerned;<sup>18</sup>
- *Germany*: the recognition of freely chosen forenames and the surname (acquired legally in another Member State) may be refused in order to ensure equality before the law;<sup>19</sup>
- *Germany*: 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 Member State where the warrant was issued;<sup>20</sup>
- *Spain*: national case-law cannot temporally limit the restitutory effects connected with a finding of unfairness by a court, in respect of a clause contained in a contract concluded between a consumer and a seller or supplier, to amounts overpaid under such a clause after the delivery of the decision in which the finding of unfairness is made. The case concerned a decision by the Spanish Supreme Court of 2013 which had found so-called floor clauses in loan contracts concluded by consumers to be unfair, but had ruled that this finding would have effect only from the date of its judgment, thereby excluding restitution claims by consumers for overpayments made in the past;<sup>21</sup>
- *Spain*: Member States' may adopt or retain in force stricter measures to prevent money laundering and terrorist financing than the rules laid down in the Directive on the prevention of the use of the financial system for money laundering and terrorist financing.<sup>22</sup> These measures, however, must be justified by the level of risk and must be proportionate;<sup>23</sup>
- *Spain and UK*: 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. Moreover, 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.<sup>24</sup>
- *Latvia*: a Member State is not required to grant every EU citizen who has moved within its territory the same protection against extradition as that granted to its own nationals. However, before extraditing the citizen, the Member State concerned must give priority to the exchange of information with the Member State of origin and allow that Member State to request the citizen's surrender for the purposes of prosecution;<sup>25</sup>
- *Austria*: 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 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;<sup>26</sup>
- *Poland*: 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

<sup>17</sup> Ognyanov, [C-554/14](#) and Court press release [No 117/16](#).

<sup>18</sup> García-Nieto and Others, [C-299/14](#), Court press release [No 18/16](#).

<sup>19</sup> Bogendorff von Wolffersdorff, [C-438/14](#), Court press release [No 119/16](#).

<sup>20</sup> Aranyosi and Căldăraru, joined cases [C-404/15](#) and [C-659/15](#), Court press release [No 36/16](#).

<sup>21</sup> Gutiérrez Naranjo, joined cases [C-154/15](#), [C-307/15](#) and [C-308/15](#).

<sup>22</sup> Directive [2005/60/EC](#).

<sup>23</sup> Safe Interenvios, [C-235/14](#).

<sup>24</sup> Rendón Marín and CS, joined cases [C-165/14](#) and [C-304/14](#) and Court press release [No 95/16](#).

<sup>25</sup> Petruhhin, [C-182/15](#), Court press release [No 84/16](#).

<sup>26</sup> Verein für Konsumenteninformation, [C-191/15](#).

93/13/EEC<sup>27</sup> 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;

- *Slovakia*: a lender must include in a consumer credit agreement all the information required under the Directive on consumer credit.<sup>28</sup> Failure to do so may be penalised by Member States by depriving the lender of an entitlement to interest and charges. Such a penalty is permitted where such information covers matters which, if not included, prevents the consumer from assessing the full extent of his contractual liability as the lack of such information may compromise the consumer's ability to assess the extent of his liability.<sup>29</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- closely monitoring that Member States transpose on time:
  - the Directive on the European Investigation Order in criminal matters;<sup>30</sup>
  - the Directive on the prevention of the use of the financial system for money laundering or terrorist financing;<sup>31</sup>
- checking that Member States correctly transpose:
  - the Victims' Rights Directive;<sup>32</sup>
  - the Framework Decision on the European arrest warrant;<sup>33</sup>
  - the Directive on payment accounts.<sup>34</sup>

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<sup>27</sup> Directive [93/13/EEC](#).

<sup>28</sup> Directive [2008/48/EC](#).

<sup>29</sup> Home Credit Slovakia, [C-42/15](#) and Court press release [No 56/16](#).

<sup>30</sup> Directive [2014/41/EU](#).

<sup>31</sup> Directive [2015/849/EU](#).

<sup>32</sup> Directive [2012/29/EU](#).

<sup>33</sup> Framework Decision [2002/584/JHA](#).

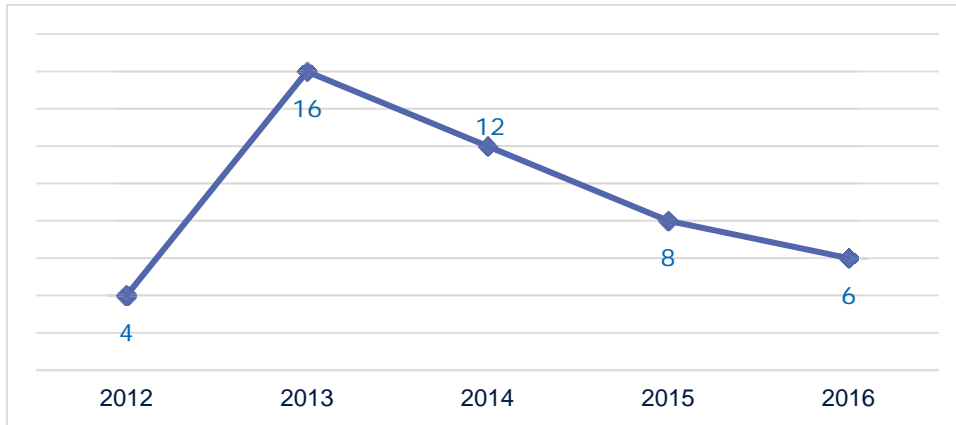
<sup>34</sup> Directive [2014/92/EU](#).

Maritime affairs and fisheries

In 2016 new complaints in the area of maritime affairs and fisheries continued to drop. The number of new EU Pilot files was only marginally lower than their 2015 level. New infringement cases rose.

I. COMPLAINTS

1. New complaints received from members of the public (2012-2016)



2. Public complaints open at year-end

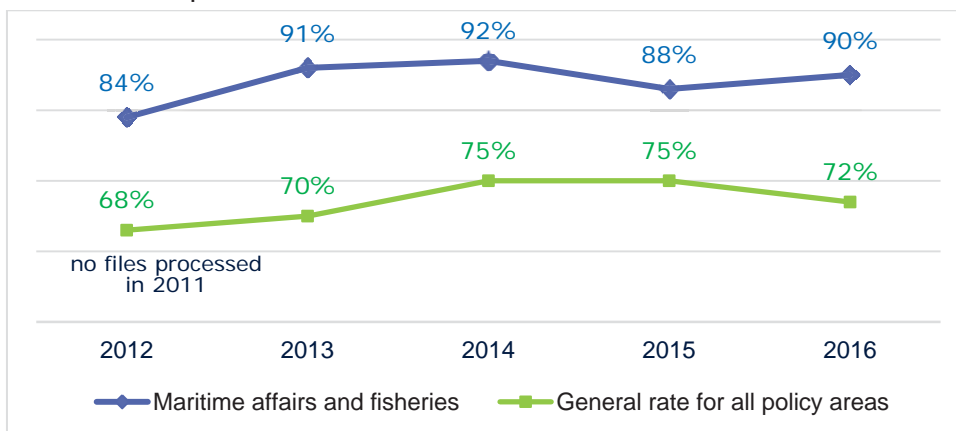
20	>	Complaints open at end-2015
6	>	New complaints registered in 2016
9	>	Complaints handled in 2016
<hr/>		
= 17	>	Complaints open at end-2016

I. EU PILOT

1. EU Pilot files open at year-end

There were 15 EU Pilot files registered in 2016, and 27 EU Pilot files remained open at end-2016.

2. EU Pilot files: policies' combined resolution rate in 2012-2016



## II. OWN-INITIATIVE CASES

### New own-initiative infringement cases in 2016

In 2016, the Commission opened own-initiative infringement cases over:

- non-compliance with the fisheries control obligations, in particular the enforcement requirements for serious infringements of the common fisheries policy rules;
- non-compliance with the obligations undertaken in the framework of international fisheries management organisations;
- non-respect of the EU's exclusive competence for the conservation of marine biological resources.

## III. INFRINGEMENT CASES

### Key infringement cases and referrals to the Court

- a) The Commission opened nine new infringement cases in 2016. These concern:
  - *Bulgaria, Greece, Spain, Croatia, Cyprus, France, Lithuania, Finland*: non-communication of national measures transposing the Maritime Spatial Planning Directive.<sup>1</sup>
  - *Italy*: fishing activities of Italian-flagged vessels in the waters under the jurisdiction of Guinea-Bissau and The Gambia in violation of EU provisions and the fisheries partnership agreements.
- 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. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

This concerned:

- *Spain*: non-compliance with the Mediterranean Regulation regarding the obligation to adopt management plans for fisheries conducted by dredges.<sup>2</sup>

## V. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>3</sup>

There were no major Court rulings in 2016 in this area.

### 2. Preliminary rulings

There were no major preliminary rulings in 2016 in this area.

## VI. OUTLOOK

### Important implementation work in 2016 includes:

- giving particular attention to the complete and correct transposition by the Member States of the Maritime Spatial Planning Directive;<sup>4</sup>
- continuing the evaluation of the impact of the Control Regulation, to determine to what extent this legal act has achieved its general objective;<sup>5</sup>

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<sup>1</sup> Directive [2014/89/EU](#).

<sup>2</sup> Regulation [\(EC\) No 1967/2006](#).

<sup>3</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>4</sup> Directive [2014/89/EU](#).

- ensuring appropriate follow-up to the recommendations formulated in the context of the assessment of the Member States' sanctioning systems for contraventions to the common fisheries policy rules; particular focus will be put on how to improve the effectiveness of the sanctioning systems and how to prioritise investigations of the deficiencies found;
- where appropriate, addressing by means of action plans certain systemic irregularities in Member States' fisheries control systems, in accordance with the Control Regulation;<sup>6</sup>
- giving particular attention to the implementation of the constituent components of the common fisheries policy and more specifically to the application of the landing obligation set out in the basic common fisheries policy Regulation.<sup>7</sup>

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<sup>5</sup> Regulation [\(EC\) No 1224/2009](#).

<sup>6</sup> Regulation [\(EC\) No 1224/2009](#).

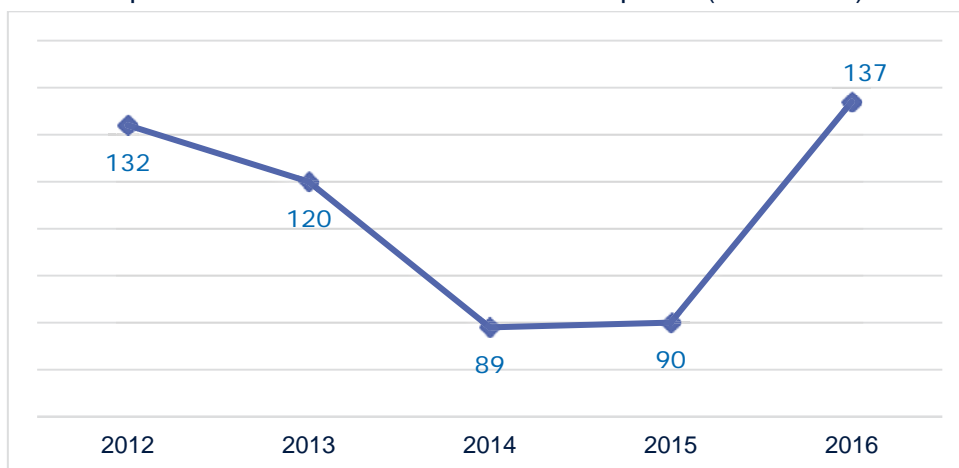
<sup>7</sup> Regulation [\(EU\) No 1380/2013](#).

## Migration and home affairs

*In 2016 the numbers of new complaints and pending infringement cases in the area of migration and home affairs both rose quite steeply to their highest levels for 5 years. At the same time, new EU Pilot files dropped sharply and new late transposition cases slightly decreased.*

## I. COMPLAINTS

## 1. New complaints received from members of the public (2012-2016)



## 2. Public complaints open a year-end

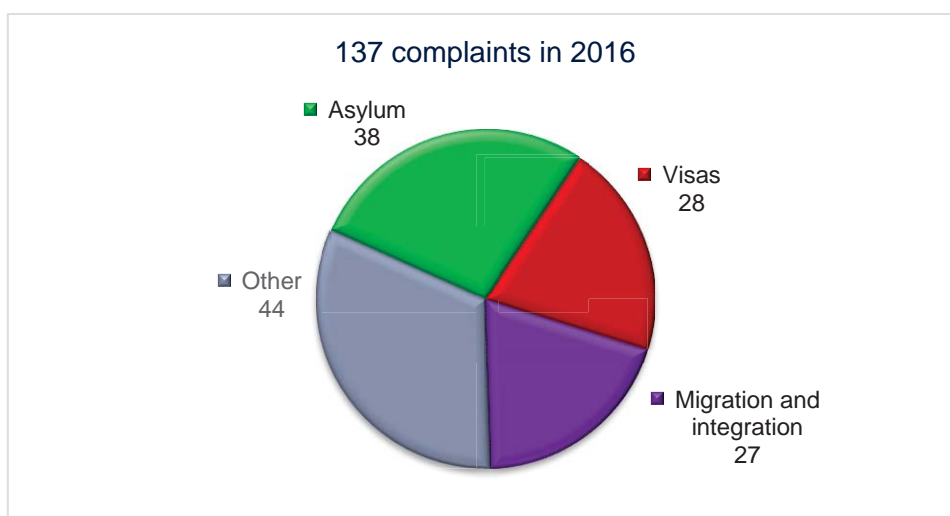
91 > Complaints open at end-2015

137 > New complaints registered in 2016

128 > Complaints handled in 2016

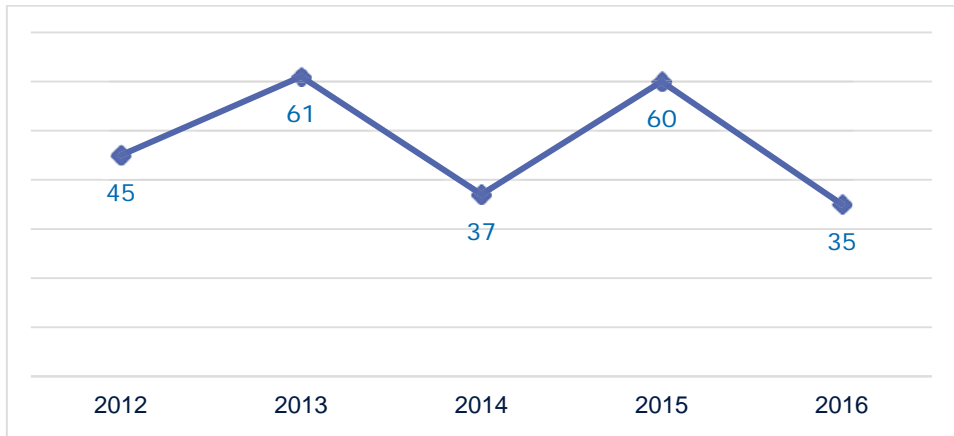
137  
= 100 > Complaints open at end-2016

## 3. New complaints registered in 2016: main policy sectors



## II. EU PILOT

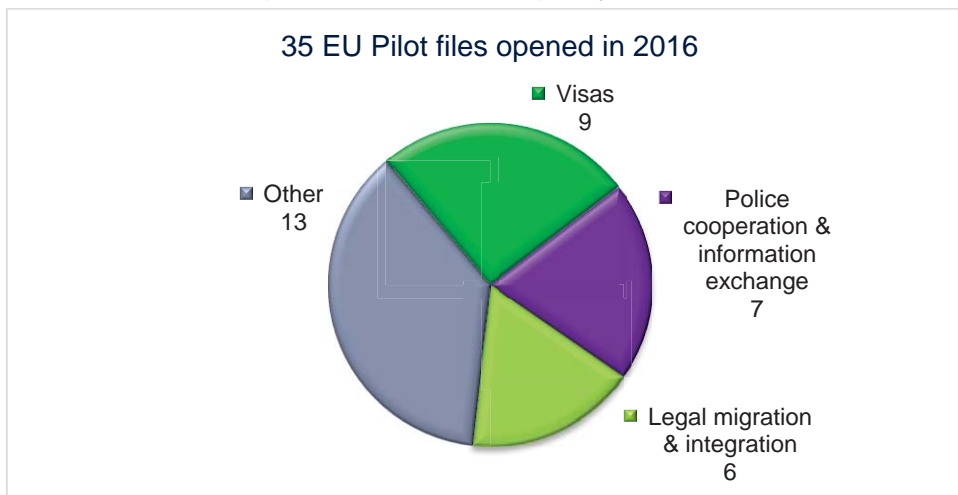
### 1. New EU Pilot files (2012-2016)



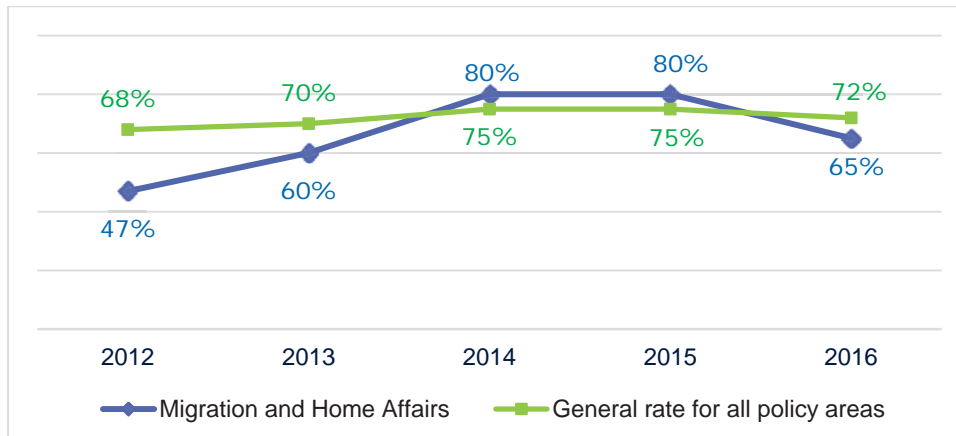
### 2. EU Pilot files open at year-end

At the end of 2016, 54 EU Pilot files remained open.

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



### 4. EU Pilot files: resolution rate for policies (2012-2016)





### III. OWN-INITIATIVE CASES

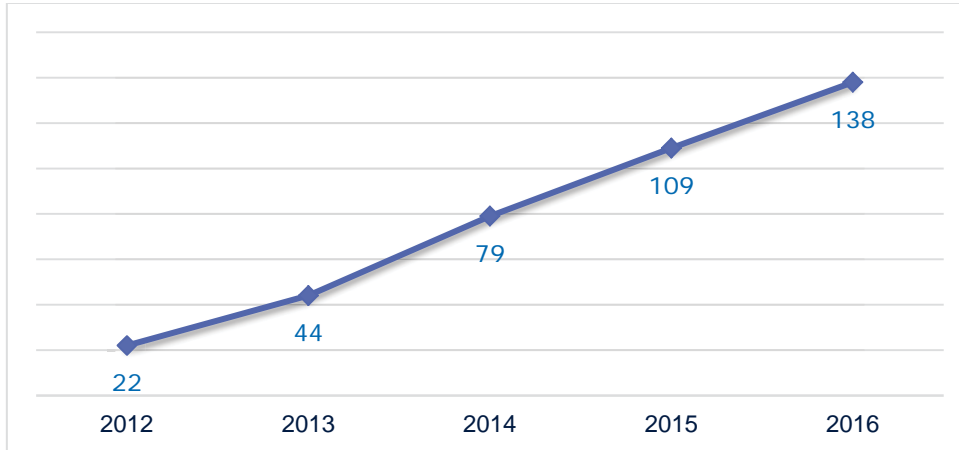
#### New own-initiative infringement cases

In 2016, the Commission opened own-initiative infringement cases over:

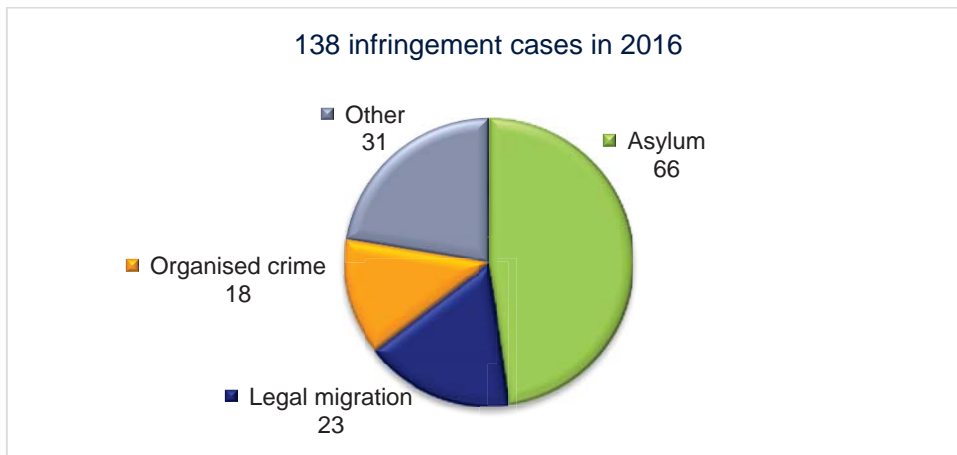
- disproportionate charges levied for residence permits.

### IV. INFRINGEMENT CASES

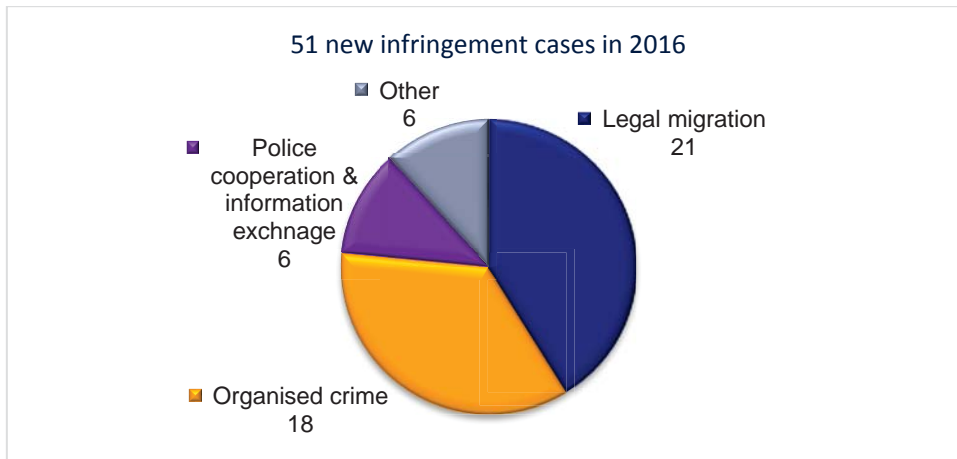
#### 1. Infringement cases open on 31 December (2012-2016)



#### 2. Infringement cases open on 31 December 2016: main policy sectors



#### 3. New infringement cases opened in 2016: main policy sectors

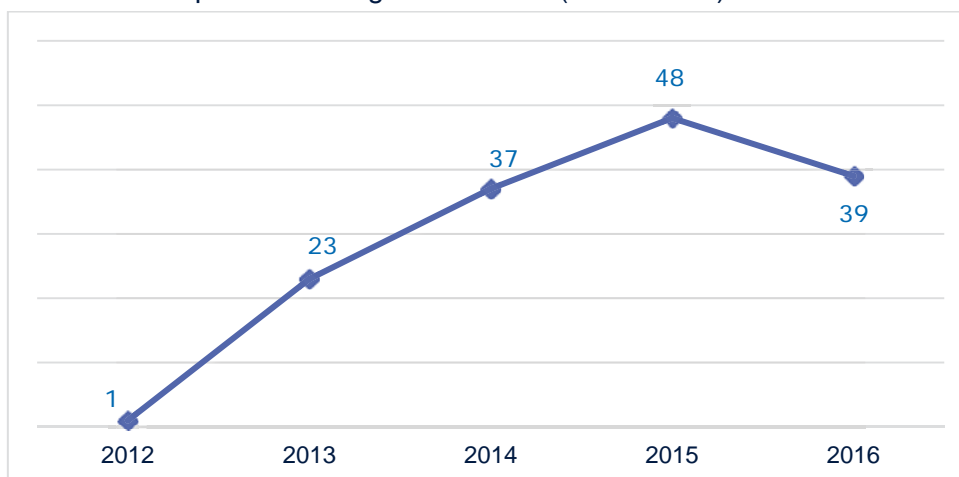


#### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 51 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
- *Belgium, Bulgaria and Ireland*: incorrect implementation of the Directive on attacks against information systems;<sup>1</sup>
  - *Bulgaria*: incorrect implementation of the Directive on the status of third-country nationals who are long-term residents by imposing disproportionate charges for resident permits;<sup>2</sup>
  - *Germany and Greece*: non-communication of national measures transposing the Asylum Procedures and Reception Conditions Directives;<sup>3</sup>
  - *Ireland, Greece, Croatia, Italy and Portugal*: non-compliance with the Prüm Decisions on information-sharing to combat terrorism and serious crime;<sup>4</sup>
  - *Spain, France, Cyprus, Luxembourg, Romania*: non-compliance with the Regulation on the marketing and use of explosives precursors;<sup>5</sup>
  - *Greece, Spain and Italy*: non-conformity of national legislation with the Return Directive;<sup>6</sup>
  - *Italy*: non-communication of national measures transposing the Long-Term Residents Directive;<sup>7</sup>
  - *Luxembourg*: 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.<sup>8</sup>
- 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.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2012- 2016)



<sup>1</sup> Directive [2013/40/EU](#); [MEMO/16/4211](#).

<sup>2</sup> Directive [2003/109/EC](#).

<sup>3</sup> Directives [2013/32/EU](#) and [2013/33/EU](#).

<sup>4</sup> Council Decisions [2008/615/JHA](#) and [2008/616/JHA](#); [MEMO/16/3125](#).

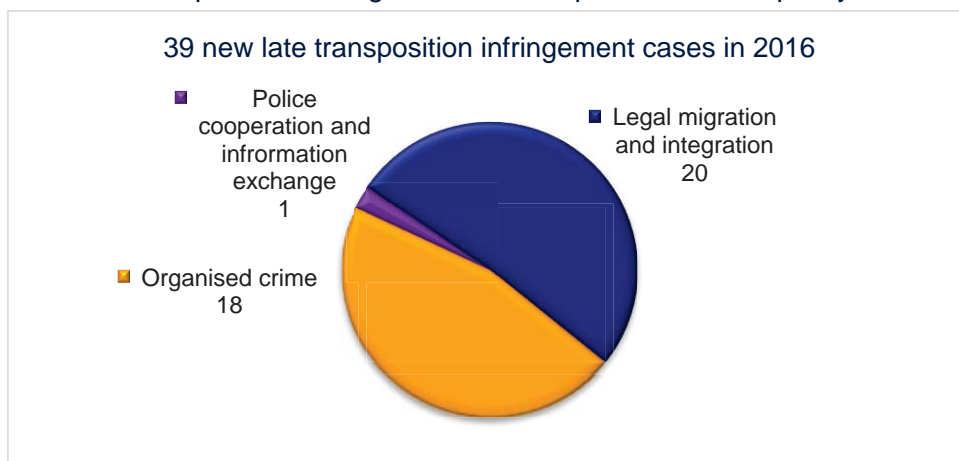
<sup>5</sup> Regulation (EU) No 98/2013; [MEMO/16/3125](#).

<sup>6</sup> Directive [2008/115/EC](#).

<sup>7</sup> Directive [2011/51/EU](#).

<sup>8</sup> Council Framework Decision [2006/960/JHA](#).

## 2. New late transposition infringement cases opened in 2016: policy sectors



## 3. Key infringement cases and referrals to the Court

- a) The Commission opened 39 cases for late transposition in 2016. Most concern:
  - the Directive on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (20 cases);<sup>9</sup>
  - the Directive on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (18 cases).<sup>10</sup>
- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

These concerned:

- *Greece, Cyprus and Italy*: failure to implement the Eurodac Regulation, which sets up an EU asylum fingerprint database;<sup>11</sup>
- *Greece and Slovenia*: non-communication of national measures transposing the Directive on attacks against information systems.<sup>12</sup>

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>13</sup>

There were no major Court rulings in 2016 in this area.

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Germany*: the Qualification Directive<sup>14</sup> does not prevent beneficiaries of subsidiary protection status from being subject to a residence condition to promote their integration where they are not in a comparable situation to non-EU citizens;<sup>15</sup>

<sup>9</sup> Directive [2014/36/EU](#).

<sup>10</sup> Directive [2014/42/EU](#).

<sup>11</sup> Regulation (EU) [603/2013](#); [MEMO/16/4211](#).

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

<sup>13</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>14</sup> Directive [2011/95/EU](#).

- *Ireland*: the principle of effectiveness must be interpreted as precluding a national procedural rule which requires an application for subsidiary protection status to be made within 15 working days of notification, by the competent authority, that an applicant whose asylum application has been rejected may make an application for subsidiary protection;<sup>16</sup>
- *Spain*: a Member State may refuse an application for family reunification if the sponsor does not have sufficient, stable and regular resources to maintain himself and the members of his family without recourse to the social assistance system of that Member State. Such a decision could be based on the prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources in the year following the date of submission of the application for family reunification. The assessment is based on the pattern of the sponsor's income in the 6 months preceding the date of the application;<sup>17</sup>
- *Hungary*: 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;<sup>18</sup>
- *Netherlands*: the Reception Conditions Directive<sup>19</sup> 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;<sup>20</sup>
- *Sweden*: 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 Regulation<sup>21</sup> concerning an absence of at least 3 months from the territory of the Member State concerned.<sup>22</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- ensuring the full and correct implementation by the Member States of instruments identified as priorities under the European Agenda on Security. This includes:
  - the Regulation on explosives precursors;<sup>23</sup>
  - the 'Prüm' system;<sup>24</sup>
  - the Framework Decision on the 'Swedish initiative' on simplifying the exchange of information and intelligence between law enforcement authorities of the EU Member States;<sup>25</sup>
  - the Framework Decision on accreditation of forensic service providers carrying out laboratory activities;<sup>26</sup> and
  - the Directives on combating the sexual abuse and sexual exploitation of children and child pornography<sup>27</sup> and on attacks against information systems.<sup>28</sup>

<sup>15</sup> Kreis Warendorf v. Ibrahim Alo and Amira Osso v. Hannover Region, joined cases [C-443/14](#) and [C-444/14](#).

<sup>16</sup> Danqua, [C-429/15](#).

<sup>17</sup> Mimoun Khachab, [C-558/14](#).

<sup>18</sup> PPU - Mirza, [C-695/15](#).

<sup>19</sup> Directive [2013/33/EU](#).

<sup>20</sup> Directive [2008/115/EC](#); J.N., [C-601/15](#).

<sup>21</sup> Article 19(2) of Regulation [\(EU\) 604/2013](#).

<sup>22</sup> Karim, [C-155/15](#).

<sup>23</sup> Regulation (EU) No [98/2013](#).

<sup>24</sup> Council Decisions [2008/615/JHA](#) and [2008/616/JHA](#).

<sup>25</sup> Council Framework Decision [2006/960/JHA](#).

<sup>26</sup> Council Framework Decision [2009/905/JHA](#).

<sup>27</sup> Directive [2011/93/EU](#).

- continuing to assess Member States' compliance with the rules on legal migration, in particular the Directives on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers<sup>29</sup> and on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer;<sup>30</sup>
- in the area of asylum, continuing to follow up on the timely and correct implementation of the Qualifications Directive<sup>31</sup> and the Long-Term Residents Directive.<sup>32</sup>

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<sup>28</sup> Directive [2013/40/EU](#).

<sup>29</sup> Directive [2014/36/EU](#).

<sup>30</sup> Directive [2014/66/EU](#).

<sup>31</sup> Directive [2011/95/EU](#).

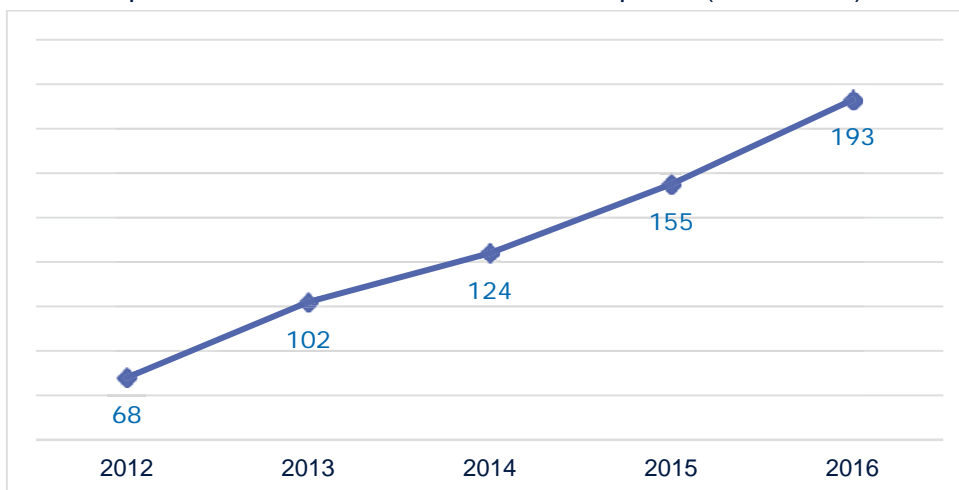
<sup>32</sup> Directive [2011/51/EU](#).

## Mobility and transport

*In 2016 the Commission received the highest number of new complaints in the area of mobility and transport since 2012. By contrast, new EU Pilot files fell further from their 2013 peak to the lowest level for 5 years. The number of infringement cases pending at the end of the year and of new late transposition cases both fell markedly.*

## I. COMPLAINTS

## 1. New complaints received from members of the public (2012-2016)



## 2. Public complaints open a year-end

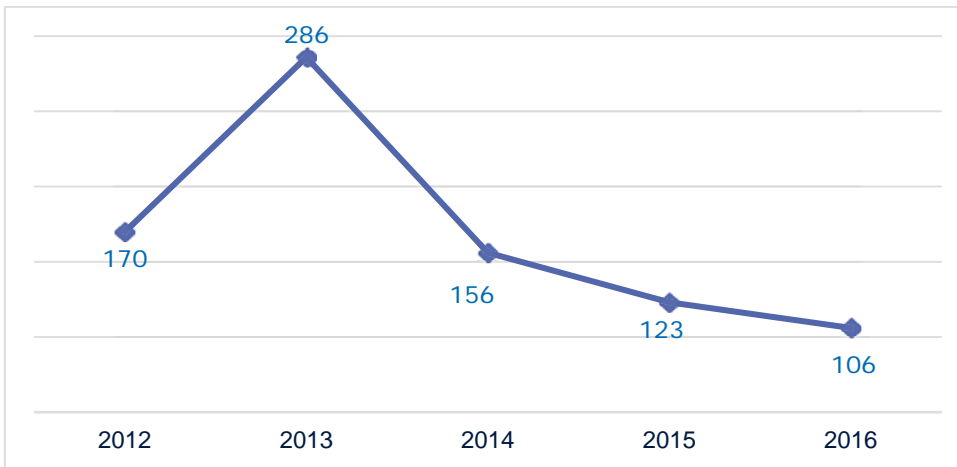
49	>	Complaints open at end-2015
193	>	New complaints registered in 2016
199	>	Complaints handled in 2016
<b>= 43</b>	>	Complaints open at end-2016

## 3. New complaints registered in 2016: main policy sectors



## II. EU PILOT

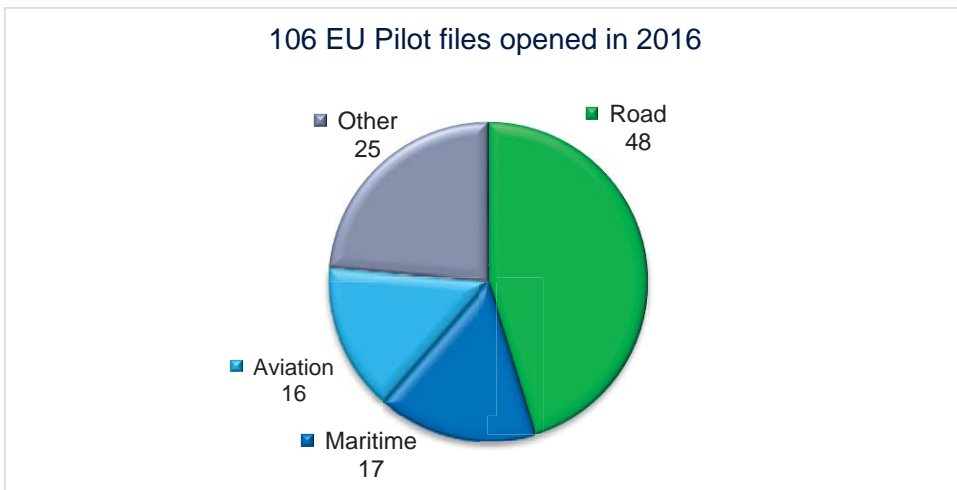
### 1. New EU Pilot files (2012-2016)



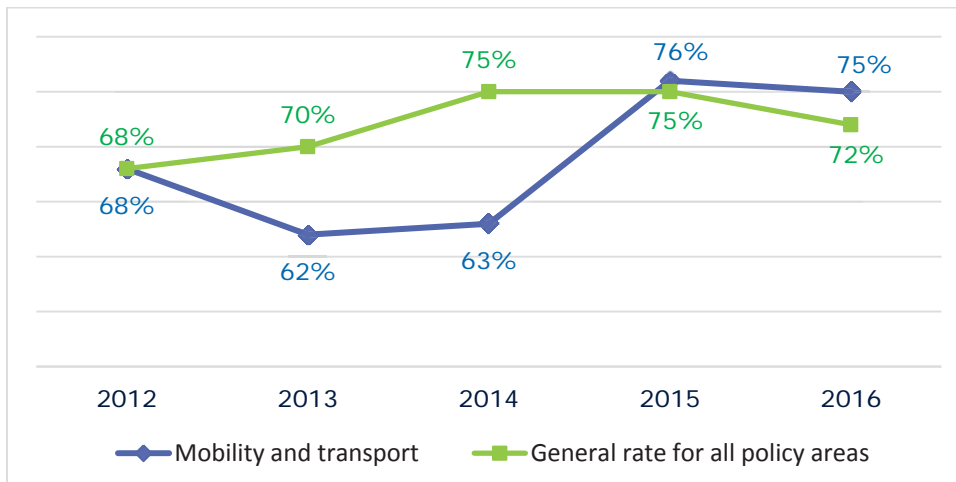
### 2. EU Pilot files open at year-end

At the end of 2016, 92 EU Pilot files remained open.

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



### 4. EU Pilot files: resolution rate for policies (2012-2016)



### III. OWN-INITIATIVE CASES

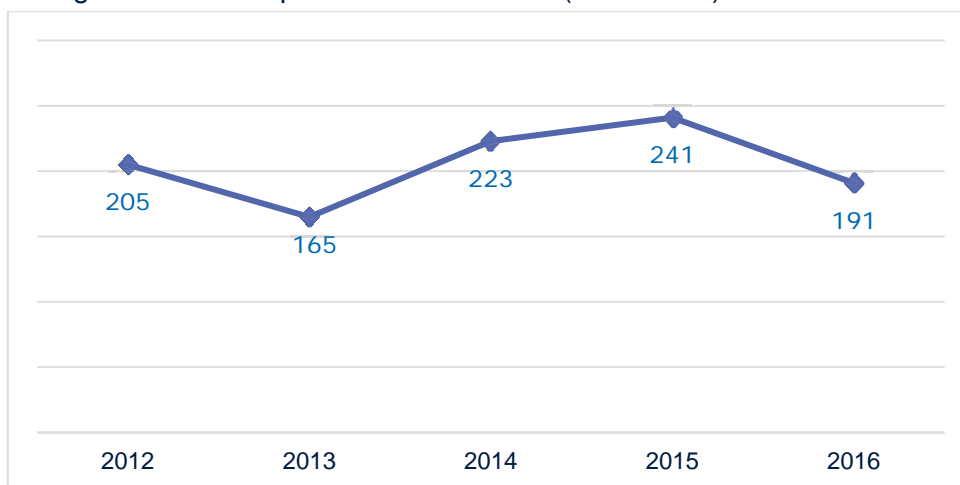
#### New own-initiative infringement cases

In 2016, the Commission opened own-initiative infringement cases over:

- *Railway sector:*
  - railway safety and interoperability;<sup>1</sup>
  - the single European railway area;<sup>2</sup>
- *Road sector:*
  - breach of Treaty principles on non-discrimination, free movement of goods and persons, and provision of services;
  - restrictions on the provision of transport services and free movement of goods;
  - incorrect implementation of the Directive on the European electronic toll service;<sup>3</sup>
- *Air sector:*
  - non-conformity with the provisions on airport charges;<sup>4</sup>
- *Maritime sector:*
  - port State control;<sup>5</sup>
  - accident investigation;<sup>6</sup>
  - flag state.<sup>7</sup>

### IV. INFRINGEMENT CASES

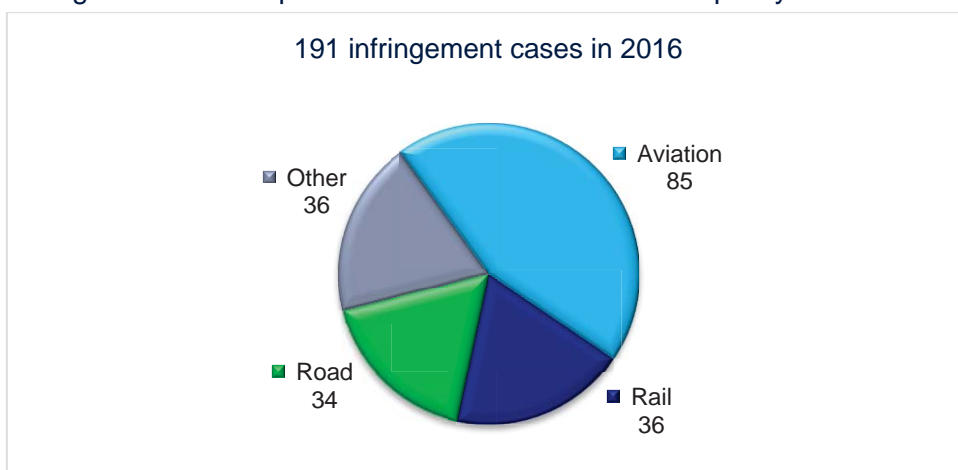
#### 1. Infringement cases open on 31 December (2012-2016)



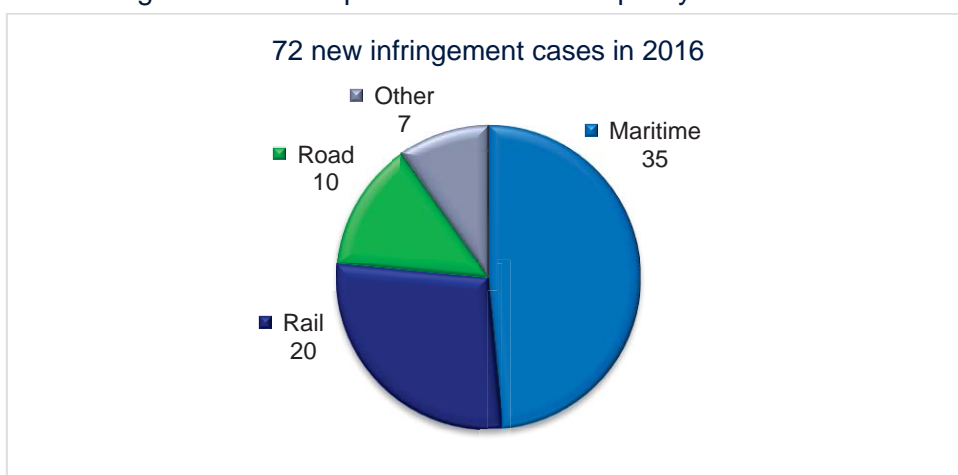
<sup>1</sup> Directives [2004/49/EC](#), [2008/57/EC](#).  
<sup>2</sup> Directive [2012/34/EU](#).  
<sup>3</sup> Directive [2004/52/EC](#).  
<sup>4</sup> Directive [2009/12/EC](#).  
<sup>5</sup> Directive [2009/16/EC](#).  
<sup>6</sup> Directive [2009/18/EC](#).  
<sup>7</sup> Directive [2009/21/EC](#).



## 2. Infringement cases open on 31 December 2016: main policy sectors



## 3. New infringement cases opened in 2016: main policy sectors



## 4. Key infringement cases and referrals to the Court

- a) The Commission opened 72 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
- *Belgium, Bulgaria, Italy, Poland, Finland, Sweden*: failure to correctly implement the Airport Charges Directive;<sup>8</sup>
  - *Belgium, Lithuania*: restrictions on the freedom to provide port services and the freedom of establishment;
  - *Belgium, Ireland, Cyprus, Portugal*: incorrect implementation of the Directive on accident investigations;<sup>9</sup>
  - *Germany, France, United Kingdom*: restrictions on the provision of transport services and free movement of goods;<sup>10</sup>
  - *Germany, Slovenia, Slovakia*: failure to fulfil air safety oversight obligations regarding initial and continuous airworthiness;<sup>11</sup>
  - *Greece, Spain, Luxembourg*: incorrect application of the Regulation on passenger rights;<sup>12</sup>

<sup>8</sup> Directive [2009/12/EC](#); [MEMO/16/319](#).

<sup>9</sup> Directive [2009/18/EC](#).

<sup>10</sup> [IP/16/2101](#) and [IP/16/1456](#).

<sup>11</sup> Regulation (EU) No [748/2012](#) and Regulation (EC) No [1321/2014](#).

<sup>12</sup> Regulation (EU) No [1177/2010](#); [MEMO/16/3644](#).

- *France, Italy*: breach of the rules on the separation of accounts under the First Railway Package;<sup>13</sup>
  - *Cyprus, Portugal*: incorrect implementation of the Directive on port State control;<sup>14</sup>
  - *Netherlands*: failure to correctly implement the Directive on the qualification and training of road drivers;<sup>15</sup>
  - *Portugal*: incorrect implementation of the Flag State Directive.<sup>16</sup>
- b) The Commission referred nine cases to the Court under Article 258 TFEU. They concern:
- *Czech Republic*: failure to fulfil obligations under the Directive on driving licences;<sup>17</sup>
  - *Denmark*: failure to comply with cabotage rules, as laid down in the Regulation on access to the international road haulage market;<sup>18</sup>
  - *Germany*,<sup>19</sup> *Finland*:<sup>20</sup> failure to correctly transpose EU rules on driving licences;
  - *Germany*: failure to fulfil the duty of sincere cooperation at the 25th session of the Revision Committee of the Intergovernmental Organisation for International Carriage by Rail;<sup>21</sup>
  - *Germany*: failure to fully implement, in North Rhine-Westphalia, the Directive on enhancing port security;<sup>22</sup>
  - *Luxembourg*: failure to meet the obligation of interconnecting a national electronic register of road transport undertakings;<sup>23</sup>
  - *Poland*: failure to meet the obligation of establishing a national electronic register of road transport undertakings;<sup>24</sup>
  - *Poland*: failure to correctly transpose and implement European rules on rail safety.<sup>25</sup>
- c) The Commission referred one case to the Court under Article 260(2) TFEU. It concerned:
- *Spain*: failure to comply with a previous Court judgment concerning freedom of establishment at Spanish ports.<sup>26</sup>

<sup>13</sup> Directives [2001/12/EC](#), [2001/13/EC](#) and [2001/14/EC](#).

<sup>14</sup> Directive [2009/16/EC](#); [MEMO/16/319](#).

<sup>15</sup> Directive [2003/59/EC](#).

<sup>16</sup> Directive [2009/21/EC](#); [MEMO/16/2490](#) and [MEMO/16/3125](#).

<sup>17</sup> Directive [2006/126/EC](#); *Commission v Czech Republic*, [C-314/16](#); [IP/15/6013](#).

<sup>18</sup> Regulation (EC) [1072/2009](#); *Commission v Denmark*, [C-541/16](#); [MEMO/16/2097](#).

<sup>19</sup> Directive [2006/126/EC](#); *Commission v Germany*, [C-30/16](#); [IP/15/6229](#) and [MEMO/15/6223](#).

<sup>20</sup> 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 a Court judgment was handed down.

<sup>21</sup> *Commission v Germany*, [C-620/16](#); [IP/16/2104](#) and [MEMO/16/2097](#).

<sup>22</sup> Directive [2005/65/EC](#); *Commission v Germany*, [C-58/16](#); [IP/15/5659](#) and [MEMO/15/5657](#).

<sup>23</sup> *Commission v Luxembourg*, [C-152/16](#); [IP/15/5829](#) and [MEMO/15/5826](#).

<sup>24</sup> *Commission v Poland*, [C-23/16](#); [IP/15/6012](#) and [MEMO/15/6006](#).

<sup>25</sup> *Commission v Poland*, [C-530/16](#); [IP/16/324](#) and [MEMO/16/319](#).

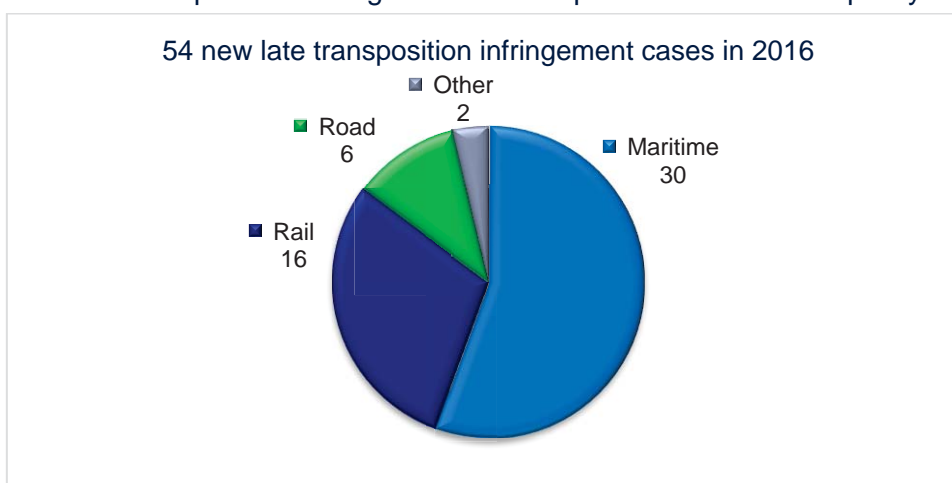
<sup>26</sup> *Commission v Spain*, [C-388/16](#); [IP/16/1455](#) and [MEMO/16/1452](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2012- 2016)



### 2. New late transposition infringement cases opened in 2016: main policy sectors



### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 54 cases for late transposition in 2016. Most concern the Directives on:
  - driving licences (11 cases);<sup>27</sup>
  - marine equipment (15 cases);<sup>28</sup>
  - language requirements (8 cases).<sup>29</sup>
- b) The Commission referred one case to the Court under Articles 258 and 260(3) TFEU. It concerned:
  - *Luxembourg*: failure to transpose the Directive on a single European railway area.<sup>30</sup>

<sup>27</sup> Directive [2014/85/EU](#).

<sup>28</sup> Directive [2014/90/EU](#).

<sup>29</sup> Directive [2016/882/EU](#).

<sup>30</sup> Directive [2012/34/EU](#); *Commission v Luxembourg*, [C-489/16](#); [IP/16/2494](#) and [MEMO/16/2490](#).

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

Major cases closed without a Court judgment in 2016.

These concerned:

- *Belgium, Spain*: incorrect implementation of the Regulation on the rights of passengers travelling by sea and inland waterway;<sup>31</sup>
- *Czech Republic, Greece, Hungary, Austria*: failure to meet the obligation to interconnect a national electronic register of road transport undertakings;<sup>32</sup>
- *Czech Republic, Ireland*: non-ratification of or reservations against appendices to the Convention concerning International Carriage by Rail;
- *Czech Republic, Greece, Hungary, Poland, Portugal*: incorrect implementation of the Directive on a European electronic toll service;<sup>33</sup>
- *Germany*: inadequate application of EU aviation security legislation;<sup>34</sup>
- *Estonia, Spain, Greece, France, Italy, Latvia, Malta, Austria, Poland, Slovenia, Slovakia, Finland*: failure to fulfil obligations under the Directive on driving licences;<sup>35</sup>
- *Estonia, Italy*: failure to meet the requirements of the Regulation on the investigation and prevention of accidents and incidents in civil aviation;<sup>36</sup>
- *Spain, Croatia, Lithuania*: non-compliance with the Railway Safety Directive;<sup>37</sup>
- *Spain, Greece*: non-compliance with the Airport Charges Directive;<sup>38</sup>
- *Croatia, Italy*: non-compliance with the rules on maritime cabotage;<sup>39</sup>
- *France, United Kingdom*: non-compliance with the First Railway Package;
- *Cyprus*: possible discrimination of nationals of other Member States regarding bus fares;<sup>40</sup>
- *Italy*: incorrect implementation of the principles governing the investigation of accidents in the maritime transport sector;<sup>41</sup>
- *Lithuania*: lack of implementation of the Regulations on airworthiness;<sup>42</sup>
- *Poland*: failure to correctly transpose and apply EU legislation on the separation of accounts in rail;<sup>43</sup>
- *Portugal*: non-ratification of the Protocol of Accession to the Eurocontrol International Convention;
- *Romania*: incorrect application of the Regulation on public passenger transport services by rail and by road;<sup>44</sup>
- *Slovakia*: non-compliance with the Directive on the interoperability of the rail system.<sup>45</sup>
- *Finland*: non-compliance with the rules on access to the occupation of road transport operator and with rules on cabotage.<sup>46</sup>

<sup>31</sup> Regulation [\(EU\) No 1177/2010](#); [MEMO/16/1452](#).

<sup>32</sup> Regulation [\(EC\) No 1071/2009](#).

<sup>33</sup> Directive [2004/52/EC](#).

<sup>34</sup> Regulations [\(EC\) No 300/2008](#) and [\(EU\) No 18/2010](#).

<sup>35</sup> Directive [2006/126/EC](#); [IP/15/6229](#), [MEMO/15/6223](#) and [IP/16/2105](#).

<sup>36</sup> Regulation [\(EU\) No 996/2010](#).

<sup>37</sup> Directive [2004/49/EC](#).

<sup>38</sup> Directive [2009/12/EC](#).

<sup>39</sup> Regulation [\(EEC\) No 3577/92](#).

<sup>40</sup> Regulation [\(EU\) No 492/2011](#).

<sup>41</sup> Directive [2009/18/EC](#).

<sup>42</sup> Regulations [\(EU\) 748/2012](#) and [1321/2014](#).

<sup>43</sup> Directive [2012/34/EU](#).

<sup>44</sup> Regulation [\(EC\) No 1370/2007](#).

<sup>45</sup> Directive [2008/57/EC](#).

<sup>46</sup> Regulations [\(EC\) No 1071/2009](#) and [\(EC\) No 1072/2009](#).

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>47</sup>

The Court ruled that:

- *Luxembourg*,<sup>48</sup> *Poland*<sup>49</sup> and *Portugal*<sup>50</sup> failed to establish a national electronic register and to interconnect with the national electronic registers of other Member States;
- *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.<sup>51</sup>

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Belgium*: a person making a train journey while not in possession of a ticket for that purpose, and who fails to regularise his situation within the periods laid down in national provisions may be deemed to not have a contractual relationship with the railway undertaking;<sup>52</sup>
- *Belgium*: the Directive on the systems of chartering and pricing in national and international inland waterway transport<sup>53</sup> must be interpreted so that contracts are to be freely concluded between the parties concerned. National legislation may therefore determine that a person who does not correspond to the Directive's definition of 'carrier' may nevertheless conclude a contract of carriage as a carrier;<sup>54</sup>
- *Czech Republic*: it is not incompatible with EU legislation<sup>55</sup> to impose the completion of a periodic training, before they carry out the driving activity, on persons who are exempted from the requirement that drivers of certain vehicles obtain an initial qualification;<sup>56</sup>
- *Germany*: the subcontracting rules in the Regulation on public passenger transport services by rail and by road<sup>57</sup> apply to contracts awarded for public passenger transport by bus. Also, a subcontracting limitation of 30 % of the transport services remains within the discretion of the competent authorities;<sup>58</sup>
- *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 equipment,<sup>59</sup> and if the competent national authority did not establish the liability of that undertaking;<sup>60</sup>
- *Lithuania*: 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;<sup>61</sup>
- *Hungary*: 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;<sup>62</sup>
- *Netherlands*: the national authorities carrying out general monitoring tasks with regard to air passengers' rights<sup>63</sup> are not required to take enforcement action in each individual

<sup>47</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>48</sup> Regulation (EC) No 1071/2009, Commission v Luxembourg, C-152/16.

<sup>49</sup> Regulation (EC) No 1071/2009, Commission v Poland, C-23/16.

<sup>50</sup> Regulation (EC) No 1071/2009, Commission v Portugal, C-583/15.

<sup>51</sup> Regulation (EEC) No 95/93, Commission v Portugal, C-205/14.

<sup>52</sup> Demey, C-261/15.

<sup>53</sup> Directive 96/75/EC.

<sup>54</sup> Mathys, C-92/15.

<sup>55</sup> Directive 2003/59/EC.

<sup>56</sup> Ivo Muladi v Krajský úřad Moravskoslezského kraje, C-447/15.

<sup>57</sup> Regulation (EC) No 1370/2007.

<sup>58</sup> Hörmann Reisen GmbH v Stadt Augsburg, Landkreis Augsburg, C-292/15.

<sup>59</sup> Regulation No 3821/85.

<sup>60</sup> EL-EM-2001, C-501/14.

<sup>61</sup> Air Baltic Corporation, C-429/14.

<sup>62</sup> Regulation (EC) No 561/2006, Eurospeed, C-287/14.

case with a view to compelling air carriers to pay compensation. However, Member States have discretion in allocating the powers which they will give to such authorities and can nevertheless empower them to act on individual complaints.<sup>64</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- monitoring and following up on the transposition of Directives with a transposition deadline in 2016. This includes three that aim to improve road safety and set minimum common standards across the European Union, namely the Directives on:
  - periodic vehicle inspections;<sup>65</sup>
  - registration documents;<sup>66</sup>
  - roadside inspections of commercial vehicles;<sup>67</sup>
- following up Court judgments expected on several issues relating to the incorrect implementation of the Directive on the separation of accounts of railway undertakings and railway infrastructure managers and on the use of charges for railway infrastructure;<sup>68</sup>
- assessing the transposition and conformity of national measures implementing the Directive on the deployment of alternative fuels infrastructure;<sup>69</sup>
- closely monitoring general issues regarding limitations on market access as well as safety and security in all modes of transport.

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<sup>63</sup> Steef Mennens v Emirates Direktion für Deutschland, [C-255/15](#).

<sup>64</sup> Joined Cases Ruijsenaars and Jansen, [C-145/15](#) and Dees-Erf, [C-146/15](#), Court press release [No 31/2016](#).

<sup>65</sup> Directive [2014/45/EU](#).

<sup>66</sup> Directive [2014/46/EU](#).

<sup>67</sup> Directive [2014/47/EU](#).

<sup>68</sup> Directive [91/440/EEC](#).

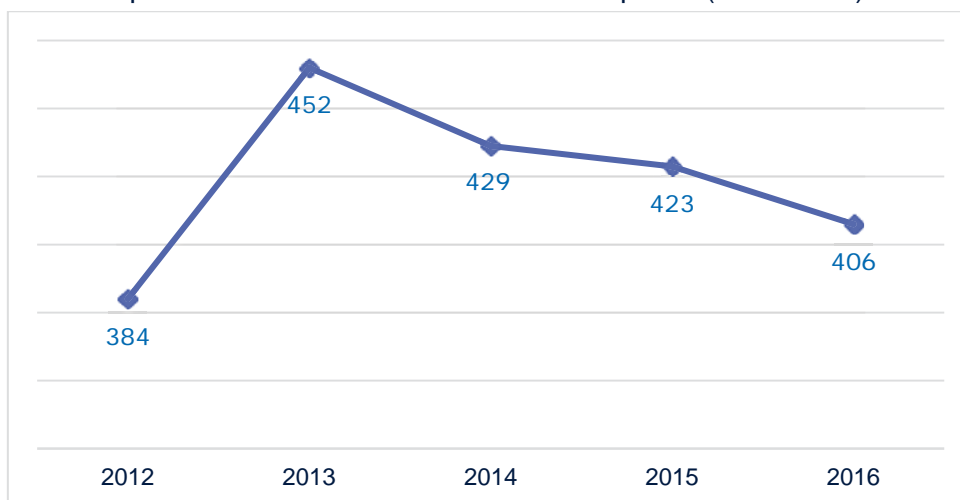
<sup>69</sup> Directive [2014/94/EU](#).

## Taxation and customs union

The number of new complaints in the area of taxation and customs union fell again slightly in 2016 while the number of new EU Pilot files increased somewhat. There were slightly more infringement cases pending at the end of the year than a year before. The number of late transposition cases sharply increased due to the expiry of the deadlines for transposing three directives.

## I. COMPLAINTS

## 1. New complaints received from members of the public (2012-2016)



## 2. Public complaints open a year-end

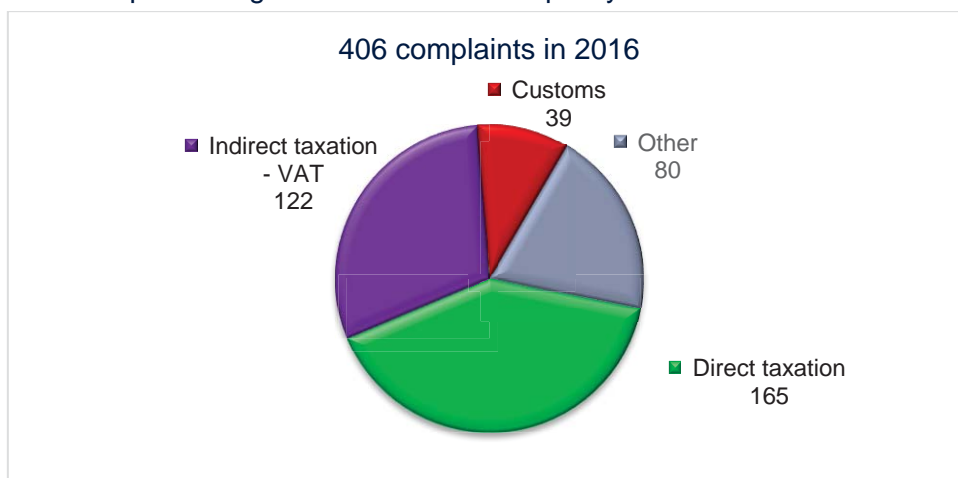
335 > Complaints open at end-2015

406 > New complaints registered in 2016

401 > Complaints handled in 2016

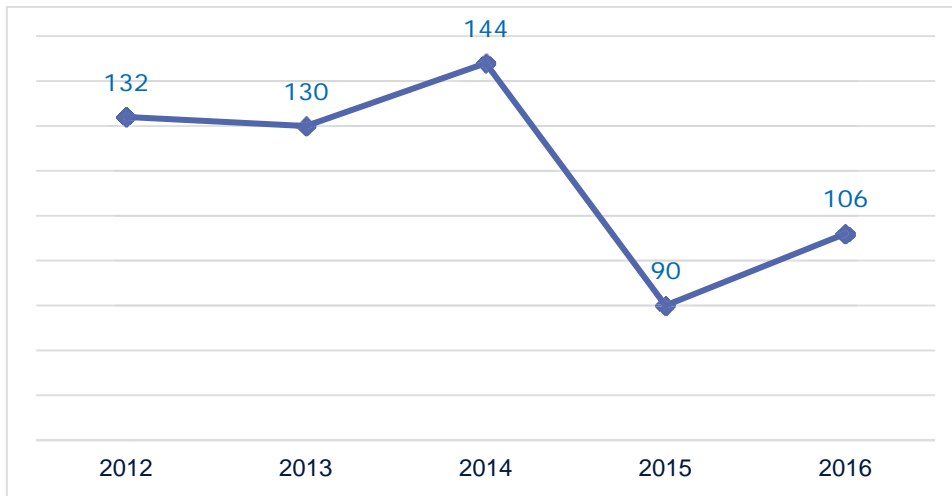
340 > Complaints open at end-2016

## 3. New complaints registered in 2016: main policy sectors



## II. EU PILOT

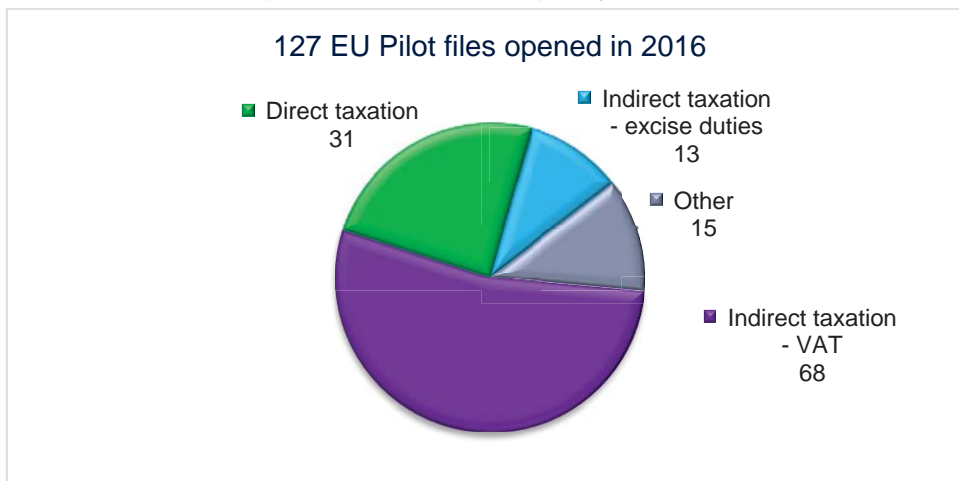
### 1. New EU Pilot files (2012-2016)



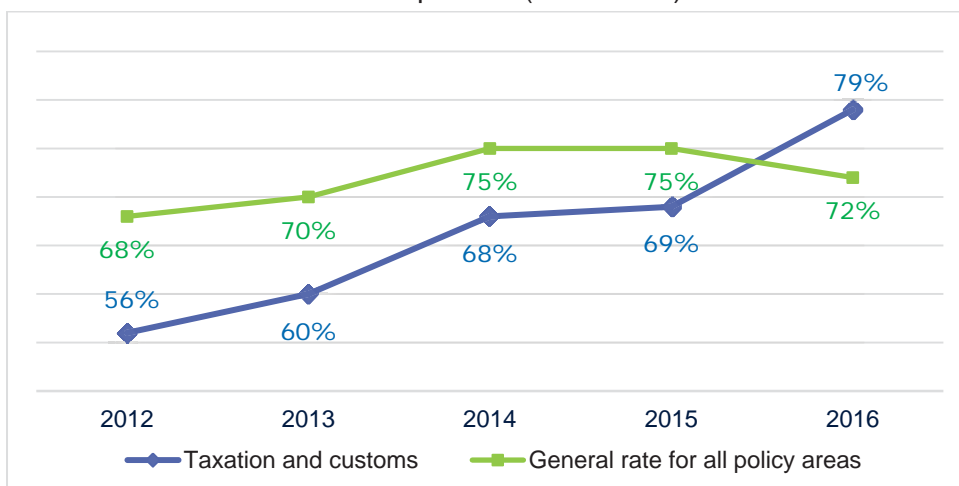
### 2. EU Pilot files open at year-end

At the end of 2016, 127 EU Pilot files remained open.

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



### 4. EU Pilot files: resolution rate for policies (2012-2016)





### III. OWN-INITIATIVE CASES

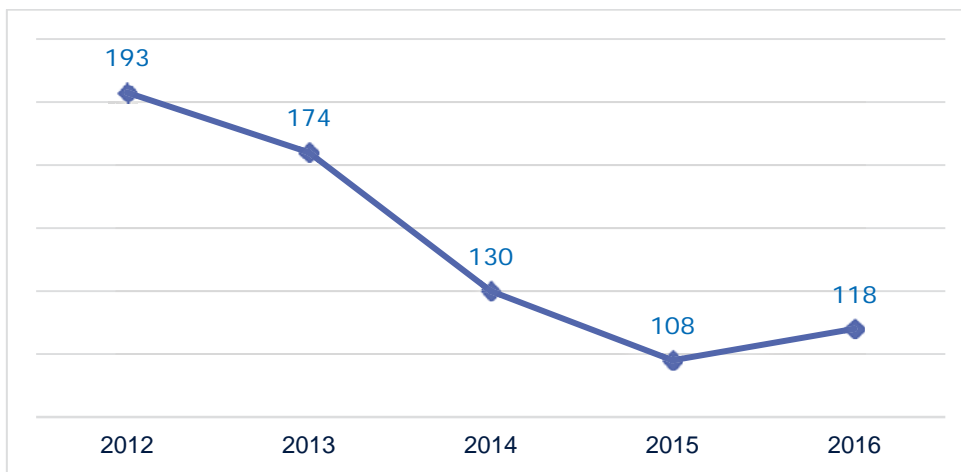
#### New own-initiative infringement cases

In 2016, the Commission opened own-initiative infringement cases over the following:

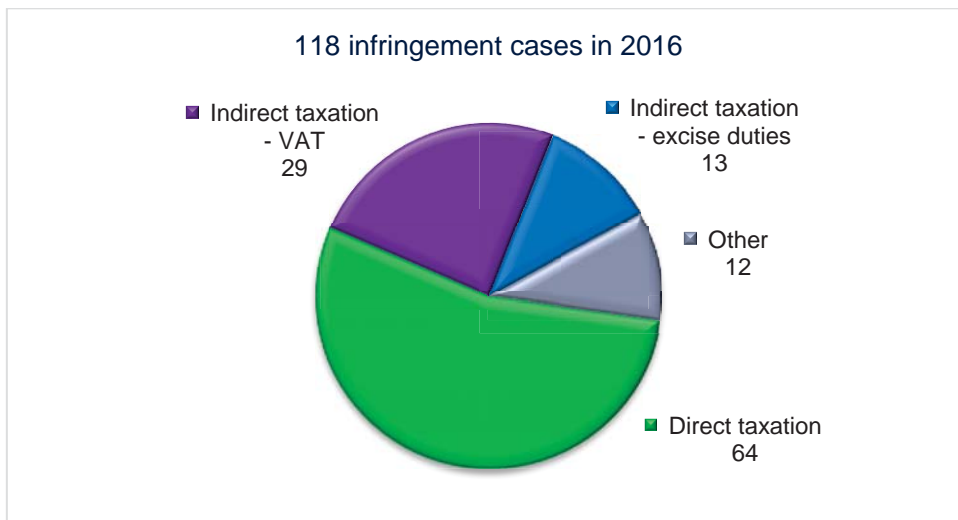
- in the area of indirect taxation: difficulties in refund of VAT;
- in the area of direct taxation: most own-initiative cases stem from an EU-wide compliance check<sup>1</sup> which examines the tax treatment of persons who actually move from one EU Member State to another; and
- in the area of customs: own-initiative cases were launched over cash control.

### IV. INFRINGEMENT CASES

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

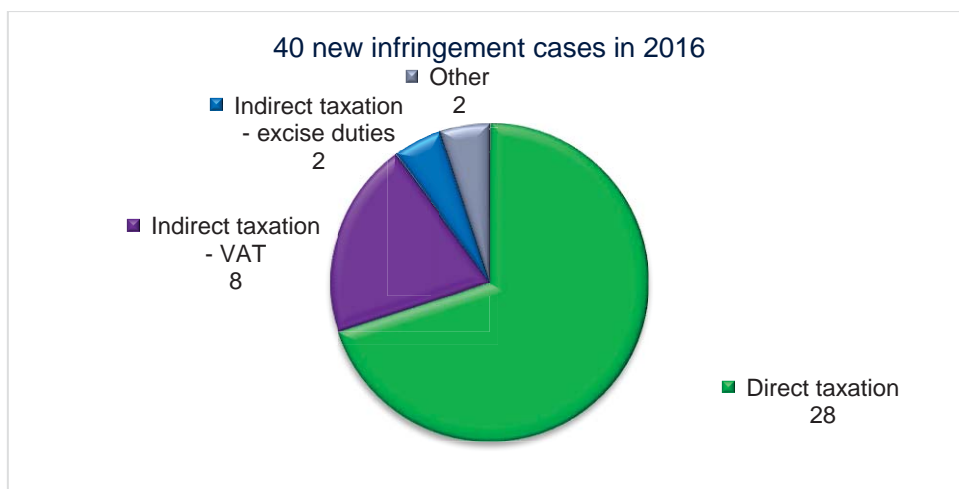


#### 2. Infringement cases open on 31 December 2016: main policy sectors



<sup>1</sup> Press release [IP/14/31](#).

### 3. New infringement cases opened in 2016: main policy sectors



### 4. Key infringement cases and referrals to the Court

- a) The Commission opened 40 new infringement cases in 2016. These, and other major ongoing infringement cases, include the following:
- *Bulgaria*: disproportionate fines for not declaring cash entered into the customs union;
  - *Estonia*: incomplete transposition of the Directive on administrative cooperation on taxation<sup>2</sup> though a general provision broadly referring to the application of EU law in the relevant matters;
  - *Croatia*: the reduced excise duty rate for small producers of ethyl alcohol. This seems to be incompatible with the Excise Duty Directive on alcohol and alcoholic beverages;<sup>3</sup>
  - *Portugal*: 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 the tax, it may constitute a covert discrimination by reason of nationality that infringes Article 18 TFEU.
- b) The Commission referred three cases to the Court under Article 258 TFEU. They concern:
- *Germany*: the exclusion of travel services used by taxable persons for their business from the special scheme for the travel agents scheme (which allows travel agents to determine on a flat-rate basis the tax assessment base for groups of services and for each taxable period) when the customer is a taxable person not reselling the travel services;<sup>4</sup>
  - *Greece*: national rules allowing service stations at its land borders with Kipi (Turkey), Kakkayia (Albania) and Evzoni (FYROM) to sell fuel without excise duties. Under the Horizontal Excise Duty Directive,<sup>5</sup> excise duties should be charged on the sale of such fuel;<sup>6</sup>
  - *Greece*: legacies bestowed on certain non-profit entities established in Greece which are treated more favourably than those bestowed on similar entities established in other EU Member States. For Greek non-profit entities, a preferential tax rate of 0.5 % is automatically available. However, similar non-

<sup>2</sup> Directive [2011/16/EU](#).

<sup>3</sup> Directive [92/83/EEC](#).

<sup>4</sup> Commission v Germany [C-380/16](#) [IP/16/1461](#).

<sup>5</sup> Directive [2008/118/EU](#).

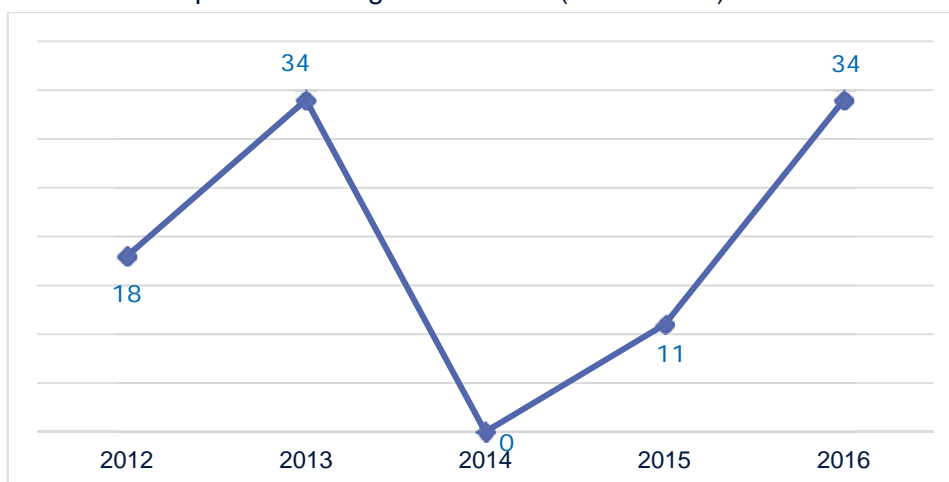
<sup>6</sup> Commission v Greece [C-590/16](#).

profit entities from other Member States are taxed at a rate of 20 to 40 % unless their Member State also affords preferential tax treatment to Greek non-profit entities.<sup>7</sup>

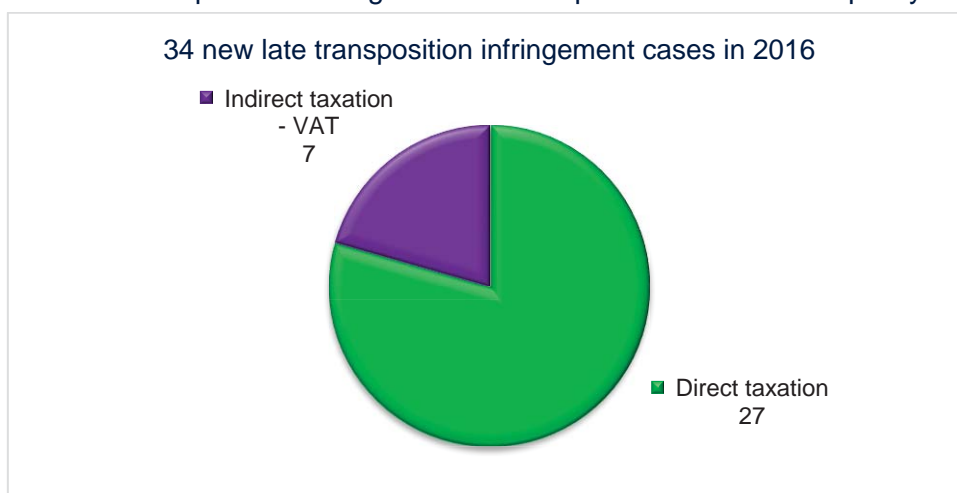
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2012- 2016)



### 2. New late transposition infringement cases opened in 2016: main policy sectors



### 3. Key infringement cases and referrals to the Court

- a) The Commission opened 34 cases for late transposition in 2016. Most concern:
- the Directives on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;<sup>8</sup> and
  - the Directive on mandatory automatic exchange of information on taxation.<sup>9</sup>
- b) The Commission did not refer any cases to the Court under Articles 258 and 260(3) TFEU.

<sup>7</sup> Commission v Greece [C-98/16 IP/15/4674](#).

<sup>8</sup> Directive [2014/86/EU](#) and Directive [2015/121/EU](#).

<sup>9</sup> Directive [2014/107/EU](#).

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

These concerned:

- *Belgium*: reduced rate for online newspapers and publications;
- *France*: enactment of administrative provisions respecting the proportionality requirements as regards the 3 % tax on properties in France owned by foreign companies;
- *Luxembourg*: 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.<sup>10</sup>

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>11</sup>

The Court ruled that:

- *Greece*: it is a restriction on the freedom to provide services to levy the full amount of car registration tax (as provided for under its national legislation) at the time of registration of a vehicle hired or leased by a Greek customer from a supplier established in another Member State, if the duration of the hire or lease contract and the duration of the vehicle's use in Greek territory is not taken into consideration;<sup>12</sup>
- *Greece*: national rules exempting the primary residence from inheritance tax only for nationals of EU Member States who are resident in Greece restricts the free movement of capital;<sup>13</sup>
- *Netherlands*: 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 workers, 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;<sup>14</sup>
- *Portugal*: 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.<sup>15</sup>

### 2. Preliminary rulings

In preliminary rulings, the Court held that:

- *Germany*: inheritance rules that oblige German financial institutions (including their branches) to notify the tax authorities about a client's assets upon his death do not restrict the freedom of establishment. Thus, branches of German banks in another Member State may also be required to notify such information, even if inheritance tax is not levied in the other Member State and even if notification would be considered as incompatible with the other Member State's banking secrecy rules;<sup>16</sup>
- *Germany*: the EU-Switzerland agreement on the free movement of persons requires that the income of German resident nationals paid by a legal person governed by public

<sup>10</sup> Directive [2011/96/EU](#).

<sup>11</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>12</sup> Commission v Greece, [C-66/15](#).

<sup>13</sup> Commission v Greece, [C-244/15](#).

<sup>14</sup> Commission v Netherlands, [C-22/15](#).

<sup>15</sup> Commission v Portugal, [C-200/15](#).

<sup>16</sup> Sparkasse Allgäu, [C-522/14](#).

law established in Switzerland must be granted the same tax exemptions as those granted to incomes paid by a legal person governed by public law established;<sup>17</sup>

- *Germany*: although the Inheritance Tax Act restricts the free movement of capital by providing that tax reduction can be claimed only if a multiple inheritance occurred under German rules (thus inheritance taxes paid to other Member States cannot be taken into account), this restriction could be justified by the need to safeguard the coherence of the tax system;<sup>18</sup>
- *Germany*: for the purposes of customs rules,<sup>19</sup> remunerated helicopter-flight training, if an instructor and the trainee pilot are present in the cockpit, is not commercial use of the aircraft;<sup>20</sup>
- *Spain*: the Commission's decisions on remission of import duties, addressed to one or more Member States, are not of direct and individual concern to the operators concerned; thus they are not challengeable by way of direct action under Article 263 TFEU, fourth paragraph, but by way of indirect action before a national court via the preliminary ruling procedure set out in Article 267 TFEU;<sup>21</sup>
- *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;<sup>22</sup>
- *Hungary*: the customs authorities may disregard the declared price of imported goods and use secondary methods (laid down in the Community Customs Code<sup>23</sup>) 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;<sup>24</sup>
- *Portugal*: 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;<sup>25</sup>
- *Romania*: Member States may not repay taxes incompatible with EU law by instalments over 5 years<sup>26</sup>

## VIII. OUTLOOK

Important implementation work in 2017 includes:

- *Indirect taxation*:
  - monitoring cases affecting the economic situation of businesses (VAT refund) as well as cases which aim to remove obstacles to the free circulation of goods and services;
  - the assessment of car registration tax for the same car in each Member State, which is perceived by citizens as contrary to the EU freedoms. The Commission will ensure correct application of the advantageous case law of the Court of Justice in this matter;
  - excise duties area: tax markings on excise products, such as cigarettes and alcohol, as potential obstacles of free movement of goods.
- *Direct taxation*
  - cross-border inheritances;<sup>27</sup>

<sup>17</sup> Radgen, [C-478/15](#).

<sup>18</sup> Feilen, [C-123/15](#).

<sup>19</sup> Commission Regulation ([EEC](#)) No 2454/93.

<sup>20</sup> Robert Fuchs, [C-80/15](#).

<sup>21</sup> Makro autoservicio mayorista v Commission, [C-264/15P](#) and Vestel Iberia v Commission, [C-265/15P](#).

<sup>22</sup> Kohll and Kohll-Schlesser, [C-300/15](#).

<sup>23</sup> Regulation ([EEC](#)) No 2913/92.

<sup>24</sup> EURO 2004, Case [C-291/15](#).

<sup>25</sup> Brisal and KBC Finance Ireland, [C-18/15](#).

<sup>26</sup> Câmpian, [C-200/14](#) and Ciup, [C-288/14](#).

- cross-border workers;<sup>28</sup>
- mobile persons;<sup>29</sup> and
- assessment will start of the results of the study on discriminatory tax obstacles to cross-border investment by pension funds and life insurance companies.
- *Customs*
  - problems potentially arising under the new EU Customs Code<sup>30</sup> and its implementing rules;
  - horizontal inquiry relating to the penalty provisions in the Cash Control Regulation;<sup>31</sup> and
  - possible horizontal inquiry in the area of postal fees.

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<sup>27</sup> Press release [IP/11/1551](#).

<sup>28</sup> Press release [IP/12/340](#).

<sup>29</sup> Press release [IP/14/31](#).

<sup>30</sup> Regulation [\(EU\) No 952/2013](#).

<sup>31</sup> Regulation [\(EC\) No 1889/2005](#).

METHODOLOGY AND EXPLANATIONS

ANNEX I — POLICY AREAS

1. COMPLAINTS

**First chart: New complaints received from members of the public (2012-2016)**

This shows the number of public complaints the Commission registered in relation to the given policy field in 2012-2016.

**Second chart: Public complaints open at year-end**

This starts with the number of open complaints 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 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 sectors**

The number of registered complaints for the current reporting year is broken down by policy sector. In general, this breakdown shows the three policy sectors in which the most complaints were received in 2016. Four (or more) policy sectors are mentioned if two (or more) policy sectors attracted the third highest number of complaints. The number of sectors covered varies according to the breadth of each policy area.

2. EU PILOT

**First chart: New EU Pilot files (2012-2016)**

This shows the number of EU Pilot files the Commission opened in the given policy area in 2012-2016.

**Second chart: New EU Pilot files opened in 2016: main policy sectors**

The number of new EU Pilot files opened in the current reporting year is broken down by policy sector. This breakdown shows the three policy sectors in which the most EU Pilot files were opened in 2016. Four (or more) policy sectors are included if two (or more) policy sectors tied for the third highest number of new EU Pilot files.

**Third chart: EU Pilot files: policies' combined resolution rate in 2012-2016**

The Member States' combined resolution rate in the given policy field is the percentage of EU Pilot files handled for which the Commission accepted the Member States' responses. The chart shows the combined resolution rate for the last 5 years.

### 3. OWN-INITIATIVE CASES

#### New own-initiative cases

This section contains a list of the most important infringement cases the Commission launched in the given policy area in 2016. The list is not exhaustive.

### 4. INFRINGEMENT CASES

#### First chart: Infringement cases open on 31 December (2012-2016)

These figures include all procedures the Commission initiated in the policy area 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, this 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);
- 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.

This figure does *not* include, for example, open EU Pilot files in the policy area. It also does 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: Infringement cases open on 31 December 2016: main policy sectors

This shows, for the given policy area, the sectors in which the most infringement cases were still open on 31 December 2016. The number of sectors shown varies according to the breadth of each policy area.

#### Third chart: New infringement cases opened in 2016: main policy sectors

This shows, for the given policy area, the sectors in which the most infringement cases were launched in 2016.

#### Key infringement cases and referrals to the Court

This section has three parts:

Part a) shows the number of new infringement cases launched in the policy area in 2016 and lists the most important new cases 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) contains the cases which the Commission referred to the Court under Article 260(2) TFEU by 31 December 2016.



## 5. TRANSPOSITION OF DIRECTIVES

### First chart: New late transposition infringement cases (2012-2016)

This shows the number of letters of formal notice sent to Member States under Article 258 TFEU for missing or partial notification of national measures transposing directives in the given policy area. This figure is already included in the total number of new infringement cases initiated in the policy area in 2016, so it should *not* be added to the figure shown in the first 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.

### Second chart: New late transposition infringement cases opened in 2016: main policy sectors

This shows the policy sectors in which the most late transposition procedures were launched in 2016.

### Key infringement cases and referrals to the Court

This section has two parts:

Part a) lists, for the given policy area, the most important directive(s) for which the Commission had to launch infringement procedures against a relatively high number of Member States.

Part b) lists the cases which the Commission referred to the Court under Article 258 TFEU and Article 260(3) by 31 December 2016.

## 6. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2016

This section contains a list of the most important infringement cases the Commission closed in the given policy area in 2016 without a Court judgment. The list is not exhaustive.

## 7. IMPORTANT JUDGMENTS

This section contains two lists:

The first list contains the Court's most important judgments in the given policy area 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 that the Court issued to the Member State's judiciary in the given policy area.

These lists are not necessarily exhaustive.