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PART 4/4

## COMMISSION STAFF WORKING DOCUMENT

### **Part I: Policy areas**

#### *Accompanying the document*

#### **Report from the Commission**

#### **Monitoring the application of Union law 2014 Annual Report**

{ COM(2015) 329 final }

{ SWD(2015) 133 final }

## REGIONAL AND URBAN POLICY

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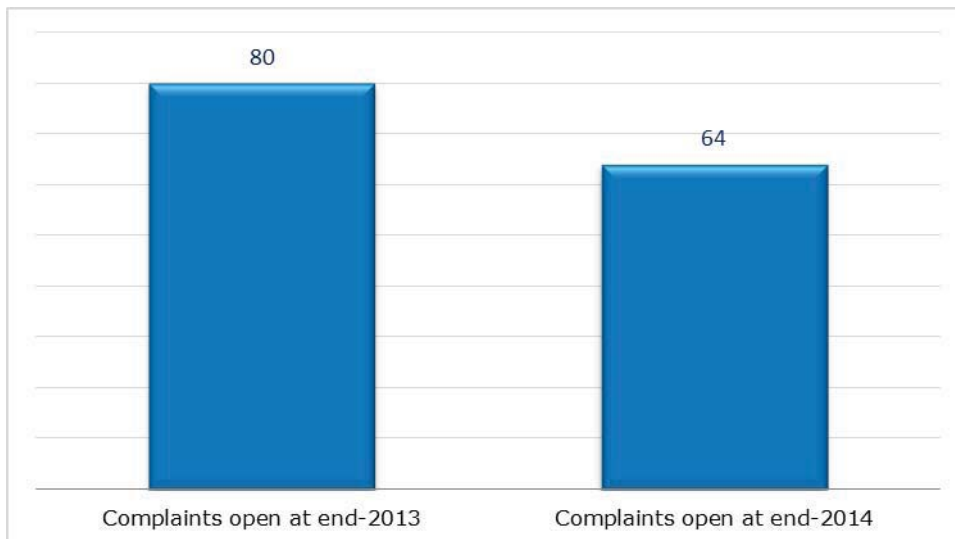
In 2014, the Commission received a substantial number of new complaints in the area of regional and urban policy (although the figure is visibly lower than that for the previous year). There were no newly opened EU Pilot files, infringement procedures or late transposition cases in this policy area in 2014.

### I. COMPLAINTS

#### 1. New complaints received from members of the public (2011-14)

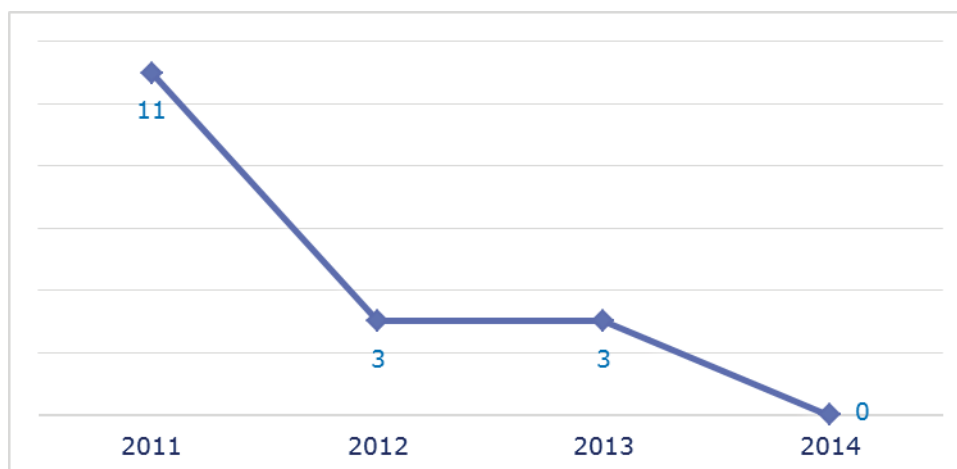


#### 2. Evolution of complaints

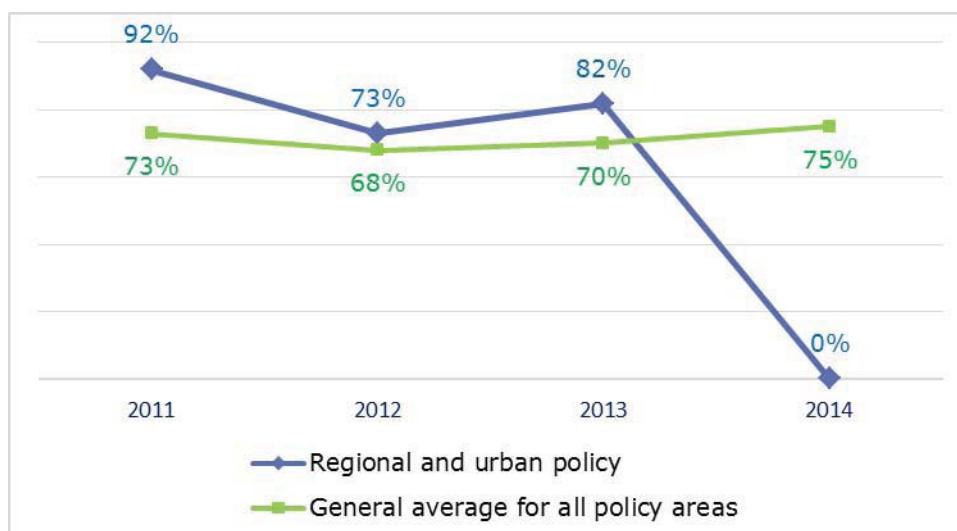


II. EU PILOT

1. New EU Pilot files (2011-14)



2. EU Pilot files: evolution of the Member States' combined resolution rate (2011-14)



III. OWN-INITIATIVE CASES

New own-initiative infringement cases in 2014

The Commission did not open any own-initiative infringement cases concerning regional and urban policy in 2014.

IV. INFRINGEMENT CASES

Key infringement cases and referrals to the Court

- a) The Commission did not open any new infringement cases in 2014.
- 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 2014

The Commission did not close any infringement cases in 2014.

## VI. IMPORTANT JUDGMENTS

### 1. Court rulings

The Court ruled that:

- *Italy*: Italy's actions against two Commission decisions under the European Regional Development Fund are unfounded. One, involving a 10% flat-rate reduction in financial assistance, concerned the Apulia region<sup>1</sup> and the other, involving the non-admission of interim payment applications, concerned the Campania region;<sup>2</sup>
- *Spain*: experience cannot be regarded as an award criterion in public procurement procedures (confirmation of established case law);<sup>3</sup>
- the Commission had not adopted the financial correction decisions within the deadline indicated in the regulation on the European Regional Development Fund, the European Social Fund and the Cohesion Fund.<sup>4</sup> The Court of Justice considered that the Commission infringed essential procedural requirements by adopting the decisions after the regulation's six-month deadline had expired, which was not compatible with the general principle of sound administration. The Court of Justice ruled in favour of the Member State (Spain) by annulling the General Court's judgment and overturning previous case-law, which considered that the regulatory deadlines for adopting financial correction decisions were indicative and that the Commission had to adopt them in a "reasonable time".<sup>5</sup>

### 2. Preliminary rulings

In preliminary rulings, the Court ruled that:

- a programme manual adopted by a monitoring committee in the context of an operational programme established by two Member States and intended to promote European territorial cooperation, cannot prevent a decision of the monitoring committee rejecting an application for aid from being subject to appeal before a court of a Member State, as this would constitute a breach of Regulation (EC) No 1083/2006, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union.<sup>6</sup>

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<sup>1</sup> Italy v Commission, [T-117/10](#).

<sup>2</sup> Italy v Commission, [C-385/13 P](#).

<sup>3</sup> Spain v Commission, [C-641/13 P](#).

<sup>4</sup> Regulation (EC) No [1083/2006](#).

<sup>5</sup> Spain v Commission, [C-197/13P](#); Spain v Commission, [C-192/13P](#); Spain v Commission, [C-429/13 P](#) and Spain v Commission, [C-513/13P](#).

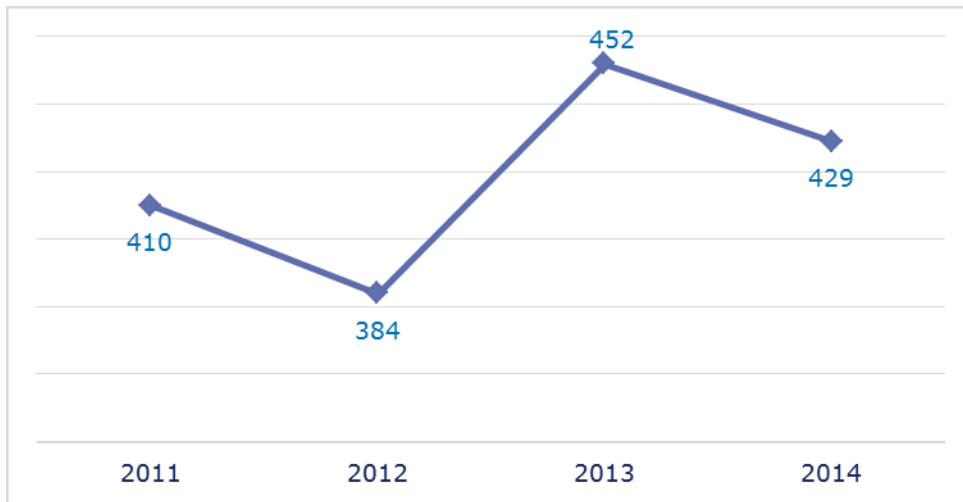
<sup>6</sup> Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee, [C-562/12](#).

## TAXATION AND CUSTOMS UNION

In 2014, the Commission received a relatively high number of new complaints in the area of taxation and customs union (second highest number since 2011). After the last three years' gradual decrease in the number of new EU Pilot files, this figure was higher again in 2014. There were fewer pending infringements at the end of the year in 2014, continuing the downward trend of the previous five years. There were no new late transposition cases in 2014 in the area of taxation and customs union.

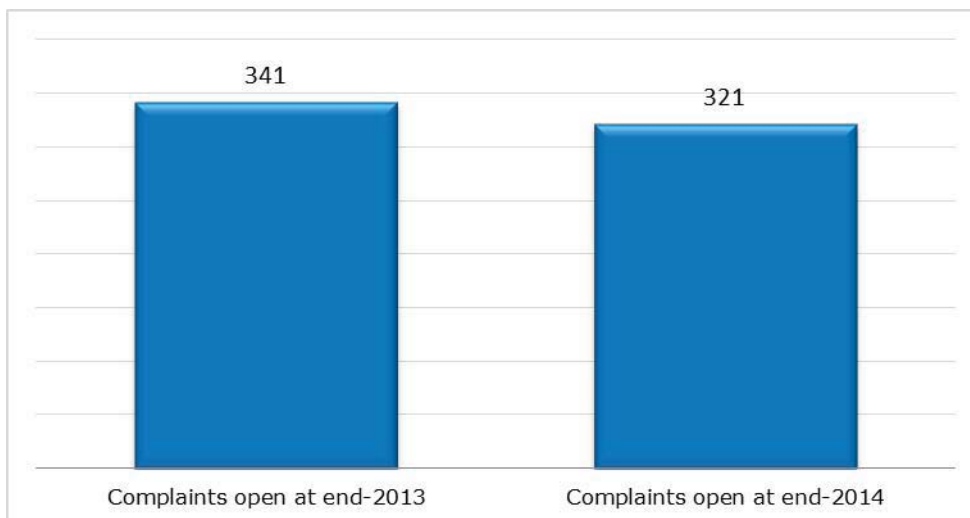
### I. COMPLAINTS

#### 1. New complaints received from members of the public (2011-14)

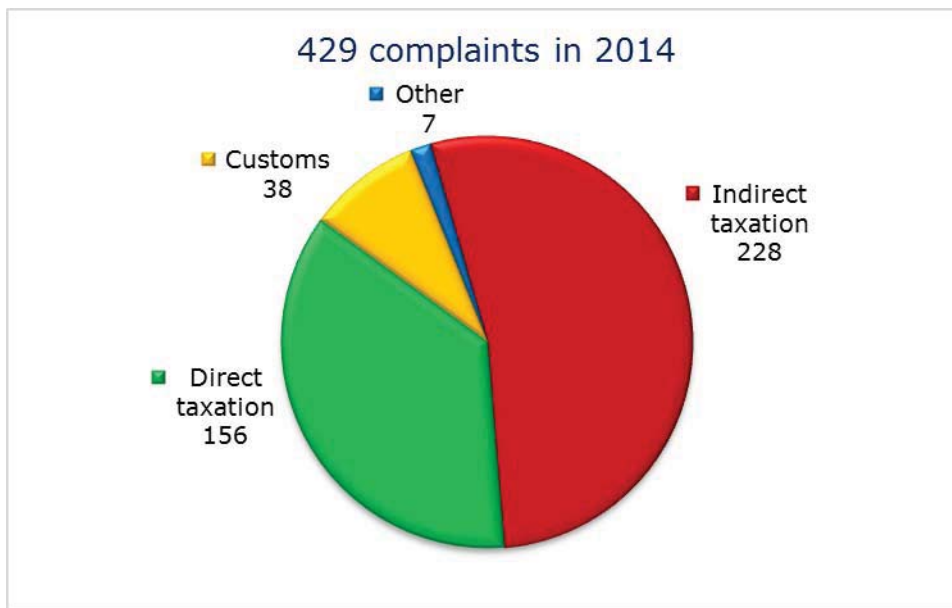


#### 2. Evolution of complaints

Most petitions and questions from the European Parliament concerned cases already opened by the Commission. One EU Pilot file was opened following a European Parliament written question regarding the implementation of a Court of Justice judgment on intra-group transfer of losses.

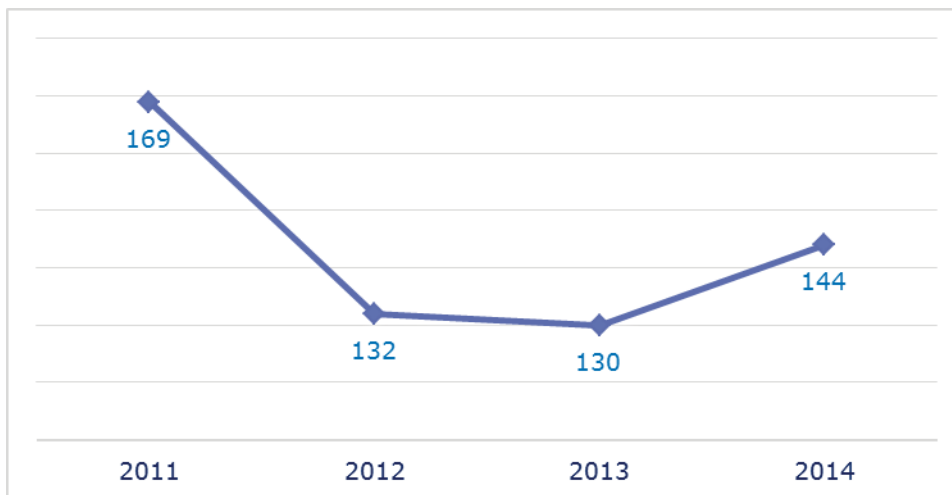


3. New complaints registered in 2014: main policy sectors

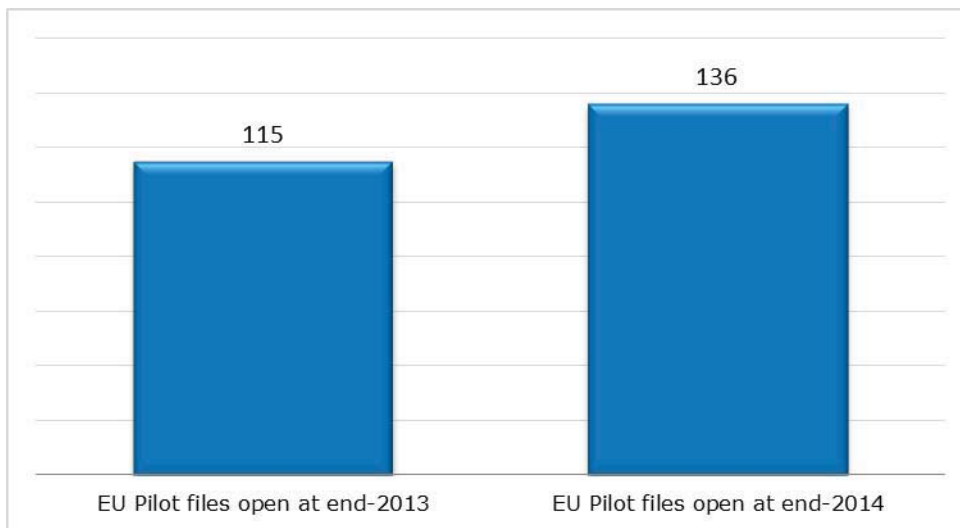


II. EU PILOT

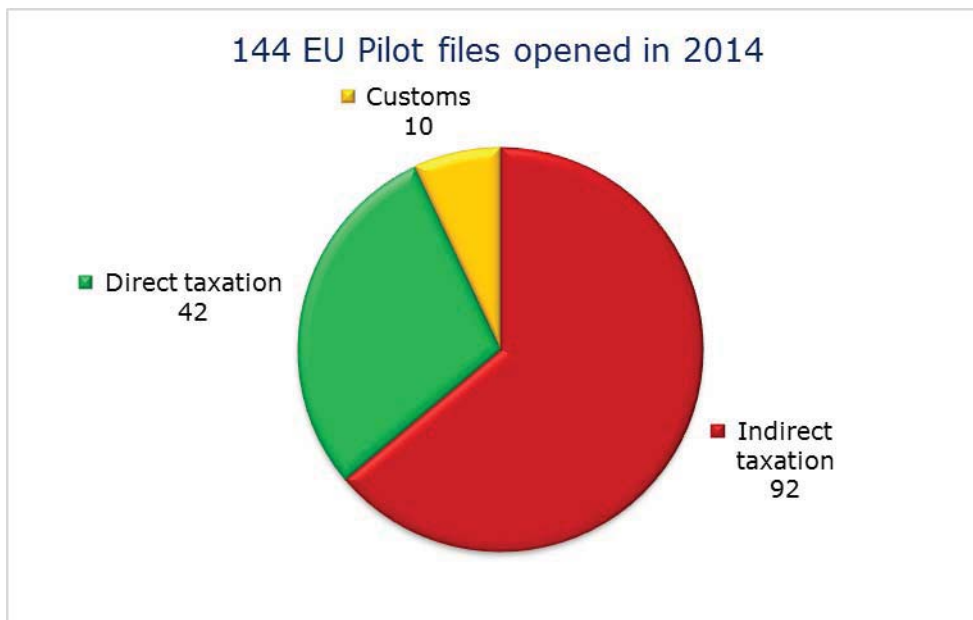
1. New EU Pilot files (2011-14)



1. Evolution of files open in EU Pilot<sup>1</sup>

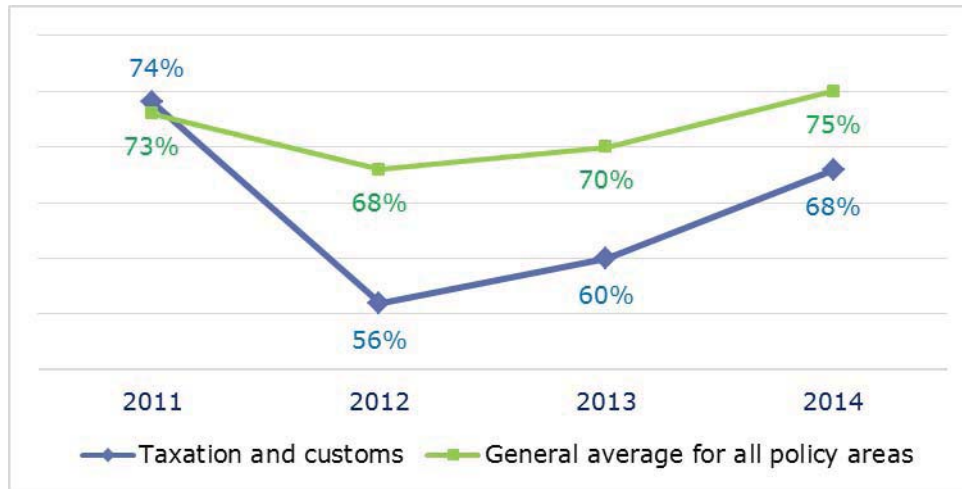


2. New EU Pilot files opened in 2014: main policy sectors



<sup>1</sup> The number of files open at the end of 2013 given in the 2013 annual report is different from the current figure. This is because some files were registered late and others have been closed.

3. EU Pilot files: evolution of the Member States' combined resolution rate (2011-14)



III. OWN-INITIATIVE CASES

New own-initiative infringement cases

The Commission opened own-initiative infringement cases in 2014 concerning:

In the customs sector:

- mutual assistance between Member States on recovering outstanding customs debts and on simplifying procedures ('waiver notification at local clearance' procedure).

In the indirect taxation sector:

- excise duties: validity of tax markings for tobacco.

In the direct taxation sector:

- implementation of the 2014 horizontal compliance review in the area of 'mobile persons taxation' resulted in a number of own-initiative cases being initiated;<sup>2</sup>
- the own-initiative cases arising from the implementation of the horizontal compliance reviews in the areas of 'cross-border inheritance taxation' and 'cross-border workers' taxation' continued.<sup>3</sup>

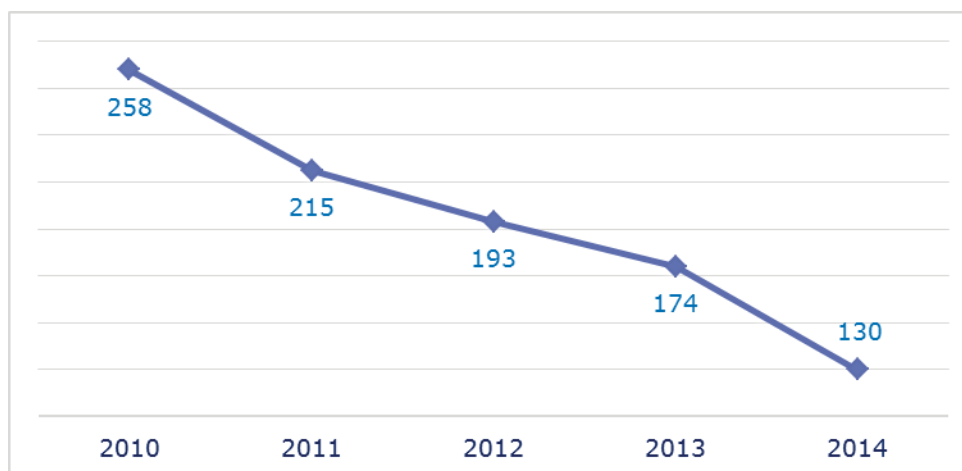
<sup>2</sup> [IP/14/31](#).

<sup>3</sup> [IP/11/1551](#) and [IP/12/340](#).

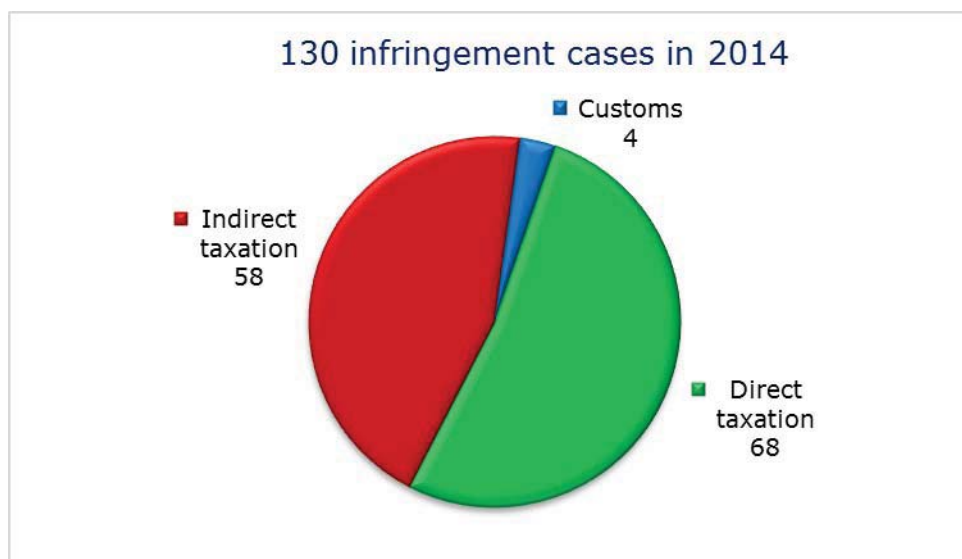


IV. INFRINGEMENT CASES

1. Infringement cases open on 31 December (2010-14)



2. Infringement cases open on 31 December 2014: main policy sectors



3. Key infringement cases and referrals to the Court

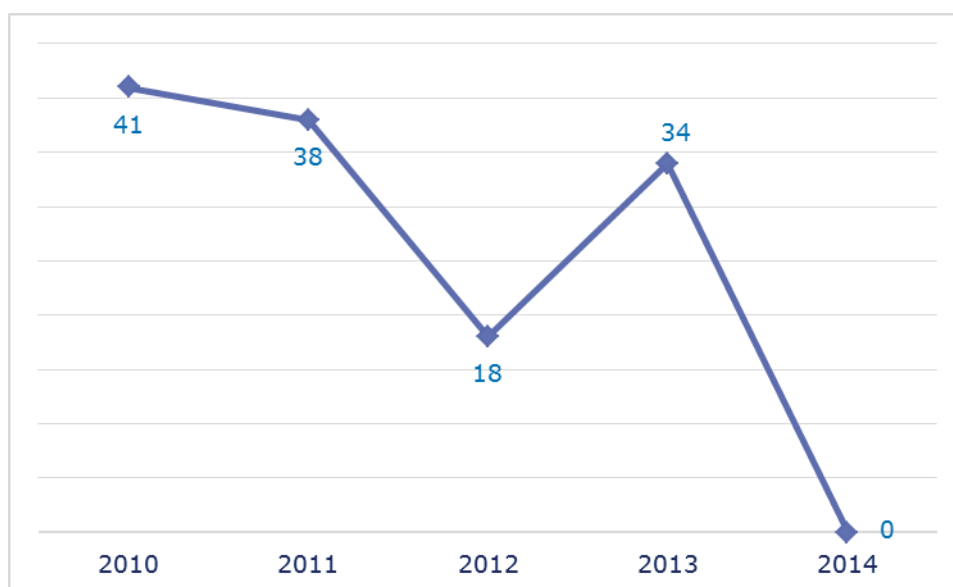
- a) The Commission opened 25 new infringement cases in 2014, among which:
- *France*: deficiencies in the follow-up to the Supreme Court decision delivered after the Court of Justice ruling in case C-310/09 *Accor*;
  - *France*: reduced VAT rate applied to numerical press;
  - *Spain*: higher taxation of income of non-profit entities located outside Spain and/or of the taxpayers making contributions to the aforementioned entities.
- b) The Commission referred eight cases to the Court under Article 258 TFEU. They concerned:

- *Belgium*: discriminatory tax rules in the Walloon Region;<sup>4</sup>
- *France*: discriminatory taxation of charities not established in France;<sup>5</sup>
- *Portugal*: discrimination against taxpayers who cease to be tax-resident in Portugal;<sup>6</sup>
- *Sweden*: VAT rules on postal services, as VAT is applied to some services that, under EU rules, should be exempt from VAT;<sup>7</sup>
- *United Kingdom*: taxation regime for transfers of assets abroad since the UK legislation seems to treat domestic and cross-border transactions differently,<sup>8</sup> and its reduced VAT rate on the supply and installation of energy-saving materials as this measure goes beyond what is allowed under the VAT Directive.<sup>9</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 (2010-14)



### 2. New late transposition infringement cases opened in 2014: main policy sectors

The Commission did not open any new late transposition infringement cases in 2014.

<sup>4</sup> The Commission decided on 21 February 2013 to refer the case to the Court; the application was filed on 20 March 2014. *Commission v Belgium*, [C-130/14](#), [IP/13/136](#).

<sup>5</sup> *Commission v France*, [C-485/14](#), [IP/14/808](#) (three infringement cases will be handled in a single Court procedure).

<sup>6</sup> *Commission v Portugal*, [C-503/14](#), [IP/14/50](#).

<sup>7</sup> The Commission decided on 20 November 2013 to refer the case to the Court; the application was filed on 10 March 2014. *Commission v Sweden*, [C-114/14](#), [IP/13/1111](#).

<sup>8</sup> The Commission decided on 24 October 2012 to refer the case to the Court; the application was filed on 7 March 2014. *Commission v United Kingdom*, [C-112/14](#), [IP/12/1147](#).

<sup>9</sup> Directive [2006/112/EC](#), the Commission decided on 21 February 2013 to refer the case to the Court; the application was filed on 4 April 2014. *Commission v United Kingdom*, [C-161/14](#), [IP/13/139](#).

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

- a) The Commission did not open any new late transposition infringement cases in 2014.
- 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 2014

These concerned:

- *Belgium*: customs fees and opening hours of customs offices;
- *France* : VAT exemption for the hiring of sea-going vessels;
- *Greece*: national income taxation of individuals and discrimination of non-resident people with disabilities when applying car registration tax;
- *Ireland*: exit taxation of companies.<sup>10</sup>

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

The Court ruled:

- against Germany by declaring that it must grant to non-residents the same inheritance and gift tax allowances as if at least one of the concerned people were resident;<sup>11</sup>
- against Hungary by confirming that EU law precludes exempting from excise duties fruit distillates (*pálinka*) produced under both contract and private distillation;
- against Spain by clarifying that EU law precludes both (i) Spanish law granting regions the competence to adopt and apply different tax treatment for residents, thus treating purely internal and cross-border situations differently,<sup>12</sup> and (ii) the obligation imposed on foreign pension funds and insurance companies to designate a tax representative in Spain;<sup>13</sup>
- against the United Kingdom by declaring that the UK controlled foreign company rule for capital gains is not compatible with the Treaty because it levied corporation tax on the UK parent company when its non-UK subsidiary realised capital gains by disposing of an asset. The tax was levied even if the UK parent company could prove that the transaction was carried out for valid commercial reasons and did not involve tax avoidance.<sup>14</sup>

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<sup>10</sup> [IP/11/78](#) on the earlier reasoned opinion.

<sup>11</sup> Commission v Germany, [C-211/13](#) and [IP/12/1018](#) on the earlier referral decision.

<sup>12</sup> Commission v Spain, [C-127/12](#) and [IP/11/1278](#) on the earlier referral decision.

<sup>13</sup> Commission v Spain, [C-678/11](#) and [IP/10/1569](#) on the earlier referral decision.

<sup>14</sup> Commission v United Kingdom, [C-640/13](#) and [IP/12/64](#) on the earlier referral decision.

## 2. Preliminary rulings

In preliminary rulings, the Court ruled that:

- a person's right to be heard before Member State authorities adopt any decision under the Community Customs Code may be relied on directly by individuals before national courts.<sup>15</sup>

## VIII. OUTLOOK

### Important implementation work in 2015 includes:

- within the *customs* sector, areas such as customs representation, tariff classification, and remission and recovery of customs duties. Particular focus will be given to the ongoing investigations of customs fees and charges issued by customs authorities in some Member States and their compatibility with Article 30 TFEU and Article 52 of the EU Customs Code;
- within the *indirect taxation* sector, follow-up of infringements with positive impact on the functioning of the single market and the economy due to the economic crisis. Emphasis will be placed on the horizontal application of judgments of the Court of Justice of the EU, where in scope of a preliminary ruling the Court provides a general interpretation of the VAT Directive and the Excise Duty Directives;
- within the *direct taxation* sector, implementation of the horizontal compliance reviews in the areas of cross-border inheritance taxation,<sup>16</sup> the taxation of cross-border workers,<sup>17</sup> and the taxation of mobile people.<sup>18</sup>
- follow-up to important judgments expected in 2015:
  - a case where the Court is to rule on whether the UK legislation adopted in response to the CJEU ruling in *Case C-446/03 Marks and Spencer* (cross-border loss relief) complies with the TFEU and the aforesaid ruling;<sup>19</sup>
  - a case where the Court is to rule for the first time on whether a Member States may tax outbound dividends paid to a loss-making parent company resident in another Member State, while domestic dividends paid to a loss-making parent company are not taxed;<sup>20</sup>
  - a case where the Court is expected to provide conclusive clarification on the German exit tax rules;<sup>21</sup>
  - a case where the Court is to rule on the treatment of final losses from permanent establishments/subsidiaries located in another Member State.<sup>22</sup>

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<sup>15</sup> Kamino International Logistics BV and Datema Hellmann Worldwide Logistics BV, Joined Cases [C-129/13](#) and [C-130/13](#).

<sup>16</sup> [IP/11/1551](#).

<sup>17</sup> [IP/12/340](#).

<sup>18</sup> [IP/14/31](#).

<sup>19</sup> Commission v United Kingdom, [C-172/12](#).

<sup>20</sup> Société Générale, [C-17/14](#).

<sup>21</sup> Verder LabTec, [C-657/13](#).

<sup>22</sup> Timac Agro Deutschland, [C-388/14](#).