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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 July 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION STAFF WORKING DOCUMENT Part II: Policy areas Accompanying the document REPORT FROM THE EUROPEAN COMMISSION Monitoring the application of European Union law 2017 Annual Report

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Delegations will find attached document SWD(2018) 378 final.

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Encl.: SWD(2018) 378 final



Brussels, 12.7.2018  
SWD(2018) 378 final

**COMMISSION STAFF WORKING DOCUMENT**

**Part II: Policy areas**

*Accompanying the document*

**REPORT FROM THE EUROPEAN COMMISSION**

**Monitoring the application of European Union law  
2017 Annual Report**

{COM(2018) 540 final} - {SWD(2018) 377 final} - {SWD(2018) 379 final}

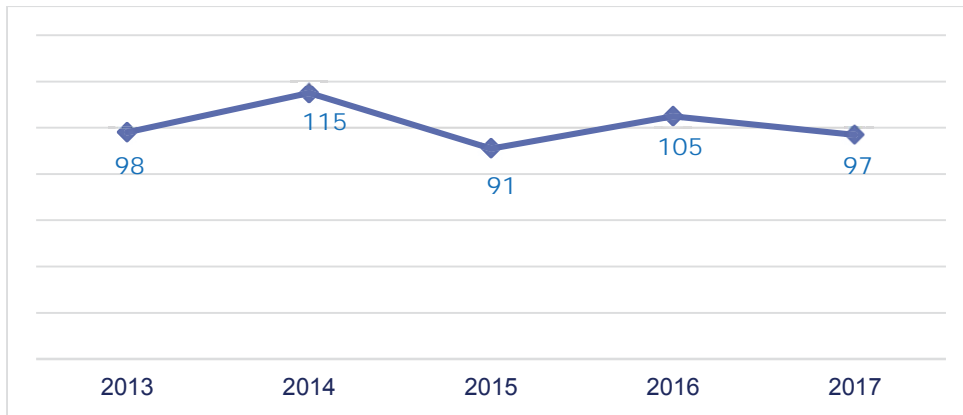
Agriculture and rural development .....	2
Communications networks, content and technology .....	6
Employment, social affairs and inclusion .....	12
Energy .....	18
Environment .....	24
Financial stability, financial services and Capital Markets Union .....	35
Health and food safety.....	41
Internal market, industry, entrepreneurship and SMEs.....	46
Justice and consumers.....	52
Maritime affairs and fisheries.....	60
Migration and home affairs.....	63
Mobility and transport .....	72
Taxation and customs union.....	80
Methodology and explanations.....	90

This document provides an overview of the policy areas in which the most significant developments related to infringements of EU law took place in 2017.

Agriculture and rural development

I. COMPLAINTS

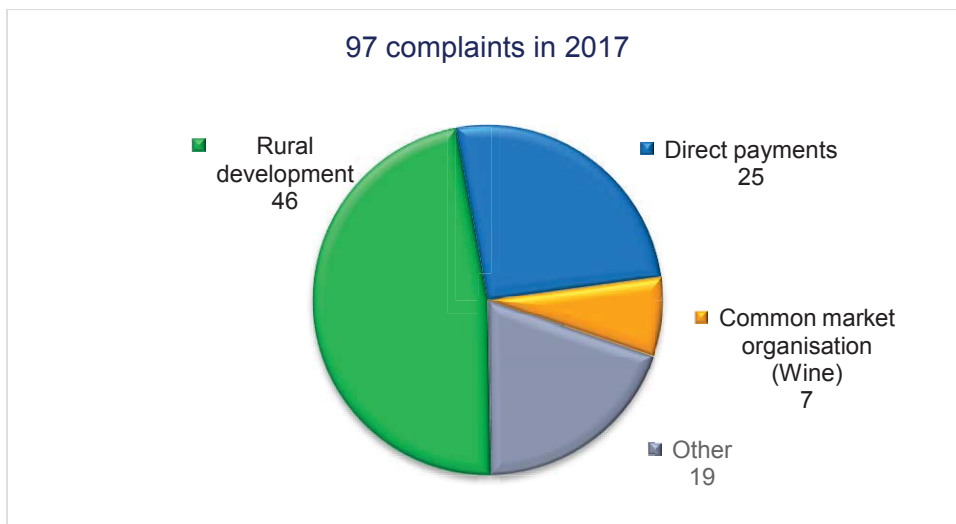
1. New complaints received from members of the public (2013-2017)



2. Public complaints open at year-end

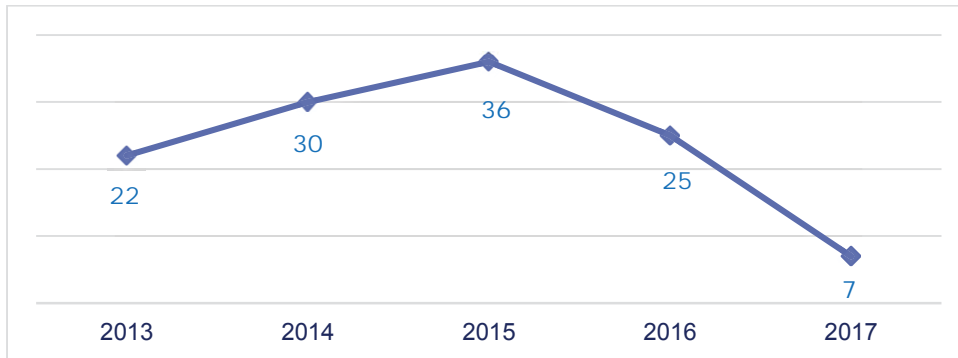
62	>	Complaints open at end-2016
97	>	New complaints registered in 2017
119	>	Complaints handled in 2017
<u>        </u>		
= 40	>	Complaints open at end-2017

3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

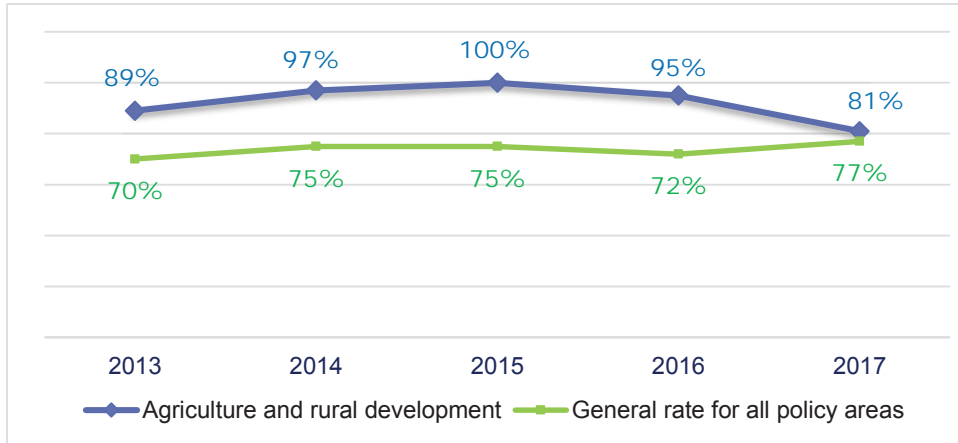
### 1. New EU Pilot files (2013-2017)



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

At the end of 2017, 17 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2013-2017)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2017, the Commission opened own-initiative infringement cases for non-compliance with the rules on protected designations of origin.

## IV. INFRINGEMENT CASES

### Key infringement cases and referrals to the Court

- a) The Commission opened 8 new infringement cases in 2017. These concern:

- *Bulgaria, Italy, Cyprus, Luxembourg, Portugal, Romania, Finland and United Kingdom*: non-communication of national measures transposing the Directive on caseins and caseinates<sup>1</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 2017

These concerned:

- *Bulgaria, Luxembourg, Portugal, Romania and Finland*: non-communication of national measures transposing the Directive on caseins and caseinates<sup>2</sup>.

## VI. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2017 in this area.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Germany*: Purely plant-based products cannot, in principle, be marketed with designations such as 'milk', 'cream', 'butter', 'cheese' or 'yoghurt', which are reserved by EU law for animal products. This prohibition applies even if those designations are accompanied by clarifying or descriptive terms indicating the plant origin of the product concerned. This prohibition however does not apply if the product is mentioned on a list of exceptions set out in a Commission decision<sup>3</sup>.
- *Germany*: A sorbet may be sold under the name 'Champagner Sorbet' if it has, as one of its essential characteristics, a taste attributable primarily to champagne. If that is the case, that product name does not take undue advantage (and therefore does not exploit the reputation) of the protected designation of origin (PDO) 'champagne'. A PDO is protected not only against false or misleading indications which may create a false impression as to the origin of the product, but also against false or misleading indications relating to the nature or essential qualities of the product<sup>4</sup>.
- *France*: Concertation on price and quantities between several organisations of agricultural producers and associations of such organisations may constitute an agreement, decision or concerted practice for the purposes of competition law. However, such practice is permitted within the same producer organisation or association of producer organisations if it is proportionate to the objectives assigned to that organisation. Such practice is not proportionate to the objectives of stabilising prices and concentrating supply if the collective fixing of minimum sale prices within a producer organisation or association of producer organisations:
  - does not allow producers to sell their own products at a lower price than those minimum prices; and
  - has the effect of reducing the already low level of competition in the markets for agricultural products<sup>5</sup>.

<sup>1</sup> Directive [2015/2203/EU](#).

<sup>2</sup> Directive [2015/2203/EU](#).

<sup>3</sup> TofuTown.com, [C-422/16](#) and Court press release [No 63/17](#).

<sup>4</sup> Comité Interprofessionnel du Vin de Champagne, [C-393/16](#) and Court press release [No 139/17](#).

<sup>5</sup> APVE and Others, [C-671/15](#) and Court press release [No 120/17](#).

## VII. OUTLOOK

Important implementation work in 2018 includes:

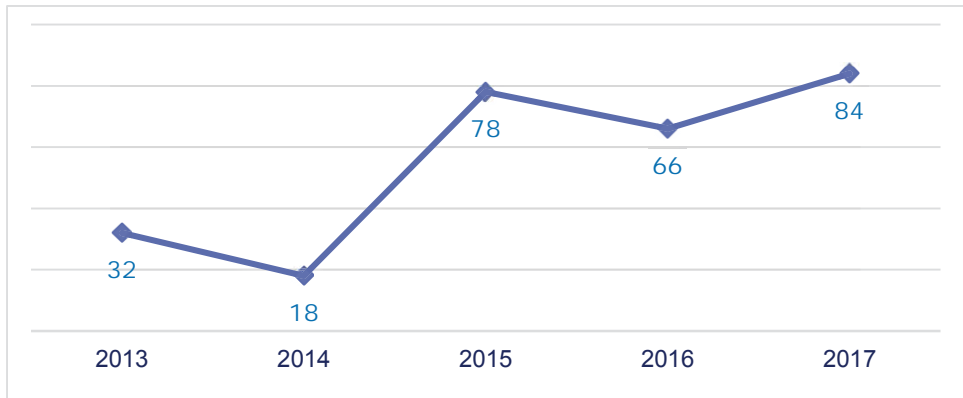
- monitoring compliance with recent rulings of the Court of Justice;
- pursuing legal action against Member States for failing to apply the common agricultural policy rules correctly, in particular the mechanisms of the common market organisation and the direct payments regime;
- continuing to make use of the clearance of accounts procedure in the agricultural sector to convince Member States to adapt their management and control systems if an infringement is detected under conformity audit mechanisms.



Communications networks, content and technology

I. COMPLAINTS

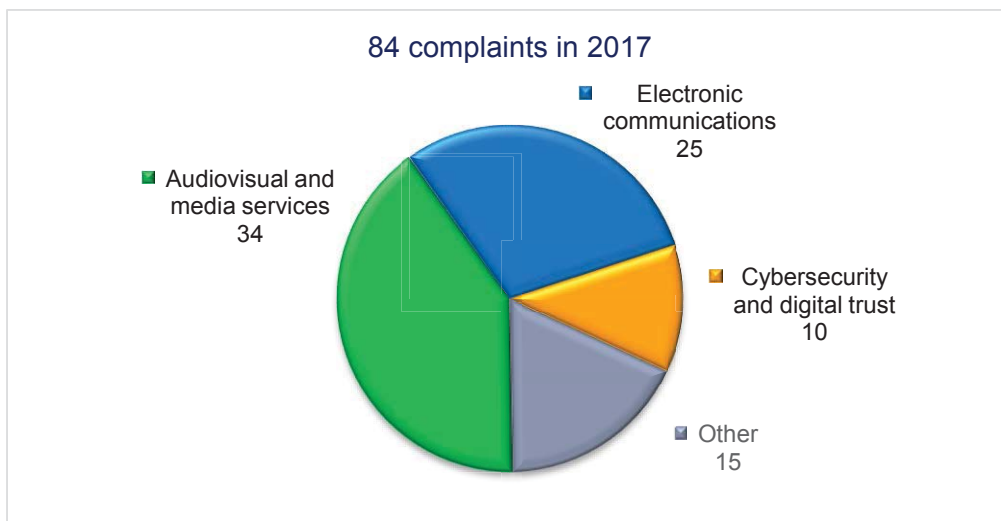
1. New complaints received from members of the public (2013-2017)



2. Public complaints open at year-end

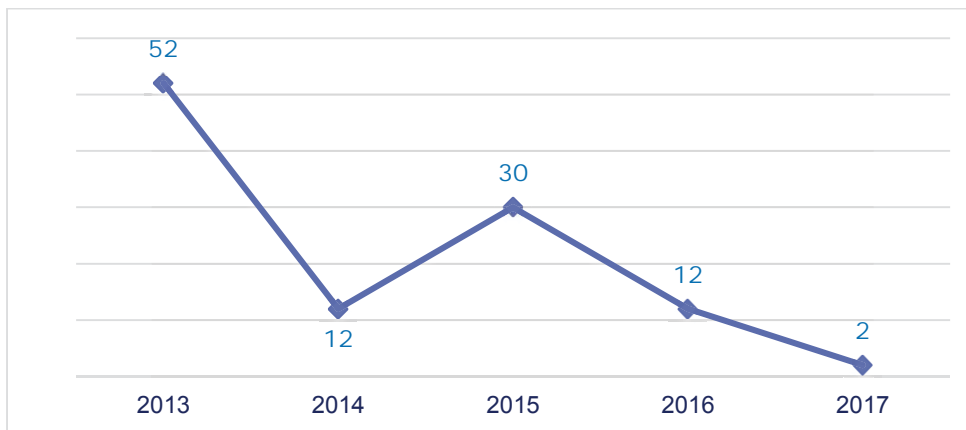
- 87 > Complaints open at end-2016
- 84 > New complaints registered in 2017
- 66 > Complaints handled in 2017
- = 105** > Complaints open at end-2017

3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

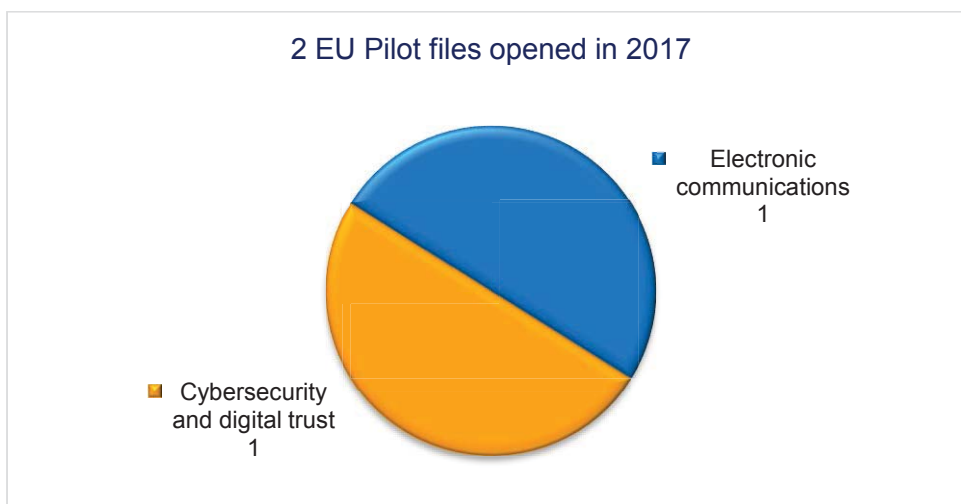
### 1. New EU Pilot files (2013-2017)



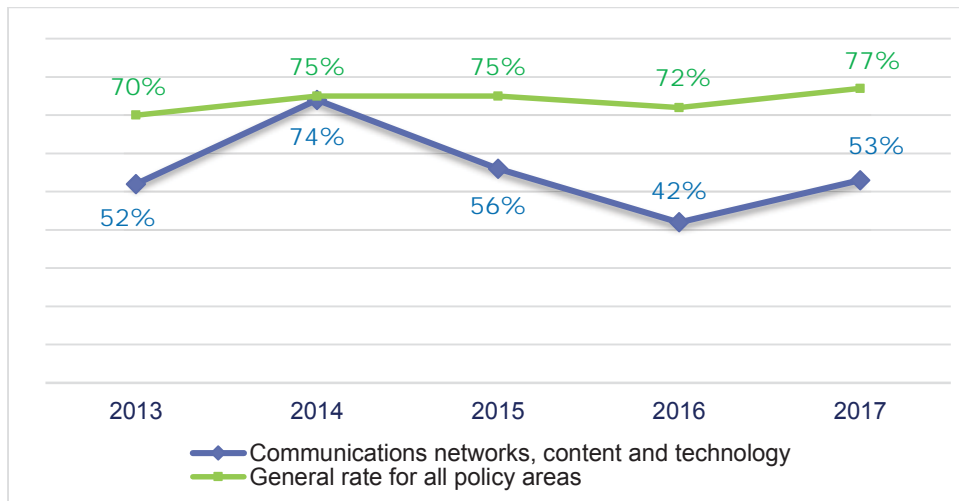
### 2. EU Pilot files open at year-end

At the end of 2017, 29 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2017: main policy sectors



#### 4. EU Pilot files: resolution rate for policies (2013-2017)



### III. OWN-INITIATIVE CASES

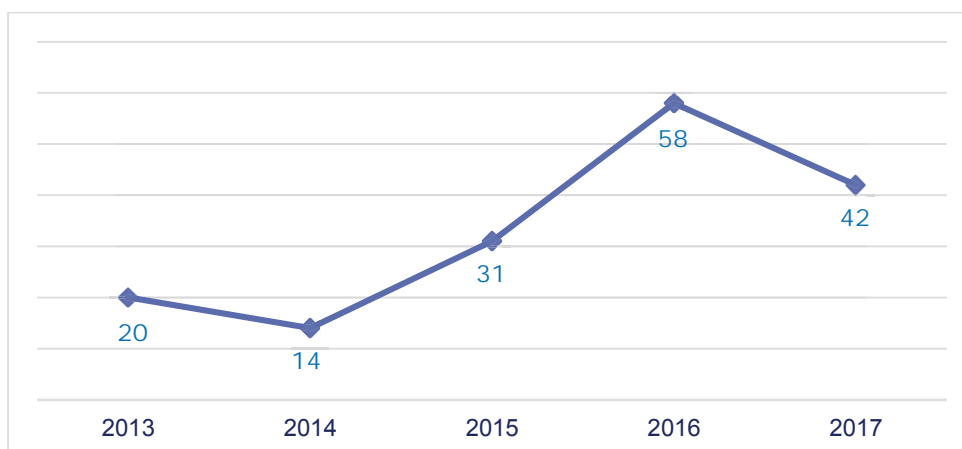
#### New own-initiative infringement cases

In 2017, the Commission opened own-initiative infringement cases over:

- delays in carrying out market reviews, contrary to the obligations under the Framework Directive for electronic communications<sup>1</sup>;
- non-compliance with the requirements on electronic identification and trust services for electronic transactions in the internal market<sup>2</sup>;
- non-compliance with the Collective Rights Management Directive<sup>3</sup>.

### IV. INFRINGEMENT CASES

#### 1. Infringement cases open on 31 December (2013-2017)

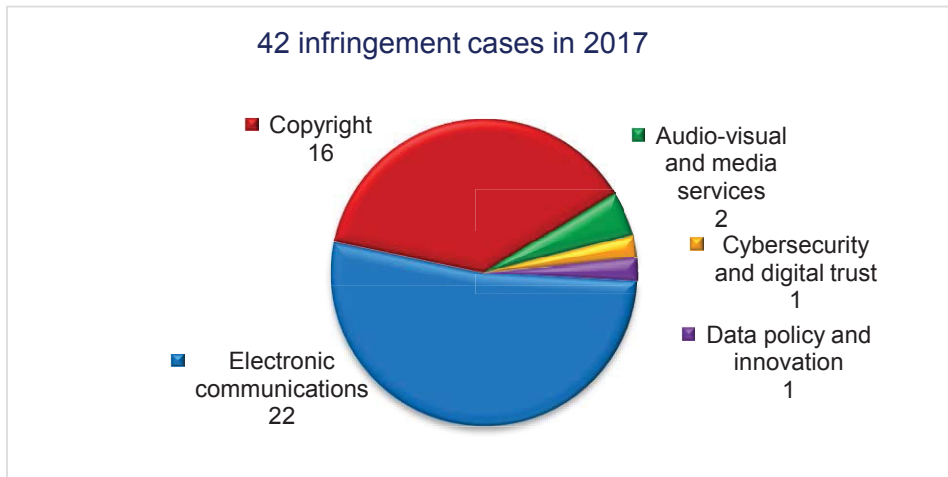


<sup>1</sup> Directive [2002/21/EC](#).

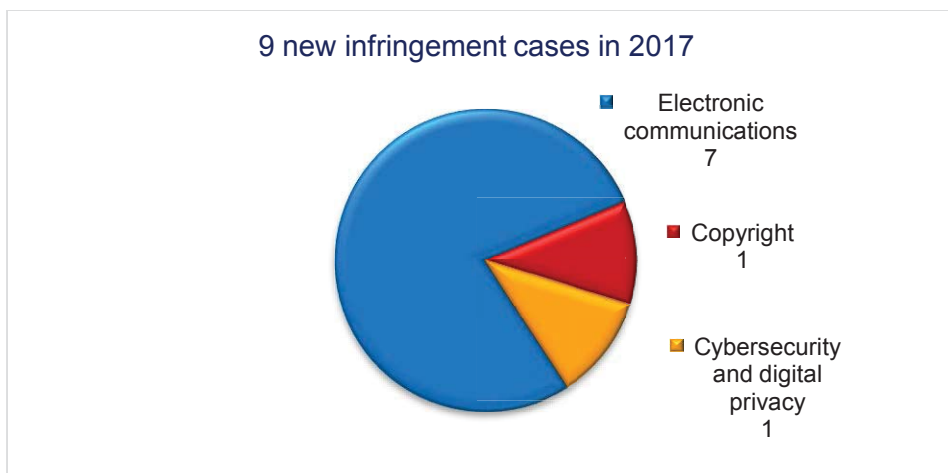
<sup>2</sup> Regulation [910/2014/EU](#).

<sup>3</sup> Directive [2014/26/EU](#).

## 2. Infringement cases open on 31 December 2017: main policy sectors



## 3. New infringement cases opened in 2017: main policy sectors



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

- a) The Commission opened 9 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following:
- *Belgium, Ireland, Spain, Hungary, Poland, Romania, Slovenia*: failure to notify measures under the Framework Directive for electronic communications<sup>4</sup>;
  - *Poland*: non-transposition of the Cable and Satellite Directive<sup>5</sup>;
  - *Romania*: non-compliance with the Collective Rights Management Directive<sup>6</sup>;
  - *Slovakia*: non-compliance with the Regulation on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation)<sup>7</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>4</sup> Directive [2002/21/EC](#), [MEMO/17/3494](#).

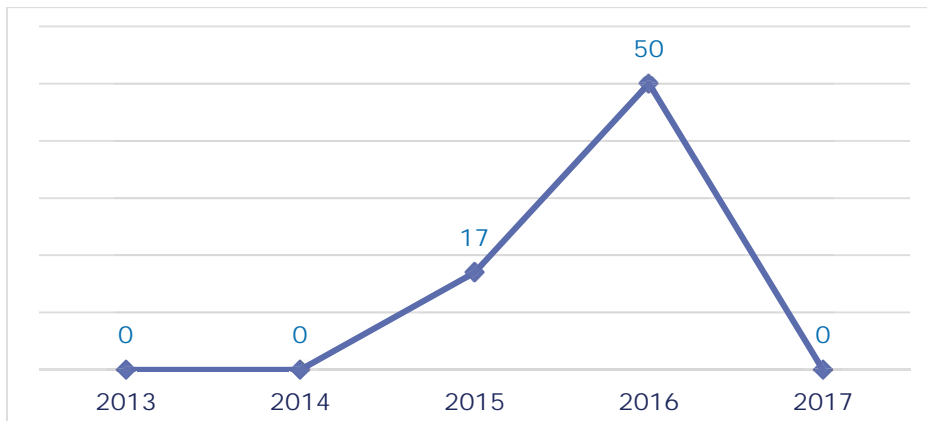
<sup>5</sup> Directive [93/83/CEE](#).

<sup>6</sup> Directive [2014/26/EU](#).

<sup>7</sup> Regulation [910/2014/EU](#), [MEMO/17/3494](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2013-2017)



### 2. New late transposition infringement cases opened in 2017: main policy sectors

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

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

- a) The Commission did not open any cases for late transposition in 2017 in this area;
- b) The Commission referred two cases to the Court under Articles 258 and 260(3) TFEU. They concerned:
  - *Belgium and Slovakia*: non-communication of measures transposing the Broadband Cost Reduction Directive<sup>8</sup>.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2017

These concerned:

- *Bulgaria and Lithuania*: non-conformity with the Audiovisual Media Services Directive<sup>9</sup>;
- *United Kingdom*: non-conformity with the Directive on harmonisation of certain aspects of copyright and related acts<sup>10</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2017 in this area.

### 2. Preliminary rulings

<sup>8</sup> Directive [2014/61/EU](#), Commission v Belgium, [C-543/17](#); [IP/17/1937](#).

<sup>9</sup> Directive [2007/65/EC](#) amending Directive [89/552/EEC](#).

<sup>10</sup> Directive [2001/29/EC](#).

The Court gave the following preliminary rulings.

- *Italy*: An online platform allowing users to store copies of TV programmes in a private cloud space cannot be deemed covered by the private copying exception. This exception applies to the reproduction right, but not the right to make available a protected work. EU rules<sup>11</sup> preclude national legislation which permits a commercial undertaking to provide private individuals with a cloud service for the remote recording of private copies of works protected by copyright, by means of a computer system, by actively involving itself in the recording, without the right holder's consent<sup>12</sup>.
- *Netherlands*: The Pirate Bay platform, by offering a search feature, categorising files, deleting faulty trackers, filtering out some types of content, and making advertising revenues plays an essential role in making protected works available to the public and as such engages in communication to the public. In other words the platform is considered to play an essential role, and to intervene, in providing access to copyright-protected content<sup>13</sup>.
- *Poland*: The case concerns a situation where a national regulatory authority imposes an obligation regarding cost orientation of prices on an operator designated as having significant market power on a specific market. The Court held that in such a case the national authority may set the prices of the services covered by such an obligation below the level of the costs incurred by that operator to provide them, if those costs are higher than the costs of an efficient operator<sup>14</sup>.

## VIII. OUTLOOK

Important implementation work in 2018 includes:

- monitoring implementation of the Digital Single Market strategy;
- 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 net neutrality and 'roam like at home' principles including measures concerning open internet access;
- monitoring compliance with the rules of the framework directives on the independence of national regulatory authorities.

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<sup>11</sup> Directive [2001/29/EC](#).

<sup>12</sup> VCAST Limited v RTI SpA, [C-265/16](#).

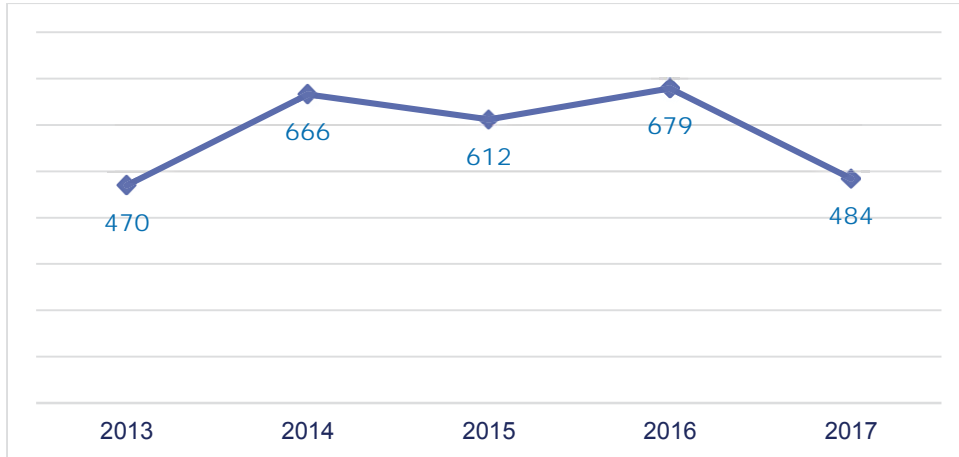
<sup>13</sup> Stichting Brein v Ziggo BV and XS4All Internet BV, [C-610/15](#).

<sup>14</sup> Directive [2002/19/EC](#); Polkomtel sp. z o.o., [C-277/16](#).

Employment, social affairs and inclusion

I. COMPLAINTS

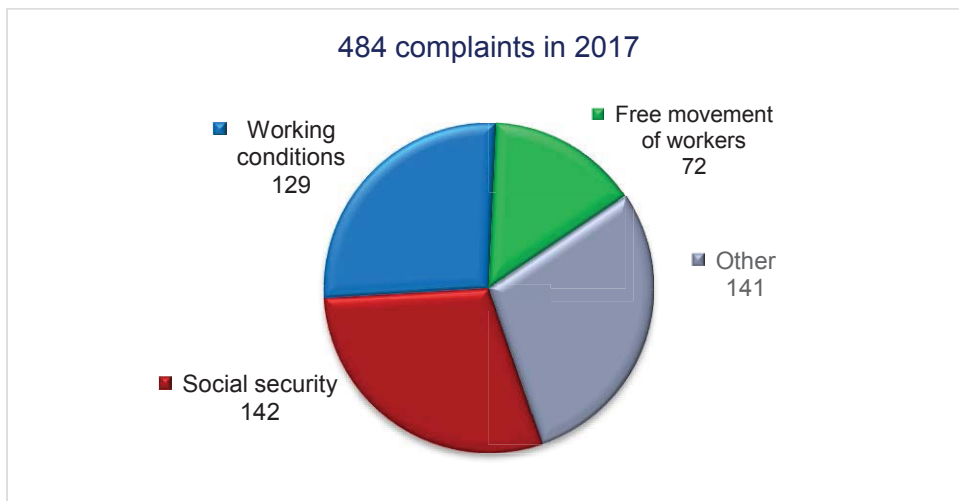
1. New complaints received from members of the public (2013-2017)



2. Public complaints open at year-end

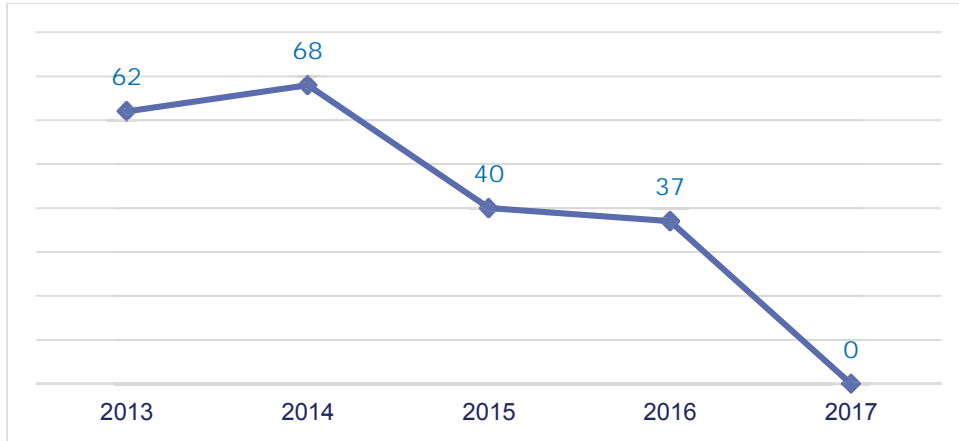
485	>	Complaints open at end-2017
484	>	New complaints registered in 2017
625	>	Complaints handled in 2017
<hr/>		
= 344	>	Complaints open at end-2017

3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

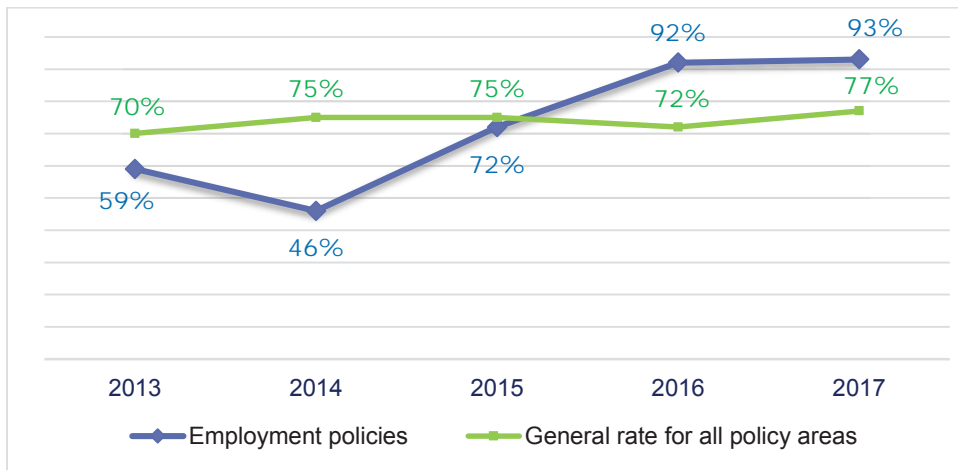
### 1. New EU Pilot files (2013-2017)



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

At the end of 2017, 21 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2013-2017)



## III. OWN-INITIATIVE CASES

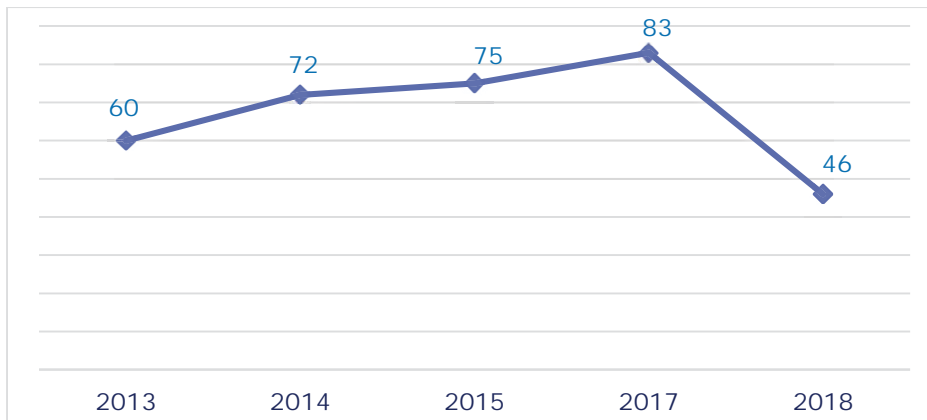
### New own-initiative infringement cases

In 2017 the Commission opened own-initiative infringement cases over working conditions.

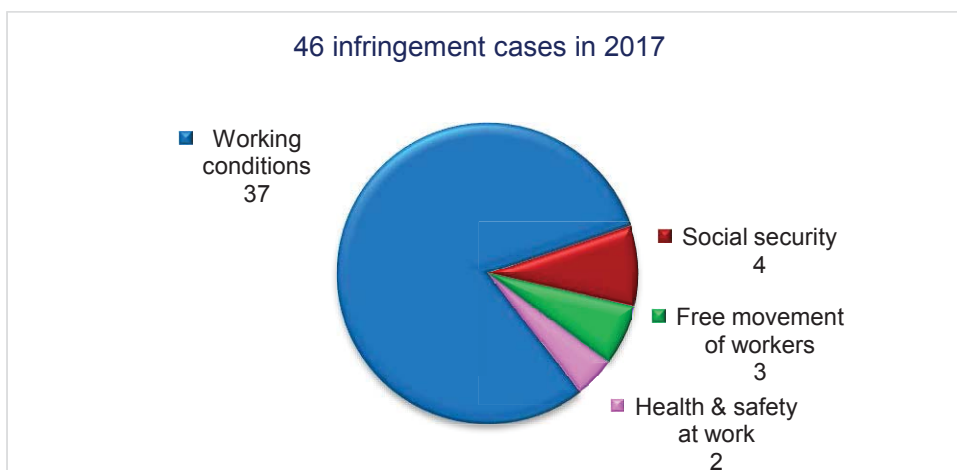


## IV. INFRINGEMENT CASES

### 1. Infringement cases open on 31 December (2013-2017)



### 2. Infringement cases open on 31 December 2017: main policy sectors



### 3. New infringement cases opened in 2017: main policy sectors

All 18 new infringement cases opened concerned working conditions.

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

a) The Commission opened 18 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following:

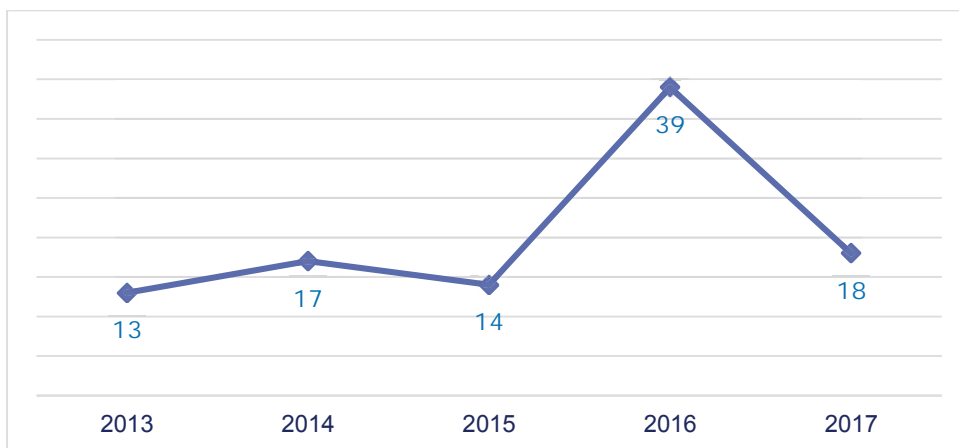
- *Bulgaria, Czech Republic, Germany, Estonia, Luxembourg, Poland, Romania, Finland, United Kingdom*: failure to communicate national measures transposing the Directive on the organisation of working time in inland waterway transport<sup>1</sup>;
- *Ireland, Greece, Croatia, Italy, Cyprus, Poland, Portugal, Romania, United Kingdom*: failure to communicate national transposition measures for the Directive on seafarers<sup>2</sup>.

<sup>1</sup> Directive [2014/112/EU](#).

- 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 (2013-2017)



### 2. New late transposition infringement cases opened in 2017: main policy sectors

All 18 new late transposition cases opened concerned working conditions.

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

- a) The Commission opened 18 cases for late transposition in 2017. They included:
  - the Directive on seafarers<sup>3</sup>; and
  - the Directive on the organisation of working time in inland waterway transport<sup>4</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 2017

These concerned:

- *Spain*: the adoption of amended transposition rules applicable to all workers as well as specific texts applicable to police workers in line with the provisions of the Working Time Directive<sup>5</sup> on night work;
- *France*: aligning the national law on police officers with the Working Time Directive<sup>6</sup>;
- *Hungary*: conformity with the Working Time Directive<sup>7</sup> by amending the rules applying to workers on regular passenger transport services, regular inter-urban short-distance public transport services and uninterrupted transport services.

<sup>2</sup> Directive [2015/1794/EU](#).

<sup>3</sup> Directive [2015/1794/EU](#).

<sup>4</sup> Directive [2014/112/EU](#).

<sup>5</sup> Directive [2003/88/EC](#).

<sup>6</sup> Directive [2003/88/EC](#).

<sup>7</sup> Directive [2003/88/EC](#).

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2017 in this area.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Germany*: The representation and collective defence of the employees' interests in the management or supervisory bodies of a company founded under national law is a non-harmonised and non-coordinated field from the point of view of EU law. A Member State may therefore adopt legislation applicable only to workers employed by companies located in its national territory<sup>8</sup>.
- *Spain*: Under the Fixed-Term Work Directive<sup>9</sup>, and as long as permanent workers are entitled to special leave until the end of their parliamentary term of office, such leave cannot be completely denied to fixed-term workers<sup>10</sup>.
- *France*: An E101 or A1 certificate issued by a competent authority in view of the posting of workers<sup>11</sup> is binding on both the social security institutions of the Member State in which the work is carried out and the courts of that Member State. This remains so even if those courts find that the worker's employment conditions clearly demonstrate that he does not fall under the category of posted workers<sup>12</sup>.
- *Netherlands*: The Transfer of Undertakings Directive<sup>13</sup> applies to a transfer that follows a declaration of insolvency when a 'pre-pack' notably aimed at ensuring the continuation of the activities of the undertaking by a third party is implemented<sup>14</sup>.
- *Poland*: Under the Collective Redundancies Directive<sup>15</sup>, an employer is required to consult workers' representatives when he intends, to the detriment of employees, to amend unilaterally the terms of remuneration, which, if refused by employees, will entail termination of their employment<sup>16</sup>.
- *Portugal*: EU law does not require the minimum uninterrupted weekly rest period to be provided no later than the day following a period of 6 consecutive working days, but requires it to be provided within each seven-day period<sup>17</sup>.
- *Slovakia*: Under the EU social security coordination rules<sup>18</sup>, a person working as self-employed in one Member State and performing only marginal activities as an employed person in another is to be covered by the social security legislation of the first Member State. Marginal activities performed in the other Member State are not to be taken into consideration for determining the applicable legislation<sup>19</sup>.

<sup>8</sup> Erzberger, [C-566/15](#).

<sup>9</sup> Directive [1999/70/EC](#).

<sup>10</sup> Vega Gonzalez, [C-158/16](#).

<sup>11</sup> Regulation (EC) No [883/2004](#).

<sup>12</sup> A-ROSA, [C-620/15](#).

<sup>13</sup> Directive [2001/23/EC](#).

<sup>14</sup> Smallsteps, [C-126/16](#).

<sup>15</sup> Directive [1998/59/EC](#).

<sup>16</sup> Socha, [C-149/16](#) and Ciupa, [C-429/16](#).

<sup>17</sup> Maio Marques da Rosa, [C-306/16](#).

<sup>18</sup> Regulation (EC) No [883/2004](#).

<sup>19</sup> Szoja, [C-89/16](#).

- *Finland*: The provisions of the Working Time Directive<sup>20</sup> on working time and rest periods are applicable to ‘relief parents’<sup>21</sup> unless their working time as a whole is not measured or predetermined or may be determined by the worker himself<sup>22</sup>.
- *United Kingdom*: Under the Working Time Directive<sup>23</sup>, a worker must be able to carry over and accumulate unexercised rights to paid annual leave when an employer does not put that worker in a position in which he is able to exercise his right to paid annual leave. The Directive precludes the requirement that the worker must take leave before establishing whether he has the right to be paid in respect of that leave<sup>24</sup>.

## VIII. OUTLOOK

Important implementation work in 2018 includes:

- monitoring the correct transposition of Directives on enforcement of free movement of workers<sup>25</sup>, on enforcement of posting of workers<sup>26</sup> on the alignment of Directives on classification, labelling and packaging of substances and mixtures<sup>27</sup> and on the minimum health and safety requirements regarding the exposure of workers to the risks arising from electromagnetic fields.<sup>28</sup>
- monitoring the complete and timely transposition of Directive on minimum requirements concerning supplementary pension rights<sup>29</sup> and of Directive establishing a fourth list of indicative occupational exposure limit values<sup>30</sup>.

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<sup>20</sup> Directive [2003/88/EC](#).

<sup>21</sup> Persons caring for children in a family-like environment (in SOS Children’s villages, for example).

<sup>22</sup> Directive [2003/88/EC](#) and Hälvä, [C-175/16](#).

<sup>23</sup> Directive [2003/88/EC](#).

<sup>24</sup> King, [C-214/16](#).

<sup>25</sup> Directive [2014/54/EU](#).

<sup>26</sup> Directive [2014/67/EU](#).

<sup>27</sup> Regulation (EC) No [1272/2008](#).

<sup>28</sup> Directives [92/58/EEC](#), [92/85/EEC](#), [94/33/EC](#), [98/24/EC](#) and [2004/37/EC](#).

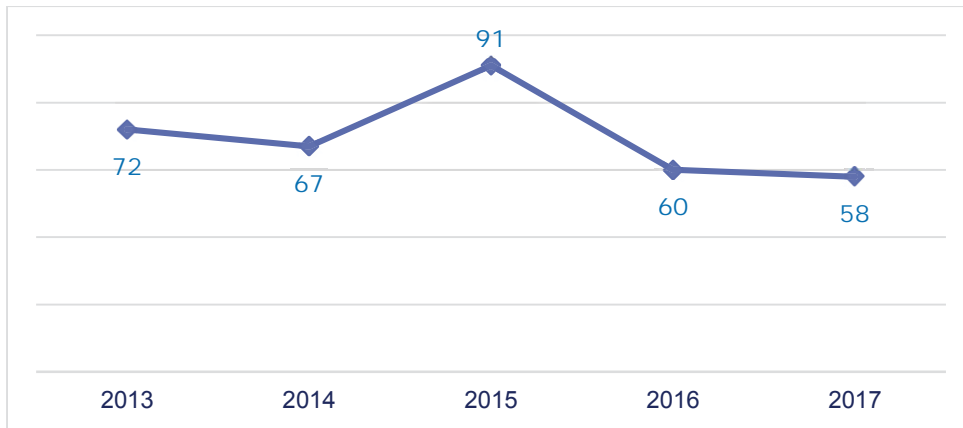
<sup>29</sup> Directive [2014/50/EU](#).

<sup>30</sup> Directive [98/24/EC](#).

## Energy

### I. COMPLAINTS

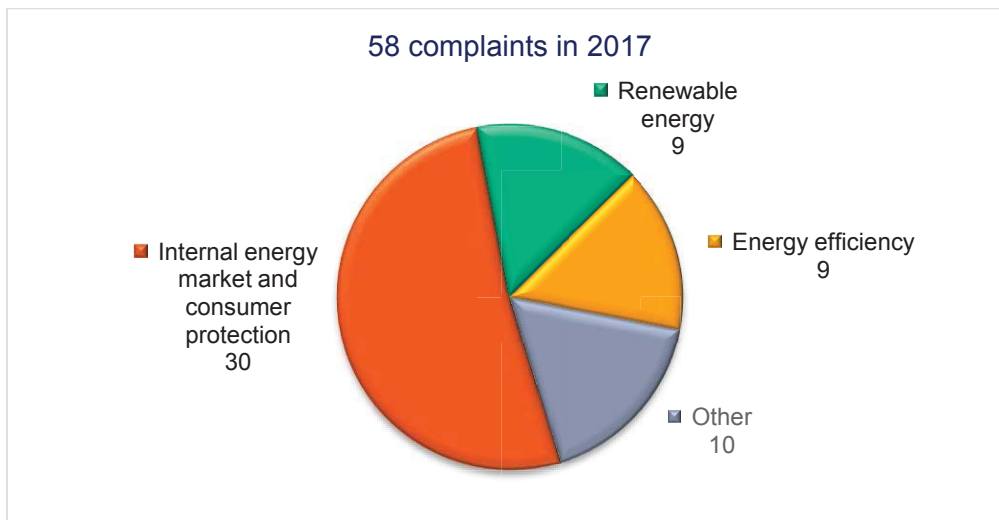
#### 1. New complaints received from members of the public (2013-2017)



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

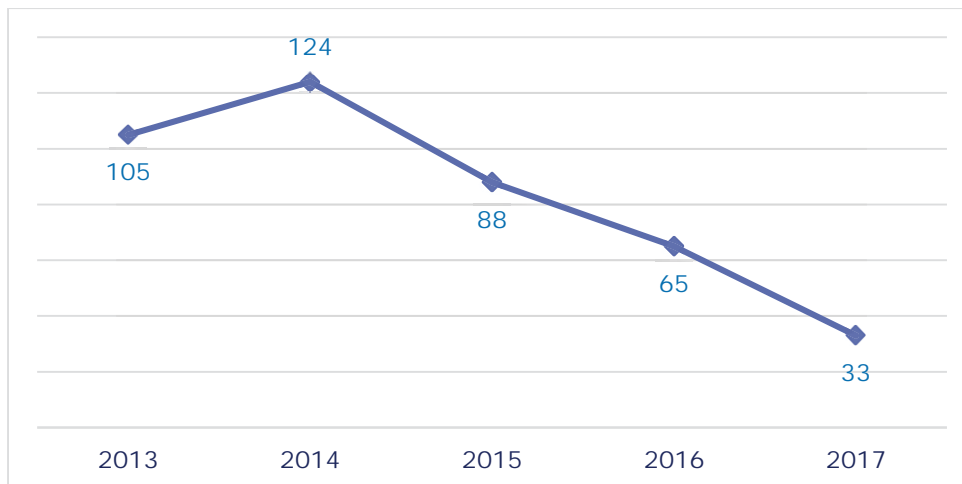
100	>	Complaints open at end-2016
58	>	New complaints registered in 2017
48	>	Complaints handled in 2017
<b>= 110</b>	>	<b>Complaints open at end-2017</b>

#### 3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

### 1. New EU Pilot files (2013-2017)



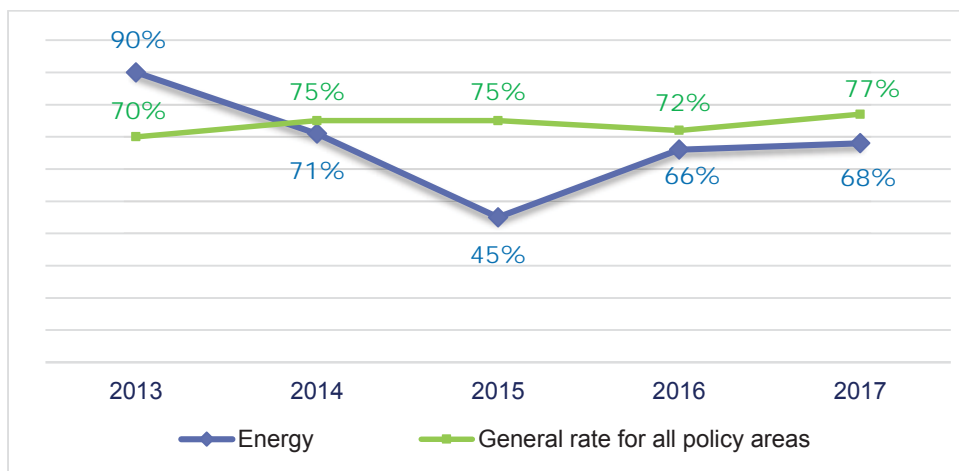
### 2. EU Pilot files open at year-end

At the end of 2017, 67 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2017: main policy sectors

All 33 new EU Pilot files opened in 2017 concerned energy efficiency.

### 4. EU Pilot files: resolution rate for policies (2013-2017)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

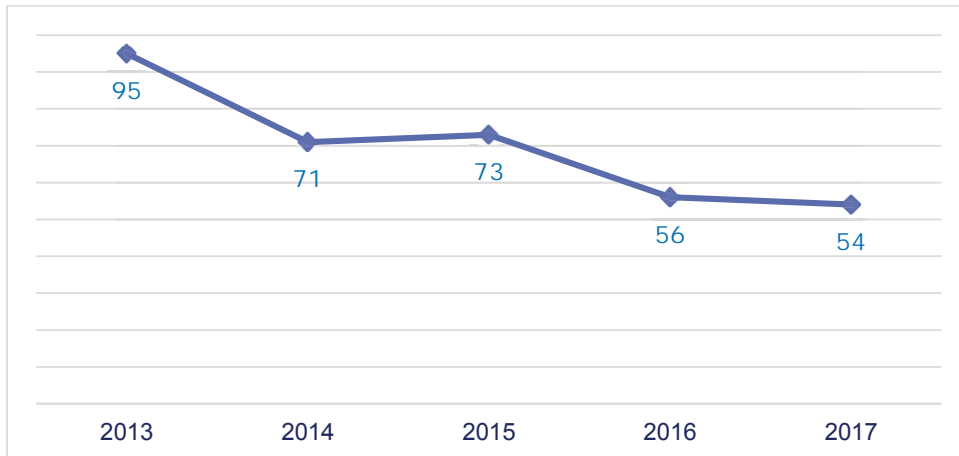
In 2017, the Commission opened own-initiative infringement cases over:

Monitoring the application of European Union law  
2017 Annual Report  
Energy

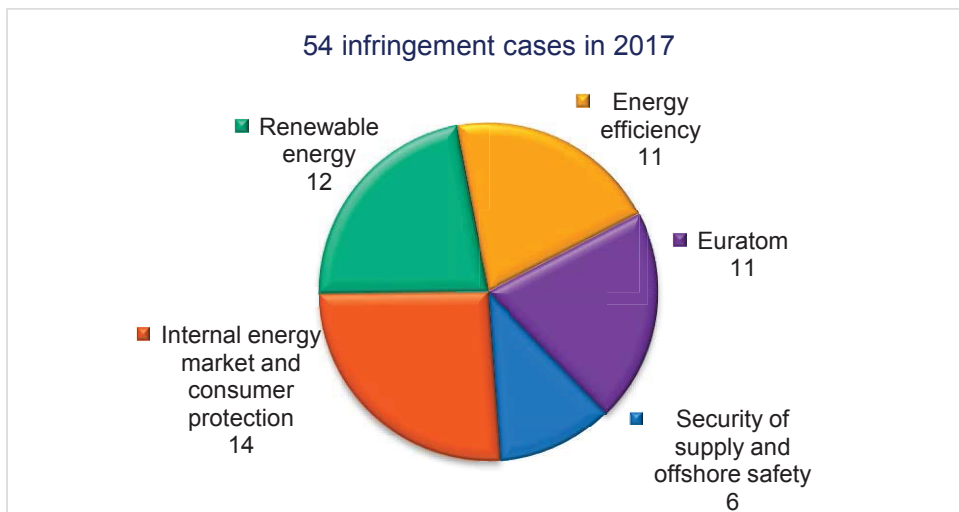
- the internal energy market and consumer protection;
- energy efficiency;
- nuclear safety.

#### IV. INFRINGEMENT CASES

##### 1. Infringement cases open on 31 December (2013-2017)

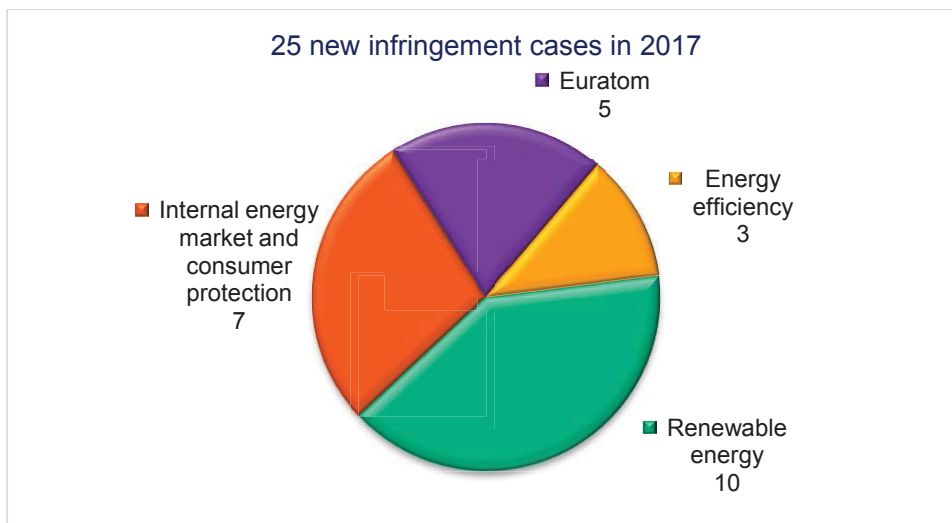


##### 2. Infringement cases open on 31 December 2017: main policy sectors



##### 3. New infringement cases opened in 2017: main policy sectors





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

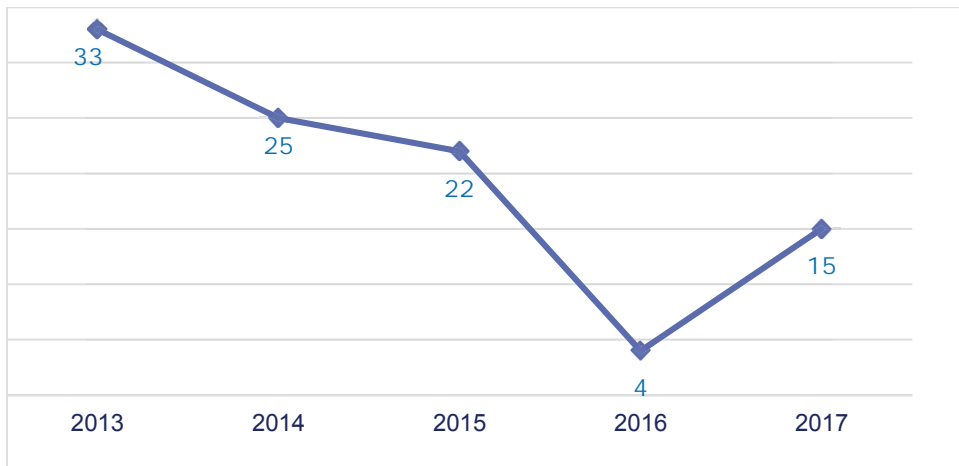
- a) The Commission opened 25 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following:
- *Belgium*: non-communication of national measures transposing the Directive on radioactive substances in water intended for human consumption<sup>1</sup>;
  - *Belgium, Denmark, Luxembourg, Austria and Slovenia*: non-communication of national measures transposing the amending Nuclear Safety Directive;<sup>2</sup>
  - *Czech Republic, Croatia, Italy, Austria, Portugal*: non-compliance with the Radioactive Waste Directive<sup>3</sup>;
  - *Czech Republic, Estonia, Croatia, Cyprus, Lithuania, Hungary, Netherlands, Sweden*: incorrect transposition and implementation of the Third Energy Package Directives (Electricity and Gas Directives)<sup>4</sup>;
  - *Czech Republic, Greece, Latvia, Lithuania, Malta*: incorrect transposition and application of the Energy Performance of Buildings Directive<sup>5</sup>;
  - *Spain*: failure to comply with the Energy Efficiency Directive<sup>6</sup>;
  - *Poland*: non-compliance with the Renewable Energy Directive<sup>7</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

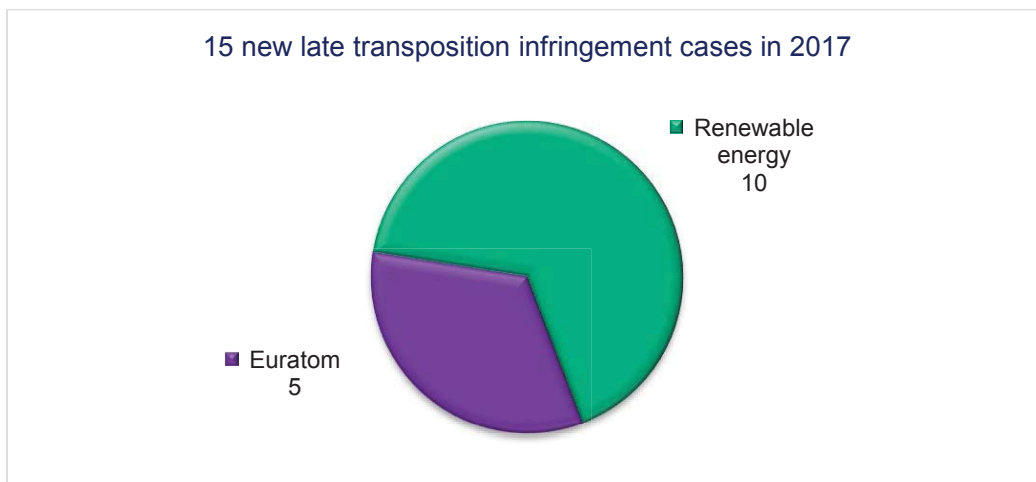
### 1. New late transposition infringement cases (2013-2017)

<sup>1</sup> Directive [2013/51/Euratom](#).  
<sup>2</sup> Directive [2014/87/Euratom](#).  
<sup>3</sup> Directive [2011/70/Euratom](#), [MEMO/17/1935](#).  
<sup>4</sup> Directives [2009/72/EC](#) and [2009/72/EC](#).  
<sup>5</sup> Directive [2010/31/EU](#).  
<sup>6</sup> Directive [2012/27/EU](#), [MEMO/17/3494](#).  
<sup>7</sup> Directive [2009/28/EC](#), [MEMO/17/1045](#).

Monitoring the application of European Union law  
2017 Annual Report  
Energy



## 2. New late transposition infringement cases opened in 2017: main policy sectors



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

- a) The Commission opened 15 cases for late transposition in 2017. They concern:
  - the Directive on radioactive substances in water intended for human consumption<sup>8</sup>;
  - the Offshore Safety Directive<sup>9</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 2017

These concerned:

- *Bulgaria*: failure to correctly transpose and ensure the effective application of the Directive on the energy performance of buildings<sup>10</sup>;
- *France and Sweden*: incorrect transposition of certain requirements of the Directive on the energy performance of buildings<sup>11</sup>;
- *Lithuania and Austria*: incorrect transposition of Directives on common rules for the internal market in electricity<sup>12</sup> and natural gas<sup>13</sup>;
- *Latvia and Portugal*: failure to adopt national programmes for spent fuel and radioactive waste management compliant with the requirements of the Radioactive Waste Directive;<sup>14</sup>
- *Portugal and Spain*: for incomplete transposition of the Directive on radioactive substances in water intended for human consumption.<sup>15</sup>

<sup>8</sup> Directive [2013/51/Euratom](#).

<sup>9</sup> Directive [2013/30/EU](#).

<sup>10</sup> Directive [2010/31/EU](#).

<sup>11</sup> Directive [2010/31/EU](#).

<sup>12</sup> Directive [2009/72/EC](#).

<sup>13</sup> Directive [2009/73/EC](#).

<sup>14</sup> Directive [2011/70/Euratom](#)

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

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2017 in this area.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Bulgaria*: The Third Energy Package does not preclude national legislation limiting the number of holders of electricity transmission licences for a particular territory<sup>16</sup>.
- *Spain*: A regional levy on windmills, taken in isolation, does not violate the Renewable Energy Directive, and in particular Member States' obligation to meet their national renewable energy targets for 2020<sup>17</sup>.
- *France*: Member States may establish gas storage requirements which go beyond the minimum standard established by the Security of Gas Supply Regulation, provided that all the proportionality conditions of the Regulation are met. The Court further clarified that operators must have the effective possibility to satisfy their gas storage obligations at regional or EU level<sup>18</sup>.
- *Poland*: 'Hydropower' has to be understood as including energy generated by the downward flow of industrial waste water<sup>19</sup>.
- *Sweden*: Article 34 of the TFEU precludes a national measure which, on the one hand, allows economic operators to implement a mass balance system in respect of sustainable biogas if the biogas is transported within the Member State's national gas network, while, on the one hand, preventing the implementation of such a mass balance system if the biogas is transported cross-border in interconnected national gas networks<sup>20</sup>.

## VIII. OUTLOOK

Important implementation work in 2018 includes:

- close monitoring of transposition and implementations of Directives and Regulations in the field of energy and related legislation.

<sup>16</sup> Balgarska energiyna borsa AD (BEB), [C-347/16](#).

<sup>17</sup> Elecdey Carcelen SA and Others, [C-215/16](#).

<sup>18</sup> Eni SpA and Others, [C-226/16](#).

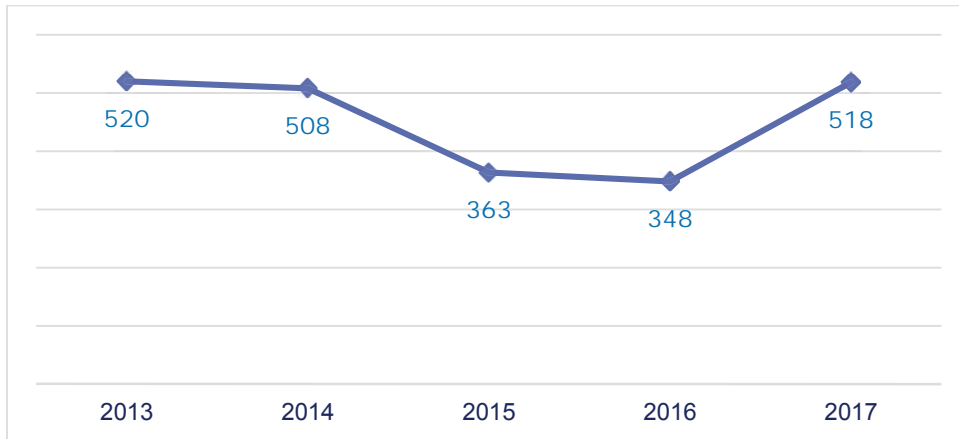
<sup>19</sup> J. D. v Prezes Urzędu Regulacji Energetyki, [C-4/16](#).

<sup>20</sup> E.ON Biofor Sverige AB, [C-549/15](#).

Environment

I. COMPLAINTS

1. New complaints received from members of the public (2013-2017)



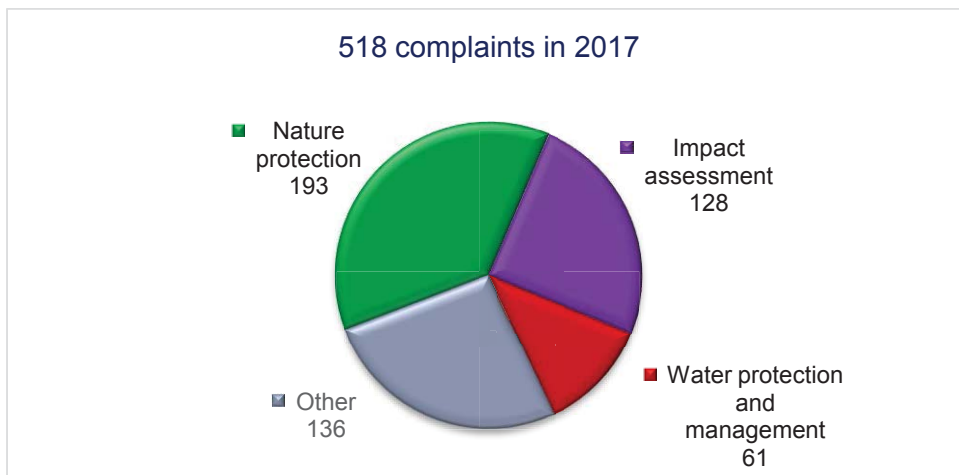
2. Public complaints open at year-end

471 > Complaints open at end-2016  
518 > New complaints registered in 2017  
399 > Complaints handled in 2017  

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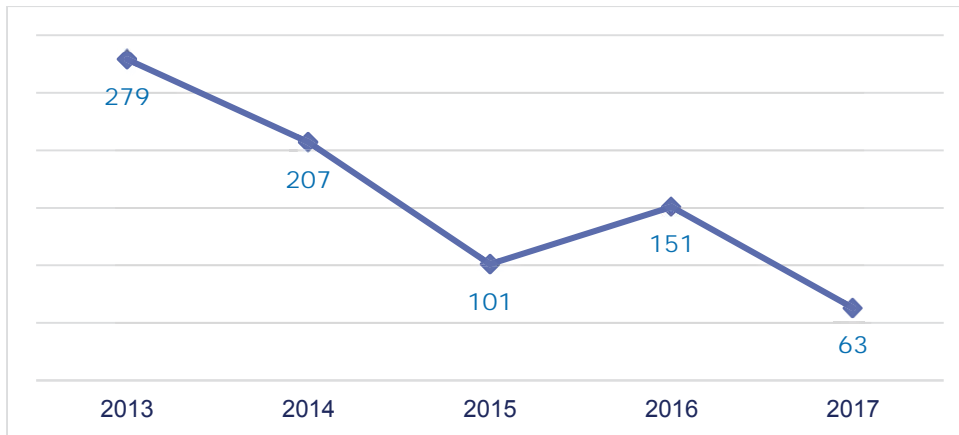
**= 590** > Complaints open at end-2017

3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

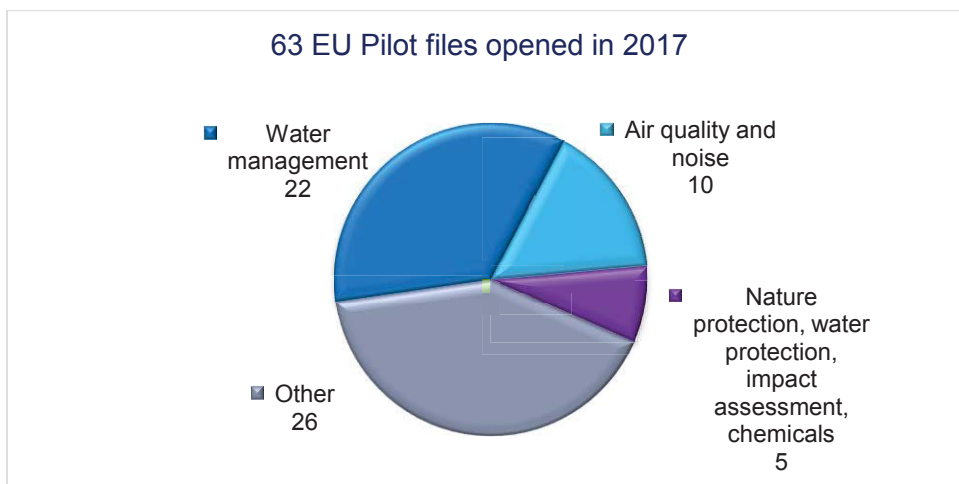
### 1. New EU Pilot files (2013-2017)



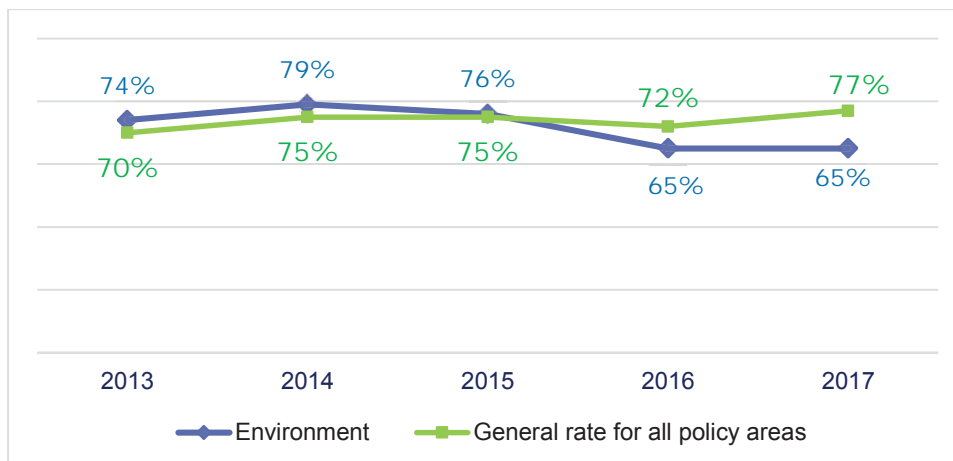
### 2. EU Pilot files open at year-end

At the end of 2017, 240 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2017: main policy sectors



### 4. EU Pilot files: resolution rate for policies (2013-2017)



### III. OWN-INITIATIVE CASES

#### New own-initiative infringement cases

In 2017, the Commission opened own-initiative infringement cases over:

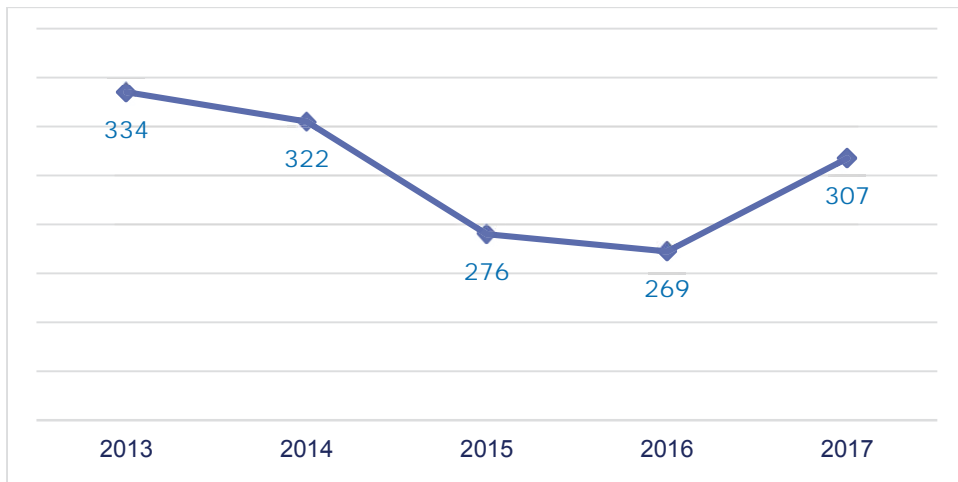
- non-compliance with the Extractive Waste Directive<sup>1</sup>;
- failure to comply with reporting obligations under EU waste legislation;
- incorrect transposition of the Waste Electrical and Electronic Equipment Directive<sup>2</sup>;
- non-compliance with the Waste Landfill Directive<sup>3</sup>;
- incorrect transposition of the Habitats Directive<sup>4</sup> and the Birds Directive<sup>5</sup>;
- inadequate treatment of urban waste water;
- failure to comply with the Floods Directive<sup>6</sup>;
- non-compliance with the Water Framework Directive<sup>7</sup>;
- failure to comply with the Marine Strategy Framework Directive<sup>8</sup>;
- non-compliance with EU rules on ambient air quality<sup>9</sup>;
- failure to adopt the required measures on environmental noise;
- non-compliant transposition of the Industrial Emissions Directive<sup>10</sup>.

### IV. INFRINGEMENT CASES

#### 1. Infringement cases open on 31 December (2013-2017)

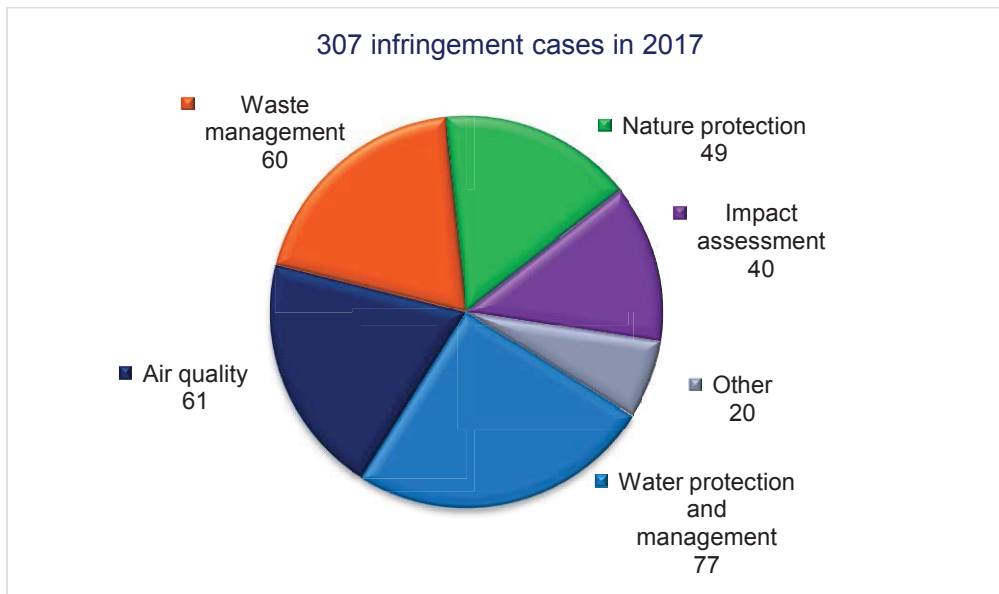
<sup>1</sup> Directive [2006/21/EC](#).  
<sup>2</sup> Directive [2012/19/EU](#).  
<sup>3</sup> Directive [1999/31/EC](#).  
<sup>4</sup> Directive [92/43/EEC](#).  
<sup>5</sup> Directive [2009/147/EC](#).  
<sup>6</sup> Directive [2007/60/EC](#).  
<sup>7</sup> Directive [2000/60/EC](#).  
<sup>8</sup> Directive [2008/56/EC](#).  
<sup>9</sup> Directive [2008/50/EC](#).  
<sup>10</sup> Directive [2010/75/EU](#).

Monitoring the application of European Union law  
2017 Annual Report  
Environment

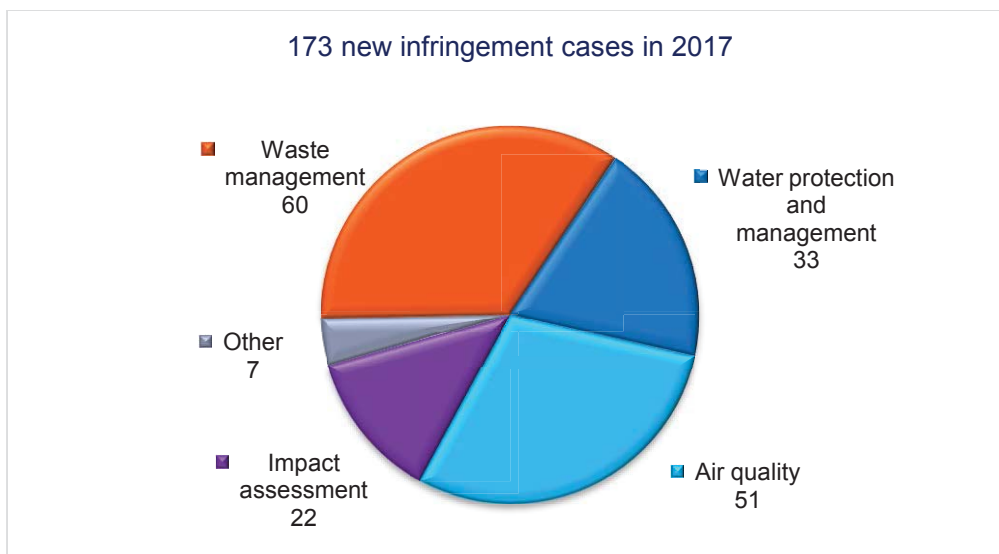




## 2. Infringement cases open on 31 December 2017: main policy sectors



## 3. New infringement cases opened in 2017: main policy sectors



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

a) The Commission opened 173 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following:

- *Belgium*<sup>11</sup>, *Spain*<sup>12</sup> and *Italy*<sup>13</sup>: lack of waste management plans and/or waste prevention programmes required under the Waste Framework Directive<sup>14</sup>;

<sup>11</sup> [MEMO/17/234](#).

<sup>12</sup> [MEMO/17/1935](#).

<sup>13</sup> [MEMO/17/234](#).

<sup>14</sup> Directive [2008/98/EC](#).

- *Belgium, Czech Republic<sup>15</sup>, Germany<sup>16</sup>, Greece<sup>17</sup>, France<sup>18</sup>, Croatia, Cyprus<sup>19</sup>, Hungary<sup>20</sup>, Poland<sup>21</sup>, Portugal<sup>22</sup>, Romania<sup>23</sup>, Slovenia<sup>24</sup> and Slovakia<sup>25</sup>*: failure to establish strategic noise maps and/or action plans required by the Noise Directive<sup>26</sup>;
- *Bulgaria*: non-compliant transposition of the Extractive Waste Directive<sup>27</sup>;
- *Bulgaria<sup>28</sup>, Spain<sup>29</sup>, France<sup>30</sup>, Italy<sup>31</sup>, Cyprus<sup>32</sup>, Latvia, Lithuania, Hungary<sup>33</sup>, Malta<sup>34</sup>, Slovenia and Slovakia*: failure to ensure that urban waste water is adequately treated;
- *Denmark, Germany, Ireland, Greece, Spain, France, Italy, Cyprus, Luxembourg, Malta, Netherlands, Austria, Romania, Slovenia, Sweden and United Kingdom*: failure to comply with reporting obligations under EU waste legislation<sup>35</sup>;
- *Denmark, Greece, Croatia, Lithuania, Malta, Romania and Slovenia*: failure to develop and report the programmes of measures required by the Marine Strategy Framework Directive<sup>36</sup>;
- *Germany, Spain, France, Italy and United Kingdom*: failure to comply with the NO<sub>2</sub><sup>37</sup> limit values set by the Air Quality Directive<sup>38</sup>;
- *Ireland, Greece, Spain<sup>39</sup> and Austria*: late adoption of the second round of river basin management plans under the Water Framework Directive<sup>40</sup>;
- *Ireland, Greece, Portugal and Slovenia*: non-reporting of flood risk management plans under the Floods Directive<sup>41</sup>;
- *Croatia<sup>42</sup> and Slovenia<sup>43</sup>*: non-conformity of national legislation with the Birds Directive and the Habitats Directive<sup>44</sup>;
- *Italy*: failure to comply with the PM<sub>10</sub><sup>45</sup> limit values set by the Air Quality Directive<sup>46</sup>;
- *Cyprus and Slovakia*: failure to ensure that waste landfills operate in compliance with EU standards;
- *Luxembourg<sup>47</sup>, Romania<sup>48</sup> and Slovakia<sup>49</sup>*: failure to ensure proper monitoring of air quality throughout their whole territory;

15 [MEMO/17/1577](#).

16 [MEMO/17/3494](#).

17 [MEMO/17/4767](#).

18 [MEMO/17/4767](#).

19 [MEMO/17/3494](#).

20 [MEMO/17/234](#).

21 [MEMO/17/1281](#).

22 [MEMO/17/1281](#).

23 [MEMO/17/3494](#).

24 [MEMO/17/3494](#).

25 [MEMO/17/1577](#).

26 Directive [2002/49/EC](#).

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

28 [MEMO/17/1936](#).

29 [MEMO/17/3494](#).

30 [MEMO/17/3494](#).

31 [MEMO/17/1280](#).

32 [MEMO/17/1936](#).

33 [MEMO/17/4767](#).

34 [MEMO/17/3494](#).

35 [MEMO/17/1281](#) and [MEMO/17/1577](#).

36 Directive [2008/56/EC](#).

37 Nitrogen dioxide.

38 Directive [2008/50/EC](#), [IP/17/238](#).

39 [MEMO/17/3494](#).

40 Directive [2000/60/EC](#).

41 Directive [2007/60/EC](#).

42 [MEMO/17/1045](#).

43 [MEMO/17/3494](#).

44 Directive [2009/147/EC](#) and Directive [92/43/EEC](#).

45 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).

46 Directive [2008/50/EC](#).

47 [MEMO/17/3494](#).

- *Austria*: non-communication of national measures transposing the Seveso III Directive<sup>50</sup>;
- *Romania*: failure to adopt appropriate measures to ensure that waste from extractive industries is managed without endangering human health or harming the environment<sup>51</sup>.

b) The Commission referred 9 cases to the Court under Article 258 TFEU. They concern:

- *Bulgaria*: failure to protect unique habitats and important bird species in the Rila Mountains<sup>52</sup>;
- *Czech Republic*: illegal shipment of hazardous waste to Poland<sup>53</sup>;
- *Ireland*: failure to ensure adequate collection and treatment of urban waste water<sup>54</sup>;
- *France*: failure to address continued violations of the EU legislation on the conservation of wild birds<sup>55</sup>;
- *Italy*: failure to rehabilitate or close non-compliant waste landfills posing a serious risk for human health and the environment<sup>56</sup>;
- *Poland*: increased logging operations in the Białowieża Forest in breach of the Birds and Habitats Directives<sup>57</sup>;
- *Romania*<sup>58</sup> and *Slovenia*<sup>59</sup>: failure to close and rehabilitate illegal waste landfills posing a serious risk for human health and the environment;
- *United Kingdom*: failure to protect the harbour porpoise (*Phocoena phocoena*)<sup>60</sup>.

c) The Commission referred 2 cases to the Court under Article 260(2) TFEU. They concern the following.

- *Spain*: Failure to comply with a Court judgment finding that Spain had failed to adequately collect and treat waste water in a number of agglomerations. The Commission asked the Court to impose a lump sum payment of EUR 46 522 999 and a daily penalty payment of EUR 171 217.20 until Spain fully complies with EU law<sup>61</sup>.
- *Italy*: Failure to comply with a Court judgment finding that Italy had failed to adequately collect and treat waste water discharged by numerous agglomerations. The Commission asked the Court to impose a lump sum payment of EUR 62 699 421.40 and a daily penalty payment of EUR 346 922.40 until Italy fully complies with EU law<sup>62</sup>.

48 [MEMO/17/1577](#).

49 [MEMO/17/3494](#).

50 Directive [2012/18/EU](#).

51 [MEMO/17/1936](#).

52 Directive [1979/409/EEC](#), Commission v Bulgaria, [C-97/17](#); [IP/16/2491](#).

53 Regulation [\(EC\) No 1013/2006](#), Commission v Czech Republic, [C-399/17](#); [IP/16/2492](#).

54 Directive [91/271/EEC](#), Commission v Ireland, [C-427/17](#); [IP/17/236](#).

55 Directive [2009/147/CE](#), Commission v France, [C-420/17](#), [IP/16/4213](#). France subsequently took the necessary measure to ensure compliance with EU law and the Commission has therefore withdrawn this case from the Court; [MEX/17/4652](#).

56 Directive [1999/31/EC](#), Commission v Italy, [C-498/17](#); [IP/17/1283](#).

57 Directives [92/43/EEC](#) and [2009/147/EC](#), Commission v Poland, [C-441/17](#); [IP/17/1948](#). The Commission also requested interim measures compelling Poland to cease operations immediately, [C-441/17 R](#). The Court granted the Commission's request for interim measures and confirmed that Poland could face financial penalties if it did not respect the Court decision; Court press release [No 122/17](#).

58 Directive [1999/31/EC](#), Commission v Romania, [C-301/17](#); [IP/17/237](#).

59 Directive [1999/31/EC](#), Commission v Slovenia, [C-506/17](#); [IP/17/1048](#).

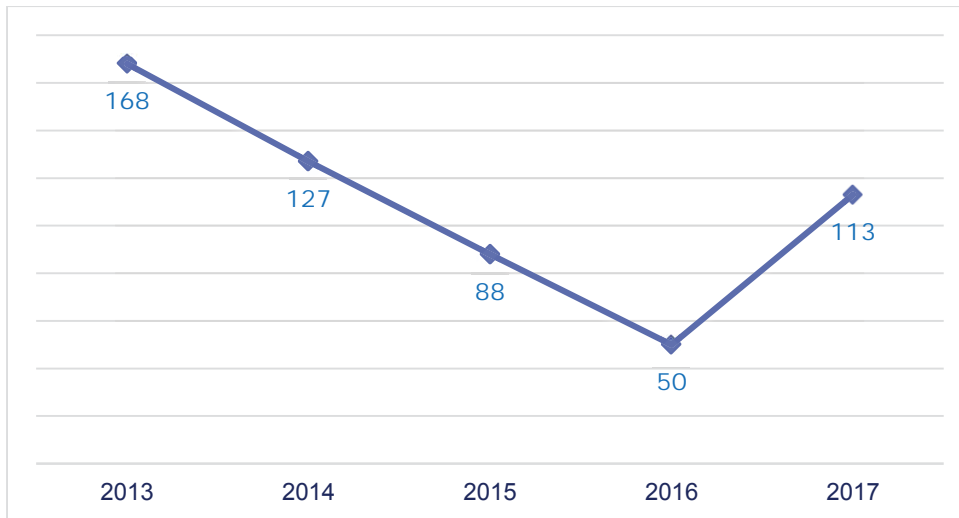
60 Directive [92/43/CEE](#), Commission v United Kingdom, [C-669/16](#); [IP/16/3128](#).

61 Directive [91/271/EEC](#), Commission v Spain, [C-205/17](#); [MEMO/16/3644](#); [IP/16/3645](#).

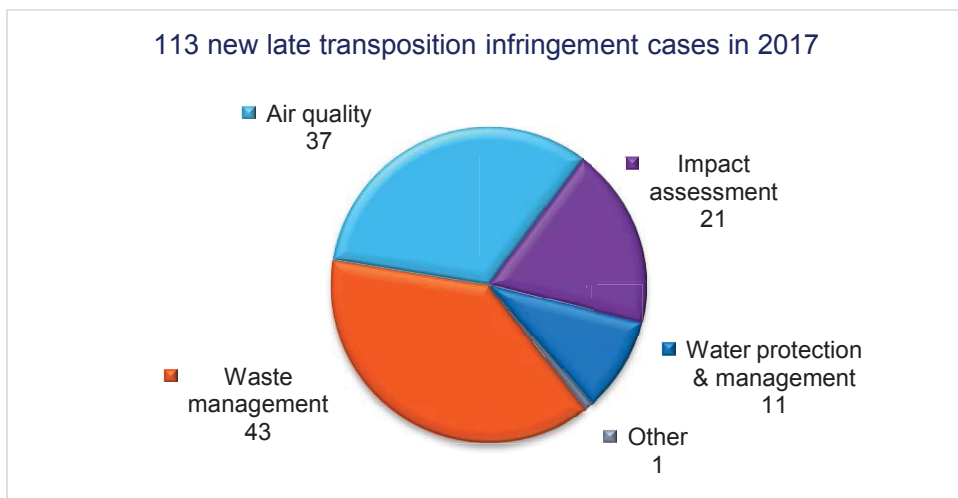
62 Directive [91/271/EEC](#), Commission v Italy, [C-251/17](#); [IP/16/4212](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2013-2017)



### 2. New late transposition infringement cases opened in 2017: main policy sectors



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

a) The Commission opened 113 cases for late transposition in 2017. Most concern:

- a Directive<sup>63</sup> amending the Environmental Impact Assessment Directive<sup>64</sup> (21 Member States);
- a Commission Directive amending the rules on reference methods, data validation and location of sampling points for the assessment of ambient air quality<sup>65</sup> (19 Member States);

<sup>63</sup> Directive [2014/52/EU](#).

<sup>64</sup> Directive [2011/92/EU](#).

<sup>65</sup> Directive [\(EU\) 2015/1480](#).

- the Directive on the reduction of national emissions of certain atmospheric pollutants<sup>66</sup> (18 Member States);
- a Directive<sup>67</sup> amending the Directive on lightweight plastic carrier bags<sup>68</sup> (16 Member States);
- a Commission Directive<sup>69</sup> amending the Directive on end-of-life vehicles<sup>70</sup> (11 Member States).

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 2017

These concerned:

- *Belgium*: non-compliant transposition of the Environmental Liability Directive<sup>71</sup>;
- *Bulgaria and Greece*: failure to make available to the Commission flood hazard and risk maps;
- *Bulgaria, Czech Republic, Denmark, Luxembourg, Poland and Slovenia*: non-communication of national measures transposing a Commission Directive<sup>72</sup> amending the Groundwater Directive<sup>73</sup>;
- *Denmark, Lithuania, Malta, Romania and Slovenia*: failure to develop and report the programmes of measures required by the Marine Strategy Framework Directive<sup>74</sup>;
- *Germany*: incorrect transposition of the Waste Framework Directive<sup>75</sup>;
- *Greece*: failure to prepare and communicate the monitoring programmes required by the Marine Strategy Framework Directive<sup>76</sup>;
- *Croatia*: failure to revise the national waste management plan and to adopt a waste prevention programme;
- *France, Poland and Finland*: non-communication of national measures transposing the Seveso III Directive<sup>77</sup>;
- *Slovenia*: lack of flood risk management plans required by the Floods Directive<sup>78</sup>;
- *Slovakia*: incorrect transposition of the Environmental Impact Assessment Directive<sup>79</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>80</sup>

The Court gave the following rulings.

- *Bulgaria* has failed to comply with the Air Quality Directive by exceeding the daily and/or annual limit values for PM<sub>10</sub><sup>81</sup> concentrations systematically and continuously in certain

<sup>66</sup> Directive [\(EU\) 2016/2284](#).

<sup>67</sup> Directive [\(EU\) 2015/720](#).

<sup>68</sup> Directive [94/62/EC](#).

<sup>69</sup> Directive [\(EU\) 2016/774](#).

<sup>70</sup> Directive [2000/53/EC](#).

<sup>71</sup> Directive [2004/35/CE](#).

<sup>72</sup> Directive [2014/80/UE](#).

<sup>73</sup> Directive [2006/118/EC](#).

<sup>74</sup> Directive [2008/56/EC](#).

<sup>75</sup> Directive [2008/98/EC](#).

<sup>76</sup> Directive [2008/56/EC](#).

<sup>77</sup> Directive [2012/18/EU](#).

<sup>78</sup> Directive [2007/60/EC](#).

<sup>79</sup> Directive [2011/92/EU](#).

<sup>80</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>81</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).

zones and agglomerations, and by not keeping the exceedance period as short as possible<sup>82</sup>.

- *Germany* has failed to fulfil its obligations under the Habitats Directive by authorising the construction of a coal-fired power plant in Moorburg, near Hamburg, without conducting an appropriate and comprehensive assessment of its implications<sup>83</sup>.
- *Greece* has failed to fulfil its obligations under EU law by tolerating the operation of the Temploni waste landfill on the island of Corfu, which does not satisfy the conditions and requirements laid down by EU directives on waste<sup>84</sup>.
- *Greece* has failed to provide adequate treatment of urban waste water in several smaller agglomerations<sup>85</sup>.
- *Spain* has failed to comply with its obligations under the Waste Framework Directive regarding the operation of 61 illegal waste landfill sites<sup>86</sup>.
- *Poland* must immediately cease logging operations in the Białowieża Forest, except where strictly necessary to ensure public safety. Poland could face financial penalties of at least EUR 100 000 per day if it did not respect the Court order<sup>87</sup>.
- *Slovenia* has failed to ensure appropriate storage and landfill of waste tyres in Lovrenc na Dravskem polju, in breach of EU directives on waste<sup>88</sup>.
- The appeal brought by *Sweden* against a judgment of the General Court interpreting EU provisions on access to documents was unfounded. The Court clarified that the documents exchanged between the Commission and the Member State concerned in the framework of the EU Pilot dialogue are covered by a general presumption of confidentiality<sup>89</sup>.
- *United Kingdom* has failed to ensure adequate treatment of urban waste water in several agglomerations, some discharging into sensitive areas<sup>90</sup>.

## 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Germany*: Substances which have not been registered at the time of their import into the territory of the EU in accordance with the REACH Regulation may be exported outside that territory<sup>91</sup>.
- *Croatia*: National legislation which provides for a fee calculated on the basis of an estimate of the volume of waste generated, and not on the basis of the quantity of waste actually produced and presented for collection, is in principle compatible with the Waste Framework Directive. However, it is for the national courts to verify whether such a fee triggers costs for certain waste holders which are manifestly disproportionate to the volumes or nature of the waste that they are liable to produce<sup>92</sup>.
- *Italy*: In the event of failure to carry out an environmental impact assessment, Member States are required to nullify the unlawful consequences of that failure. EU law does not prevent the conduct of an impact assessment after the plant concerned has been constructed and has entered into operation, as long as the relevant national rules do not

<sup>82</sup> Directive [2008/50/EC](#), Commission v Bulgaria, [C-488/15](#).

<sup>83</sup> Directive [92/43/EEC](#), Commission v Germany, [C-142/16](#).

<sup>84</sup> Directives [2008/98/EC](#) and [1999/31/EC](#), Commission v Greece, [C-202/16](#).

<sup>85</sup> Directive [91/271/EEC](#), Commission v Greece, [C-320/15](#).

<sup>86</sup> Directive [2008/98/EC](#), Commission v Spain, [C-563/15](#).

<sup>87</sup> Commission v Poland (Forêt de Białowieża), [C-441/17 R](#) and Court press release [No 122/17](#).

<sup>88</sup> Directives [1999/31/EC](#) and [2008/98/CE](#), Commission v Slovenia, [C-153/16](#).

<sup>89</sup> Regulation [\(EC\) No 1049/2001](#), Sweden v Commission, [C-562/14 P](#) — appeal against judgment Spirlea v Commission, [T-306/12](#).

<sup>90</sup> Directive [91/271/EEC](#), Commission v United Kingdom, [C-502/15](#).

<sup>91</sup> Regulation [\(EC\) No 1907/2006](#), Pinckernelle, [C-535/15](#).

<sup>92</sup> Directive [2008/98/EC](#), VG Čistoča, [C-335/16](#).

allow the requirements of EU law to be circumvented and the assessment covers both the past and future environmental impact of the plant<sup>93</sup>.

- *Hungary*: National legislation which provides that users and owners of land on which unlawful pollution was produced are jointly responsible for the environmental damage is not contrary to EU law. It is not necessary for this purpose to establish a causal link between the conduct of the land owners and the damage established, provided that such legislation complies with the principles and provisions of EU law. It is also allowed by EU law to provide in national legislation that owners of land on which unlawful pollution has been produced may be subject to fines, provided such legislation is appropriate for attaining the objective of more stringent protection and the methods for determining the amount of the fine do not go beyond what is necessary to attain that objective<sup>94</sup>.
- *Netherlands*: The Commission Implementing Decision adopting the eighth update of the list of sites of Community importance for the Atlantic biogeographical region was invalid<sup>95</sup>.
- *Austria*: An environmental organisation duly constituted and operating in accordance with the requirements of national law must be able to challenge before a court a decision authorising a project that may be contrary to the obligation to prevent deterioration of the condition of water bodies. The imposition on an environmental organisation of a time limit leading to it losing both its status as a party to the administrative procedure for the authorisation of a project and its right to bring an action against the decision issued at the end of that procedure constitutes an excessive restriction of the right to bring judicial proceedings<sup>96</sup>.
- *Austria*: The Environmental Liability Directive applies to environmental damage occurring after 30 April 2007 but caused by the operation of a facility authorised and put into operation before that date. National legislation is not compatible with EU law if it automatically excludes from qualification as 'environmental damage' damage which has a significant adverse effect on the ecological, chemical or quantitative status or ecological potential of water, solely based on the fact that it is covered by an authorisation granted under that national legislation. Also not compatible with EU law is national legislation which does not entitle people holding fishing rights to initiate a review procedure for environmental damage<sup>97</sup>.

## VIII. OUTLOOK

Important implementation work in 2018 includes:

- following up on cases where the Court rendered a second judgment and imposed financial sanctions, as well as on Court judgments expected in 2018 on the shipment of waste and the interpretation of the Strategic Environmental Assessment Directive<sup>98</sup>;
- legal action to ensure complete transposition by Member States of the Directive on reducing the consumption of lightweight plastic carrier bags<sup>99</sup>, the Directive<sup>100</sup> amending the Environmental Impact Assessment Directive<sup>101</sup>, the Seveso III Directive<sup>102</sup> and the Medium Combustion Plants Directive<sup>103</sup>; assessing the conformity of the national legislation transposing these directives and the Industrial Emissions Directive<sup>104</sup>;

<sup>93</sup> Comune di Corridonia, joined cases [C-196/16](#) and [C-197/16](#).

<sup>94</sup> Túrkevei Tejtermelő Kft., [C-129/16](#).

<sup>95</sup> Decision [\(EU\) 2015/720](#), Vereniging Hoekschewaards Landschap, [C-281/16](#).

<sup>96</sup> Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation, [C-664/15](#).

<sup>97</sup> Directive [2004/35/EC](#), Folk, [C-529/15](#).

<sup>98</sup> Directive [2001/42/EC](#).

<sup>99</sup> Directive [\(EU\) 2015/720](#) amending Directive [94/62/EC](#).

<sup>100</sup> Directive [2014/52/EU](#).

<sup>101</sup> Directive [2011/92/EU](#).

<sup>102</sup> Directive [2012/18/EU](#).

<sup>103</sup> Directive [\(EU\) 2015/2193](#).

<sup>104</sup> Directive [2010/75/EU](#).

- pursuing cases of non-compliant transposition of the EU provisions on waste and the Environmental Quality Standards Directive<sup>105</sup>; following up on the study assessing the implementation by the Member States of certain provisions of the Waste Landfill Directive, as interpreted by the Court<sup>106</sup>;
- legal action to ensure: complete and correct transposition of the Habitats and Birds Directives<sup>107</sup>; completion of the Natura 2000 network across the EU (both terrestrial and marine); and the designation and conservation of special areas of conservation;
- following closely the notifications submitted by Member States on exemptions from the assessment procedure under the Environmental Impact Assessment Directive<sup>108</sup>;
- enforcing the adoption of the second round of river basin management plans and considering action to ensure compliance of the adopted plans with EU requirements<sup>109</sup>;
- legal action to address inadequate treatment of urban waste water, failure to comply with EU standards on air quality, lack of noise maps and noise action plans, and absence of reports under the Marine Strategy Framework Directive<sup>110</sup>.

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<sup>105</sup> Directive [2013/39/EU](#).

<sup>106</sup> Directive [1999/31/EC](#), Commission v Italy, [C-323/13](#).

<sup>107</sup> Directives [92/43/EEC](#) and [2009/147/EC](#).

<sup>108</sup> Directive [2011/92/EU](#). In 2017 Spain and Greece submitted in total three notifications concerning exemptions of projects aimed at responding to civil emergencies resulting from natural disasters. All three met the conditions for exemptions under the Directive.

<sup>109</sup> Directive [2000/60/EC](#).

<sup>110</sup> Directive [2008/56/EC](#).



Financial stability, financial services and Capital Markets Union

## I. COMPLAINTS

### 1. New complaints received from members of the public in 2017

The Commission received 155 complaints from members of the public in this area in 2017 and 88 in 2016.

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

57 > Complaints open at end-2016

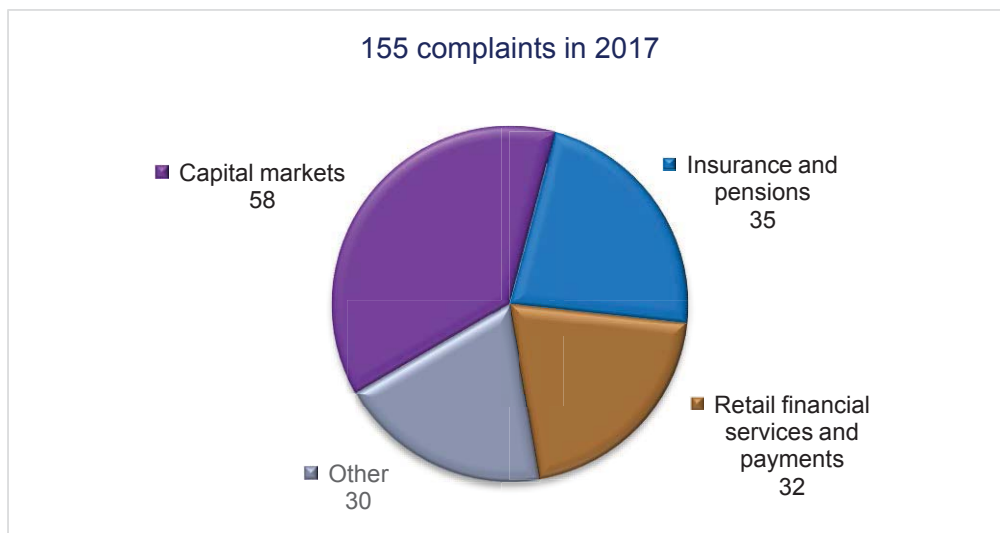
155 > New complaints registered in 2017

109 > Complaints handled in 2017

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= 103 > Complaints open at end-2017

### 3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

### 1. New EU Pilot files (2016-2017)

The Commission opened one new EU Pilot file in this area in 2017.

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

There were 11 EU Pilot files open at end-2017.

### 3. New EU Pilot files opened in 2017: main policy sectors

The single EU Pilot file opened by the Commission related to insurance and pensions.

### 4. EU Pilot files: policies' combined resolution rate in 2016-2017

The resolution rate for financial stability, financial services and Capital Markets Union in 2017 was 62 %. This compares with 73 % in 2016.

## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

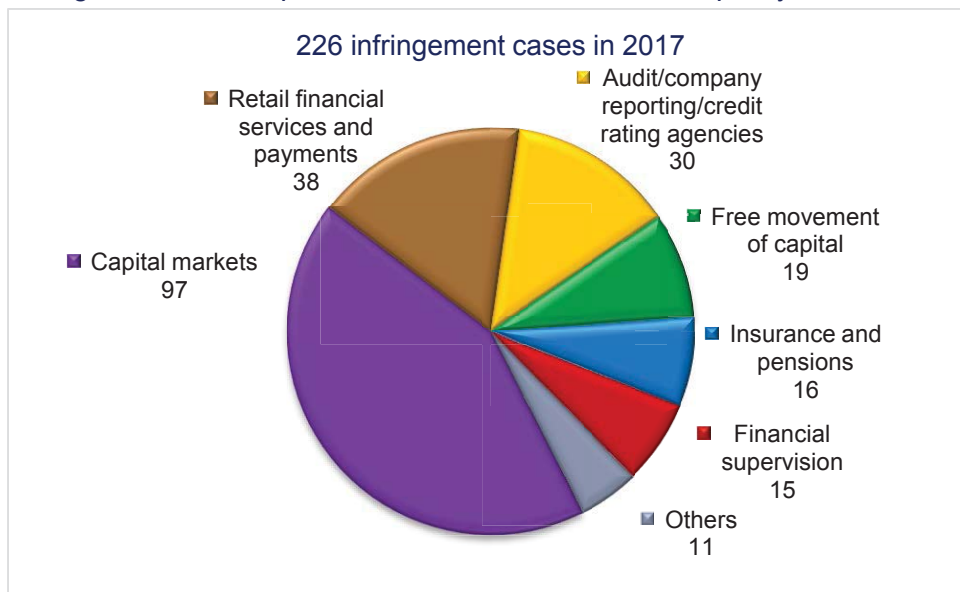
In 2017 the Commission's own-initiative infringement cases in this area concerned Member States' incorrect application of the rules on the free movement of capital.

## IV. INFRINGEMENT CASES

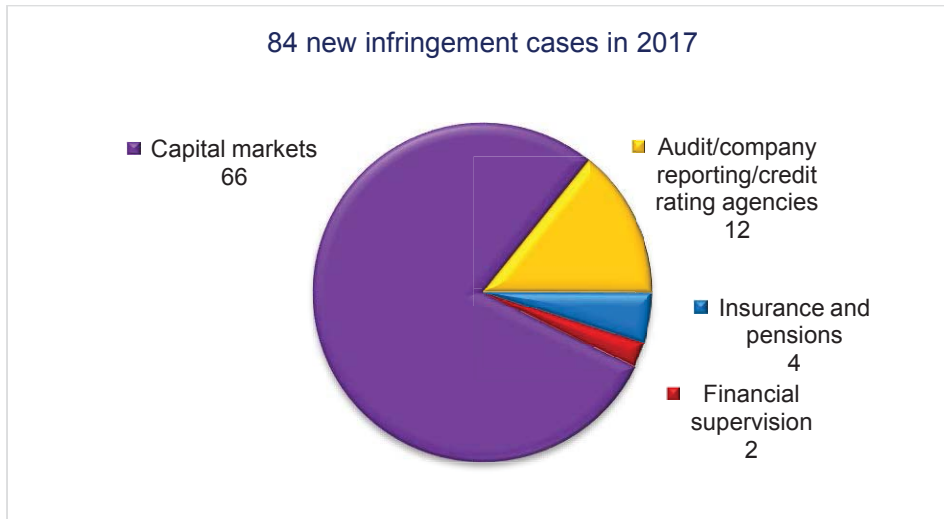
### 1. Infringement cases open on 31 December (2016-2017)

There were 226 infringement cases open on 31 December 2017 in this area.

### 2. Infringement cases open on 31 December 2017: main policy sectors



### 3. New infringement cases opened in 2017: main policy sectors



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

a) The Commission opened 84 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following:

- *Belgium, Bulgaria, Estonia, Greece, Spain, France, Croatia, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden*: late transposition of the Markets in Financial Instruments Directive (MiFID II)<sup>1</sup>;
- *Belgium, Spain, Croatia, Cyprus, Luxembourg, Netherlands, Portugal and Romania*: late transposition of the Payment Accounts Directive<sup>2</sup>;
- *Bulgaria, Latvia, Lithuania Hungary and Slovakia*: restrictions on investors acquiring agricultural land may violate the free movement of capital and freedom of establishment;
- *Estonia, Cyprus, Poland, Romania and Slovenia*: late transposition of the Audit Directive<sup>3</sup>;
- *Ireland, Spain and Cyprus*: late transposition of the Directive on disclosure of non-financial and diversity information by certain large undertakings<sup>4</sup>;
- *Croatia*: following the privatisation of the main Croatian energy company, INA (Industrija Nafta d.d.), the Croatian state reserved certain special powers which may restrict the free movement of capital and freedom of establishment under the TFEU.

b) The Commission referred two cases to the Court under Article 258 TFEU. They concerned the following.

- *Spain*: Late transposition of the 'Whistle-blowing' Directive<sup>5</sup>.
- *Hungary*: The termination of 'usufruct rights' — contracts giving the right to use a property and to profit from it — held by investors in Hungary, especially on agricultural land. The measure deprived both foreign and domestic investors of their acquired rights and of the value of their investments without providing them with compensation. The law cut the original 20-year transitional period down to four and a half months, which is too short to give investors the opportunity to adapt to the new legal environment and deprives them of their acquired rights. The measure may fail to ensure legal certainty and respect of the right to property (protected by

<sup>1</sup> Directive [2014/65/EU](#).

<sup>2</sup> Directive [2014/92/EU](#).

<sup>3</sup> Directive [2014/56/EU](#).

<sup>4</sup> Directive [2014/95/EU](#).

<sup>5</sup> Directive [2015/2392/EU](#), *Commission v Spain*, [C-599/17](#), [IP/17/1950](#).

the EU Charter of Fundamental Rights). It may also violate the principles of free movement of capital and freedom of establishment<sup>6</sup>.

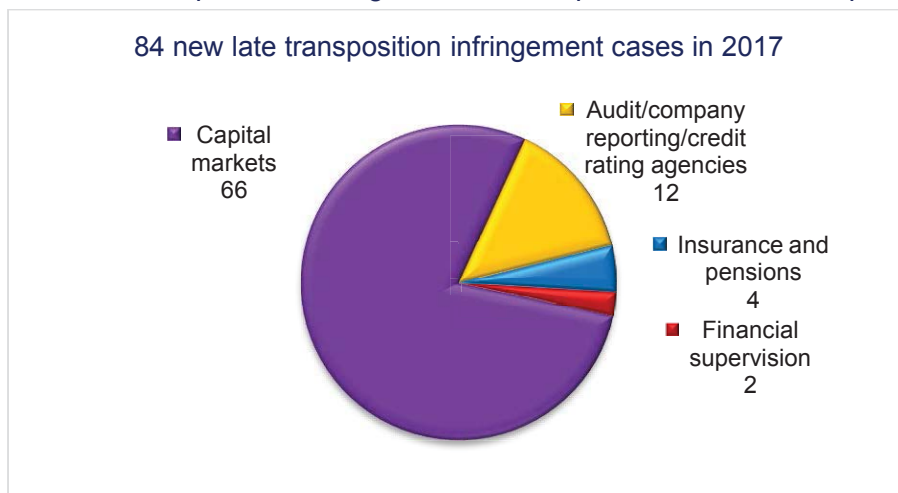
c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2016-2017)

The Commission opened 84 new late transposition infringement cases in 2017.

### 2. New late transposition infringement cases opened in 2017: main policy sectors



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

a) The Commission opened 84 cases for late transposition in 2017. Most concern the:

- Markets in Financial Instruments Directive (MiFID II) (19 Member States)<sup>7</sup>;
- Directive amending the MiFID II Directive (23 Member States)<sup>8</sup>;
- Directive implementing the MiFID II Directive (24 Member States)<sup>9</sup>.

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

- *Spain*: failure to fully transpose the Mortgage Credit Directive<sup>10</sup>;
- *Croatia*: failure to fully transpose the Mortgage Credit Directive<sup>11</sup>;
- *Croatia*: failure to fully transpose the Audit Directive<sup>12</sup>;

<sup>6</sup> Commission v Hungary, [C-235/17](#), [IP/16/2102](#).

<sup>7</sup> Directive [2014/65/EU](#).

<sup>8</sup> Directive [2014/65/EU](#).

<sup>9</sup> Directive [2017/593/EU](#).

<sup>10</sup> Directive [2014/17/EU](#), Commission v Spain, [C-569/17](#), [IP/17/1049](#).

<sup>11</sup> Directive [2014/17/EU](#), Commission v Croatia, [C-381/17](#), [IP/17/1049](#).

<sup>12</sup> Directive [2014/56/EU](#), Commission v Croatia, [C-415/17](#), [IP/17/1579](#).

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2017

These concerned:

- *Belgium, Bulgaria, Greece, Spain, Italy, Luxembourg, Malta, Austria, Romania and Slovakia*: incomplete transposition of the Solvency II Directive<sup>13</sup>;
- *Belgium, Bulgaria, Greece, Spain, Italy, Luxembourg, Malta, Austria, Romania and Slovakia*: incomplete transposition of the Omnibus II Directive in respect of the powers of the European Insurance and Occupational Pensions Authority and the *European Securities and Markets Authority* 14;
- *Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Spain, France, Latvia, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia, Finland and Sweden*: incomplete transposition of the Accounting Directive<sup>15</sup>;
- *Belgium, Bulgaria, Czech Republic, Denmark, Greece, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Poland, Slovenia and Sweden*: incomplete transposition of the Transparency Directive<sup>16</sup>;
- *Greece*: restrictions on free movement of capital in the Hellenic Telecommunications Company (OTE);
- *Italy*: Special rights of the state in the privatisation law.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2017 in this area.

### 2. Preliminary rulings

The Court gave the following preliminary ruling.

*Austria*: An e-Banking website could be considered as a "durable medium", as required under the Payment Services Directive<sup>17</sup>, if it allows the user to store information addressed to him personally in such a way that he may access it and reproduce it unchanged for an adequate period, without any unilateral modification of its content by that service provider or by another professional being possible. If the user is obliged to consult that internet website in order to become aware of that information, the provider shall actively draw the customer's attention to the existence and availability of that information on that website. The case concerns a clause in the terms and conditions of an Austrian bank, under which its customers receive notifications and statements on their online banking and their banking relationship via an email inbox that the bank operates on its e-Banking website. To access the emails the customer must log in to the e-Banking website. There is no additional notification of messages that have been transmitted to this email inbox.<sup>18</sup>

## VIII. OUTLOOK

Important implementation work in 2018 includes:

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<sup>13</sup> Directive [2009/138/EC](#).

<sup>14</sup> Directive [2014/51/EU](#).

<sup>15</sup> Directive [2013/34/EU](#).

<sup>16</sup> Directive [2013/50/EU](#).

<sup>17</sup> Directive [2007/64/EC](#).

<sup>18</sup> BAWAG, [C-375/15](#).

- monitoring the transposition of the MiFID II Directive and of two financial services directives (the Directive on payment service<sup>19</sup> and the Directive on insurance distribution<sup>20</sup>);
- carrying out conformity checks relating to a number of financial services directives, such as the Accounting and Audit Directives<sup>21</sup>, the Transparency Directive<sup>22</sup>, the Mortgage Credit Directive<sup>23</sup>, the Payment Accounts Directive<sup>24</sup> and the Directive on disclosure of non-financial information by certain large undertakings<sup>25</sup>; assessing the conformity of national transposition measures with these directives.
- Following up on a forthcoming preliminary ruling on the compatibility of intra-EU Bilateral Investment Agreements with EU law<sup>26</sup>. The Court is expected to clarify, among other things, whether an investor-to-state dispute settlement clause within the EU is compatible with the system of legal protection established by EU law.

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<sup>19</sup> Directive [2015/2366/EU](#).

<sup>20</sup> Directive [2016/97/EU](#).

<sup>21</sup> Directives [2013/34/EU](#) and [2014/56/EU](#).

<sup>22</sup> Directive [2013/50/EU](#).

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

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

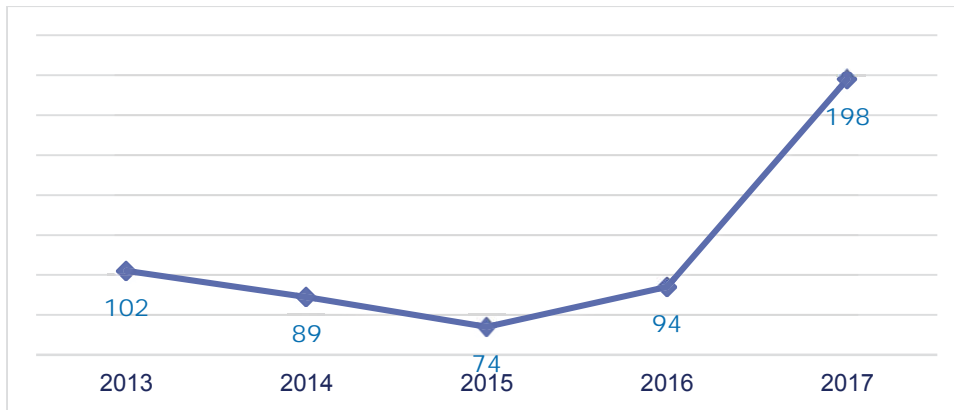
<sup>25</sup> Directive [2014/95/EU](#).

<sup>26</sup> Achmea, [C-284/16](#).

Health and food safety

I. COMPLAINTS

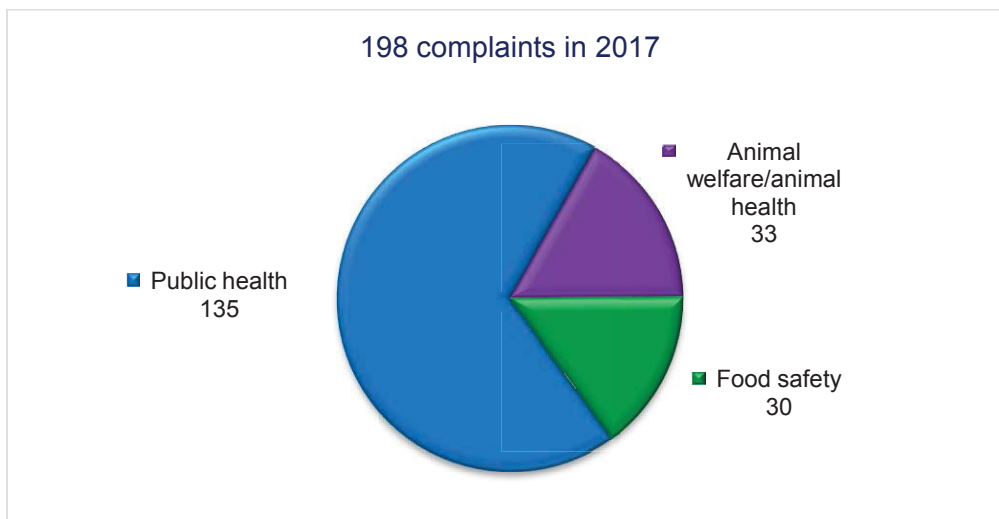
1. New complaints received from members of the public (2013-2017)



2. Public complaints open at year-end

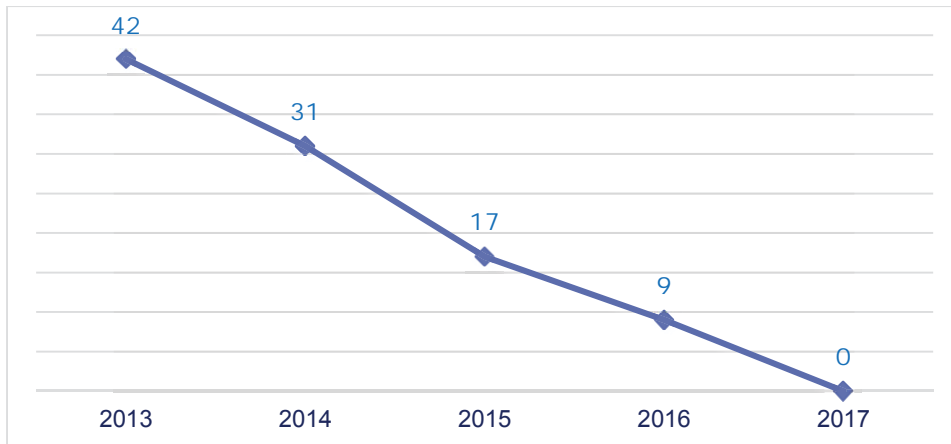
92	>	Complaints open at end-2016
198	>	New complaints registered in 2017
209	>	Complaints handled in 2017
<hr/>		
= 81	>	Complaints open at end-2017

3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

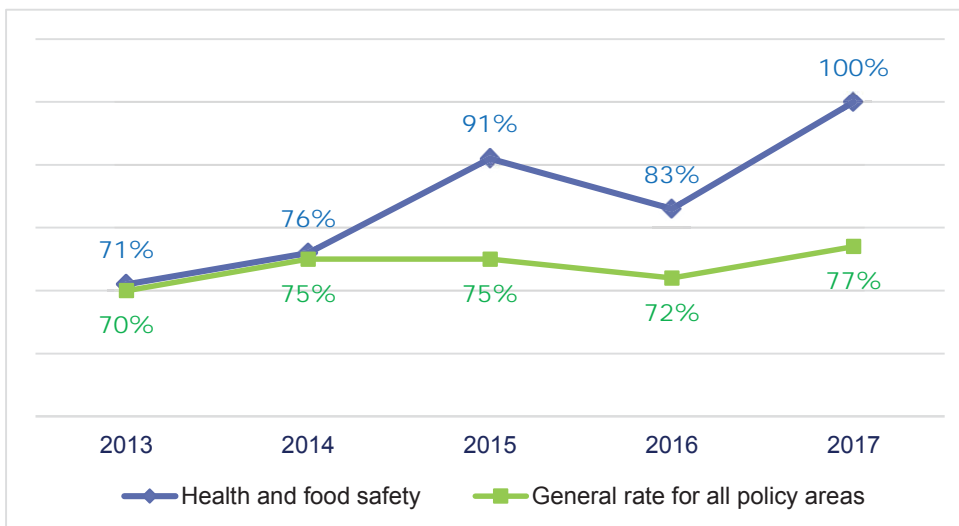
### 1. New EU Pilot files (2013-2017)



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

At the end of 2017, 17 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2013-2017)



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

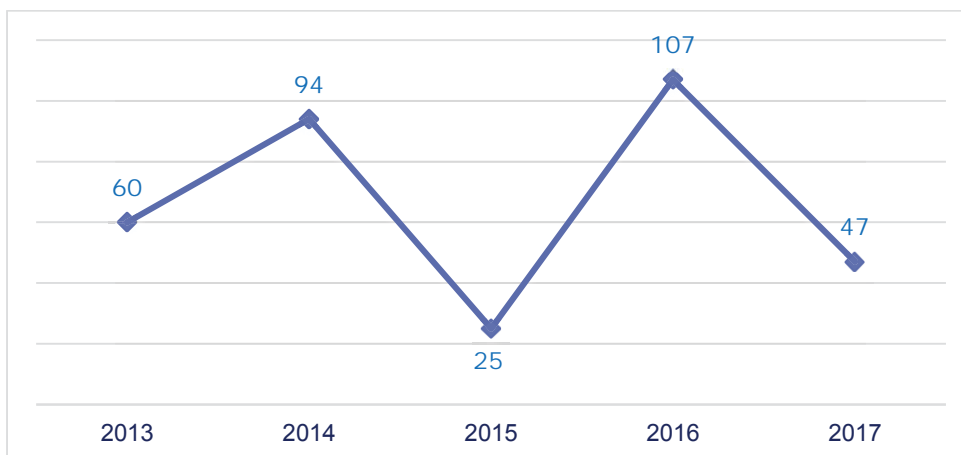
In 2017 the Commission opened own-initiative infringement cases over:

- animal welfare;
- food safety;
- public health.

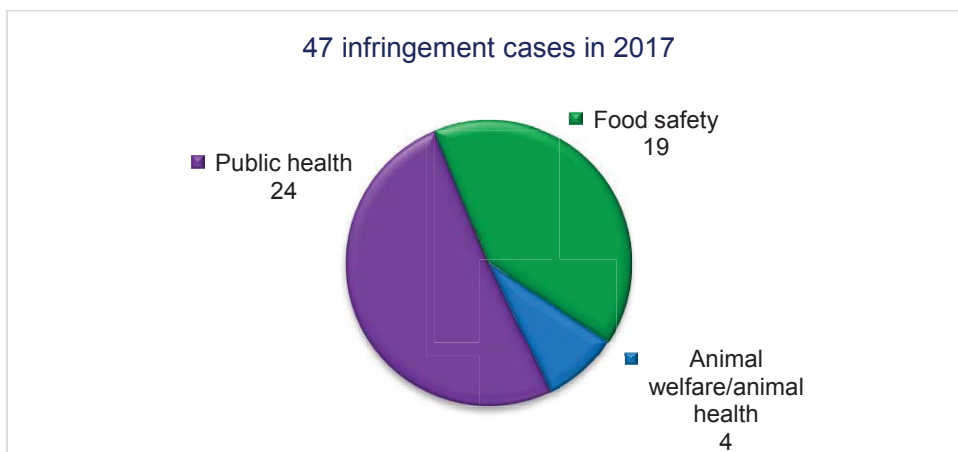


## IV. INFRINGEMENT CASES

### 1. Infringement cases open on 31 December (2013-2017)



### 2. Infringement cases open on 31 December 2017: main policy sectors



### 3. New infringement cases opened in 2017: main policy sectors

All 62 new infringement cases opened concerned food safety.

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

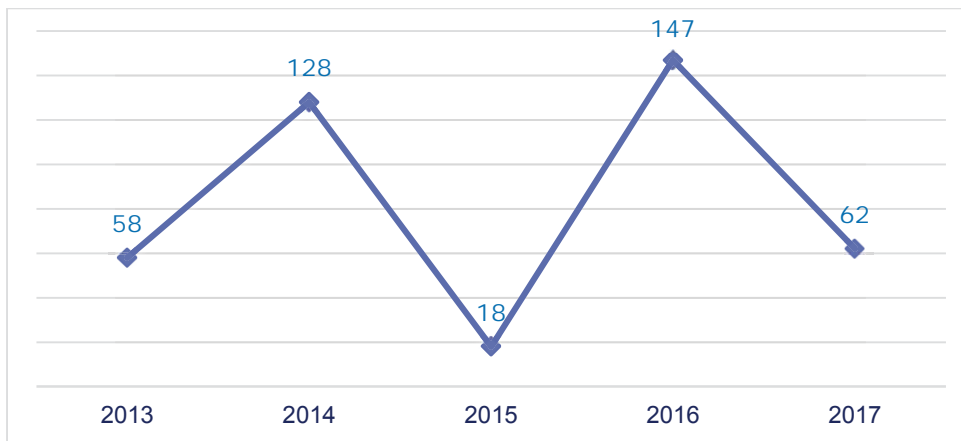
- a) The Commission opened 62 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following:
  - *Czech Republic, Germany and Luxembourg*: failure to notify national measures transposing the Directives on the registration of suppliers and of varieties and the common list of varieties, on requirements for the labelling, sealing and packaging of fruit plant propagating material and on the specific requirements for the genus and species of fruit plants<sup>1</sup>;

<sup>1</sup> Directives [2014/96/EU](#), [2014/97/EU](#) and Directive [2014/98/EU](#).

- *Italy*: non-compliance with the Commission's decision on measures to prevent the spread within the EU of the plant bacterium *Xylella fastidiosa*<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 (2013-2017)



### 2. New late transposition infringement cases opened in 2017: main policy sectors

There are 62 new late transposition cases, all concerning food safety.

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

- a) The Commission opened 62 cases for late transposition in 2017. Most concern:
- the Directive on requirements for the labelling, sealing and packaging of fruit plant propagating material<sup>3</sup>;
  - the Directive on the registration of suppliers and of varieties and the common list of varieties<sup>4</sup>;
  - the Directive on the specific requirements for the genus and species of fruit plants<sup>5</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 2017

These concerned:

- *Belgium*: incorrect application of the Directive on the protection of pigs as regards group housing of sows<sup>6</sup>;

<sup>2</sup> Commission Implementing Decision ([EU](#))2015/789; [MEMO/17/1935](#).

<sup>3</sup> Directive [2014/96/EU](#).

<sup>4</sup> Directive [2014/97/EU](#).

<sup>5</sup> Directive [2014/98/EU](#).

<sup>6</sup> Directive [2008/120/EC](#).

- *Czech Republic*: placing on the market of certain plant protection products that were not authorised under the provisions of EU legislation<sup>7</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2017 in this area.

### 2. Preliminary rulings

There were no major Court preliminary rulings in 2017 in this area.

## VIII. OUTLOOK

Important implementation work in 2018 includes:

- checking the compliance of national transposition measures with the Tobacco Products Directive<sup>8</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>7</sup> Regulation [\(EC\) No 1107/2009](#).

<sup>8</sup> Directive [2014/40/EU](#).

Internal market, industry, entrepreneurship and SMEs

## I. COMPLAINTS

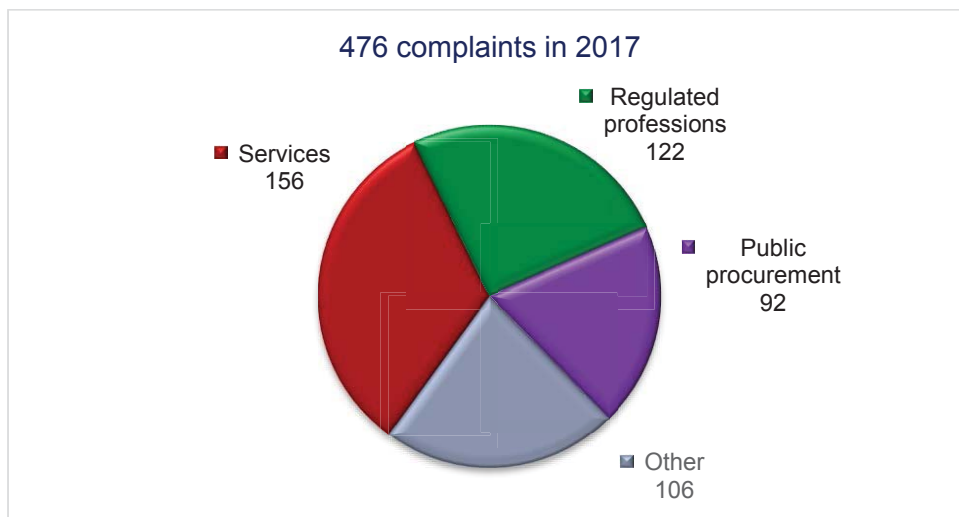
### 1. New complaints received from members of the public (2016-2017)

The Commission received 476 complaints from the members of the public in the area of internal market, industry, entrepreneurship and SMEs in 2017, and 483 in 2016.

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

631	>	Complaints open at end-2016
476	>	New complaints registered in 2017
466	>	Complaints handled in 2017
<b>641</b>	>	Complaints open at end-2017

### 3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

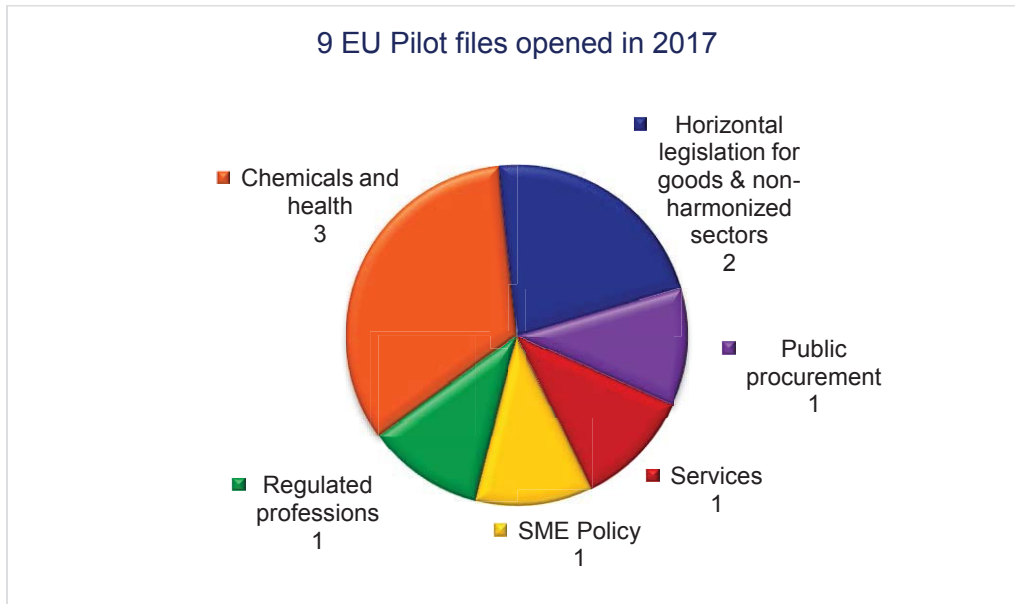
### 1. New EU Pilot files (2016-2017)

In 2017 the Commission opened 9 new EU Pilot files in this area, against 111 in 2016.

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

At the end of 2017, 90 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2017: main policy sectors



### 4. EU Pilot files: resolution rate for policies (2016-2017)

The resolution rate for files concerning the internal market, industry, entrepreneurship and SMEs in 2017 was 73 %.

## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2017 the Commission opened own-initiative infringement cases over:

- public procurement;
- the Late Payment Directive; <sup>1</sup>
- the automotive and mobility industries.

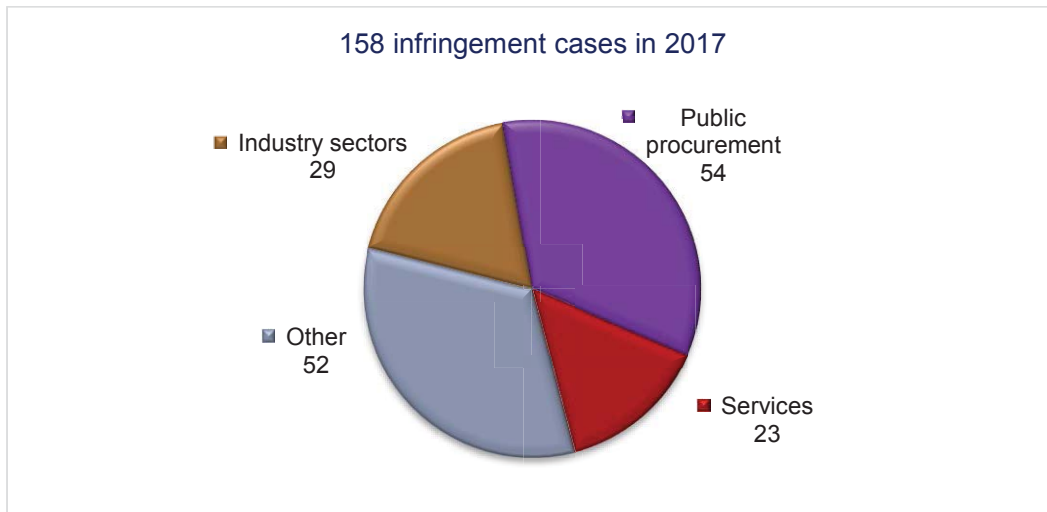
## IV. INFRINGEMENT CASES

### 1. Infringement cases open on 31 December 2017

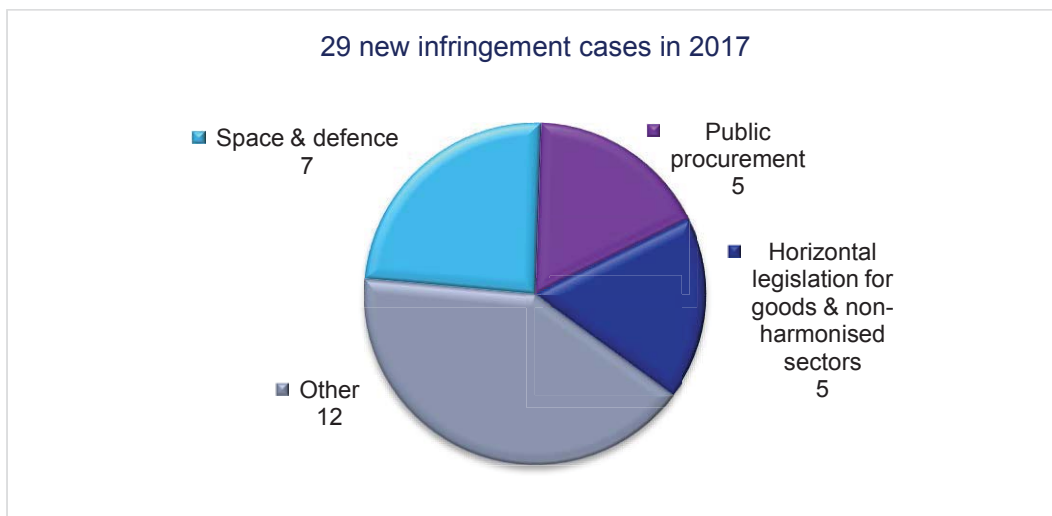
There were 158 infringement cases open on 31 December 2017 in this area.

<sup>1</sup> Directive [2011/7/EU](#).

## 2. Infringement cases open on 31 December 2017: main policy sectors



## 3. New infringement cases opened in 2017: main policy sectors



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

- a) The Commission opened 29 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following:
- *Greece, Spain, Malta, Austria and Portugal*: failure to notify national measures transposing the Directive on recognition of professional qualifications<sup>2</sup>;
  - *France*: restrictions on the exercise of the professions of psychomotor therapists and snowboard instructors;
  - *Croatia*: restrictions on the exercise of the profession of lawyers;
  - *Cyprus*: non-recognition of professional training in engineering and architecture acquired abroad by Cypriot citizens<sup>3</sup>;

<sup>2</sup> Directive [2013/55/EU](#).

<sup>3</sup> Directive [2005/36/EC](#); [IP/17/4773](#).

- *Hungary*: amendments to the Hungarian Higher Education Act violate EU law by restricting EU and non-EU universities in their operations<sup>4</sup>.
- b) The Commission referred four cases to the Court under Article 258 TFEU. They concern:
- *Germany*: authorisation of a car manufacturer to place vehicles on the EU market using a banned greenhouse gas in their air-conditioning systems<sup>5</sup>;
  - *Germany*: imposition of excessive and unjustified obstacles to the provision of services across the internal market<sup>6</sup>;
  - *Italy*: extension of a motorway concession contract without a prior call for tenders<sup>7</sup>;
  - *Hungary*: imposition of excessive and unjustified obstacles to cross-border activities by granting an exclusive right to a single operator to provide a service<sup>8</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 2017

Seven new late transposition infringement cases were opened in 2017. They all concerned the space and defence sector.

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

- a) The Commission opened 7 cases for late transposition in 2017. They concern:
- the Directive on defence-related products<sup>9</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 2017

These concerned mainly:

- gambling<sup>10</sup>:
  - *Belgium*: permanent establishment requirement under the Belgian gambling regulations;
  - *Cyprus*: permanent establishment requirement under the Cypriot gambling law;
  - *Netherlands*: non-respect of freedom of establishment (hazard games act);
  - *Poland*: seat requirements under Polish gambling regulations;
  - *Sweden*: non-respect of freedom of establishment (hazard games act).
- non-communication of national measures transposing:
  - *Bulgaria, Ireland, Greece, Spain, Cyprus, Latvia, Luxembourg, Netherlands, Austria, Portugal, Slovenia, Finland and United Kingdom*: the Directive on recognition of professional qualifications<sup>11</sup>;
  - *Germany*: the Directive on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles<sup>12</sup>;

<sup>4</sup> [IP/17/5004](#).

<sup>5</sup> Directive [2006/40/EC](#), Commission v Germany, [C-668/16](#), [IP/15/6290](#).

<sup>6</sup> Directive [2006/123/EC](#), Commission v Germany, [C-377/17](#), [IP/16/3646](#), [MEMO/16/3644](#).

<sup>7</sup> Directive [2004/18/EC](#), Commission v Italy, [C-526/17](#), [IP/17/1284](#).

<sup>8</sup> Directive [2006/123/EC](#); Commission v Hungary, [C-171/17](#); [IP/16/3646](#).

<sup>9</sup> Directive [2017/433/EU](#).

<sup>10</sup> [IP/17/5109](#).

<sup>11</sup> Directive [2005/36/EC](#).

<sup>12</sup> Directive [2013/29/EU](#).

- *Croatia, Cyprus, Malta and Romania*: the Directive on procurement by entities operating in the water, energy, transport and postal services sectors<sup>13</sup>;
- *Croatia, Malta and Romania*: Public Procurement Directive<sup>14</sup>;
- *Malta, Poland and Romania*: Directive on the award of concession contracts<sup>15</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>16</sup>

The Court ruled that:

- *Hungary*: the requirement to hold Hungarian nationality in order to work as a notary constitutes discrimination based on nationality prohibited by the Treaty<sup>17</sup>.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Belgium*: A general and absolute prohibition of any advertising relating to the provision of oral and dental care services and the establishment of certain requirements of discretion regarding signs of dental practices violates the freedom to provide services<sup>18</sup>.
- *France*: The case concerned a refusal to issue a router for access to the private virtual network for lawyers to a lawyer duly registered at a Bar of another Member State, for the sole reason that that lawyer is not registered at a Bar of the first Member State, in which he wishes to practise his profession as a free provider of services. The Court held that the refusal constitutes a restriction on the freedom to provide services under Council Directive 77/249/EEC<sup>19</sup>.
- *Italy*: Restrictions imposed on gambling concession holders through new legislation may be compliant with the TFEU principles provided they are justified by overriding reasons relating to the general interest and are enacted proportionately i.e. with an amendment to the concession providing for a transitional period of sufficient length<sup>20</sup>.
- *Italy*: The Italian measures regarding the allocation of digital TV frequencies may violate in several regards the EU law on the internal market<sup>21</sup>.
- *Hungary*: The Hungarian legislation prohibiting the organisation of games of chance without a licence violates the freedom to provide services. The requirement of having provided such services in Hungary for at least 10 years constitutes discrimination<sup>22</sup>.
- *Finland*: All postal service providers may be subject to obligations concerning quality, availability and performance; express/courier/parcel service providers are subject to the Postal Services Directive<sup>23</sup>.
- *United Kingdom*: The national legislation goes beyond what is considered necessary to achieve the objectives of preserving the allocation of powers of taxation between the Member States<sup>24</sup>.
- *United Kingdom*: The TFEU cannot be invoked between the United Kingdom and Gibraltar regarding the UK tax regime on the provision of gambling services<sup>25</sup>.

<sup>13</sup> Directive [2014/25/EU](#).

<sup>14</sup> Directive [2014/24/EU](#).

<sup>15</sup> Directive [2014/23/EU](#).

<sup>16</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>17</sup> Commission vs Hungary [C-392/15](#).

<sup>18</sup> Luc Vanderborght, [C-339/15](#).

<sup>19</sup> Jean-Philippe Lahorgue, [C-99/16](#).

<sup>20</sup> Global Starnet Ltd, [C-322/16](#).

<sup>21</sup> Europa Way and Persidera, [C-560/15](#) and Persidera, [C-112/16](#).

<sup>22</sup> Unibet International Ltd v Nemzeti Adó, [C-49/16](#).

<sup>23</sup> Ilves Jakelu, [C-368/15](#).

<sup>24</sup> Trustees of the P Panayi Accumulation & Maintenance Settlements, [C-646/15](#).



## VIII. OUTLOOK

Important implementation work in 2018 includes:

- monitoring the transposition of important Directives:
  - on the protection of undisclosed know-how and business information against their unlawful acquisition, use and disclosure<sup>26</sup>; and
  - on electronic invoicing in public procurement<sup>27</sup>.
- continuing to follow very closely national authorities' enforcement of EU rules in the automobile sector;
- to tackle restrictions in the retail sector under the Single Market strategy, the Commission will adopt a Communication addressing the need 'to set out best practices for facilitating retail establishment and reducing operational restrictions in the Single Market (...).'

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<sup>25</sup> The Gibraltar Betting and Gaming Association Limited and The Queen, [C-591/15](#).

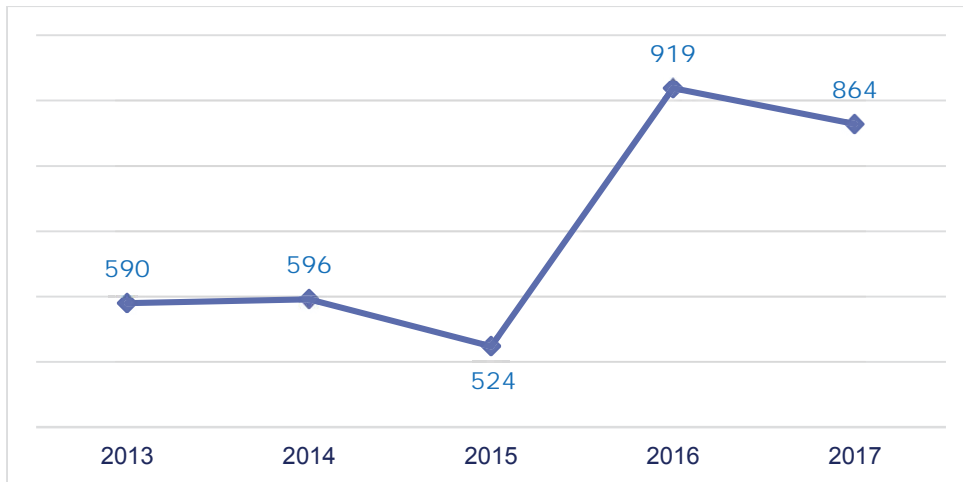
<sup>26</sup> Directive [2016/943/EU](#).

<sup>27</sup> Directive [2014/55/EU](#).

Justice and consumers

I. COMPLAINTS

1. New complaints received from members of the public (2013-2017)



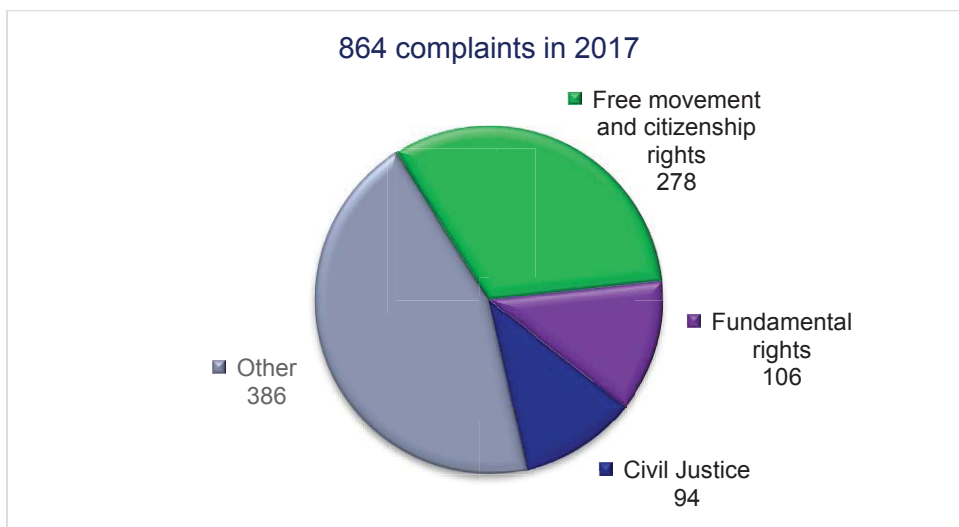
2. Public complaints open at year-end

722 > Complaints open at end-2016  
864 > New complaints registered in 2017  
829 > Complaints handled in 2017  

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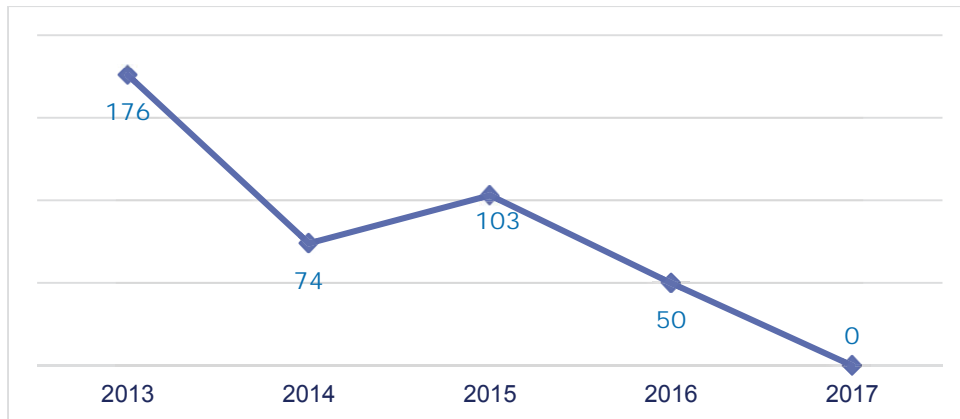
**= 757** > Complaints open at end-2017

3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

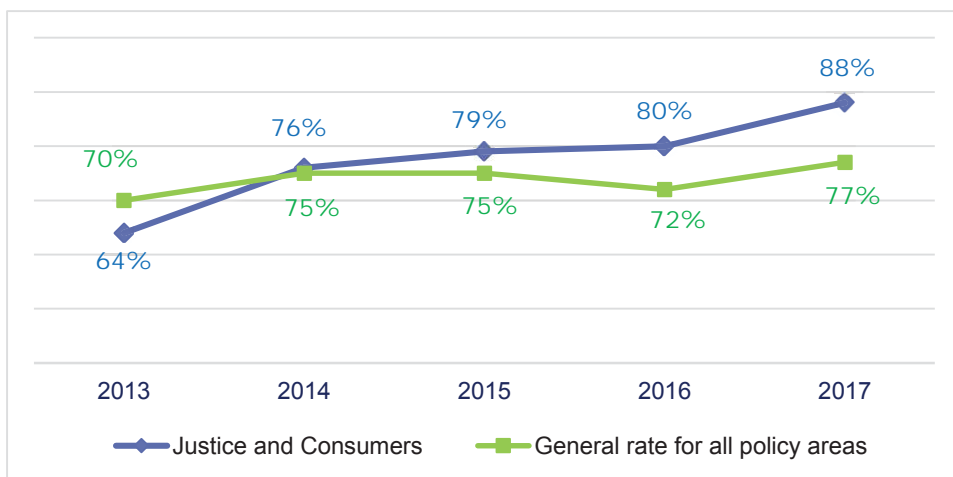
### 1. New EU Pilot files (2013-2017)



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

At the end of 2017, 127 EU Pilot files remained open.

### 3. EU Pilot files: resolution rate for policies (2013-2017)



### III. OWN-INITIATIVE CASES

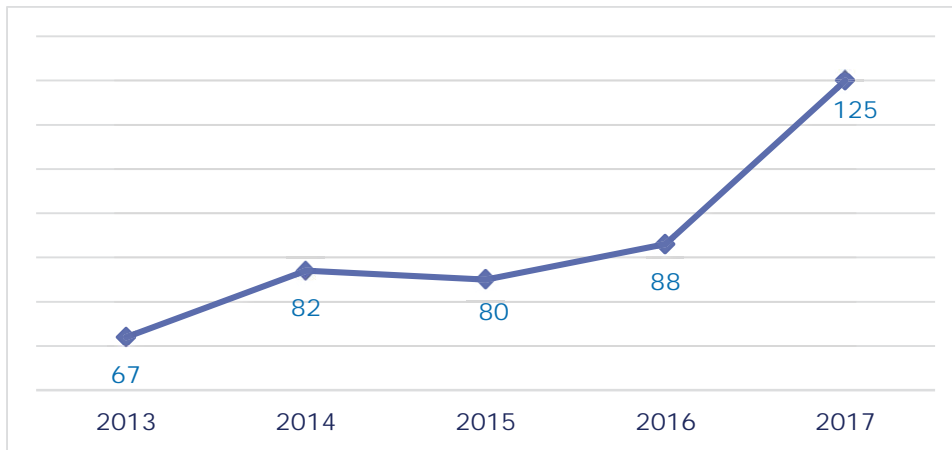
#### New own-initiative infringement cases

In 2017, the Commission opened own-initiative infringement cases over:

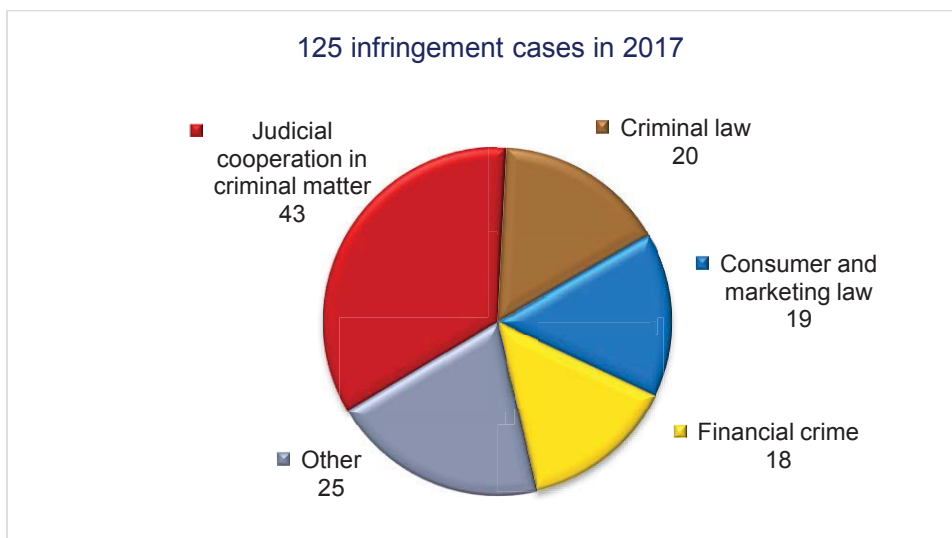
- protection of consumers and marketing law;
- lack of transposition of the Fourth Anti-Money Laundering Directive<sup>1</sup>;
- respect of fundamental rights.

### IV. INFRINGEMENT CASES

#### 1. Infringement cases open on 31 December (2013-2017)

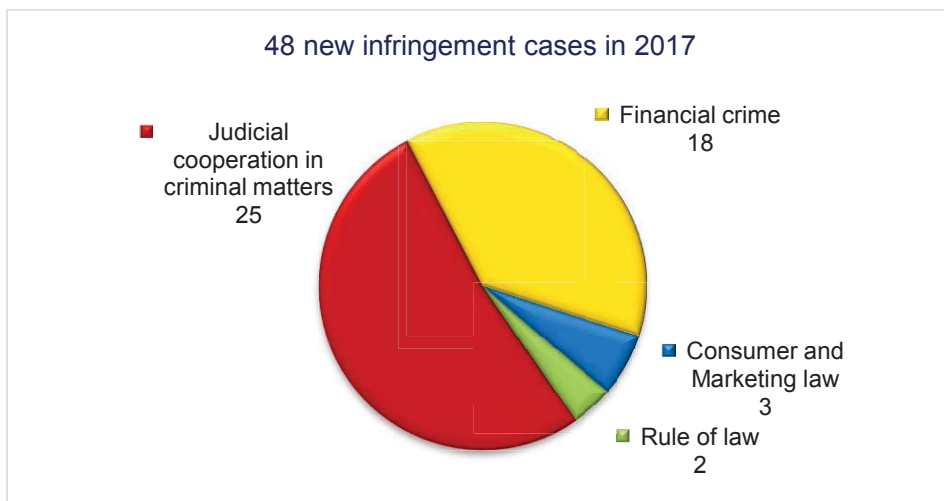


#### 2. Infringement cases open on 31 December 2017: main policy sectors



<sup>1</sup> Directive [2015/849](#).

### 3. New infringement cases opened in 2017: main policy sectors



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

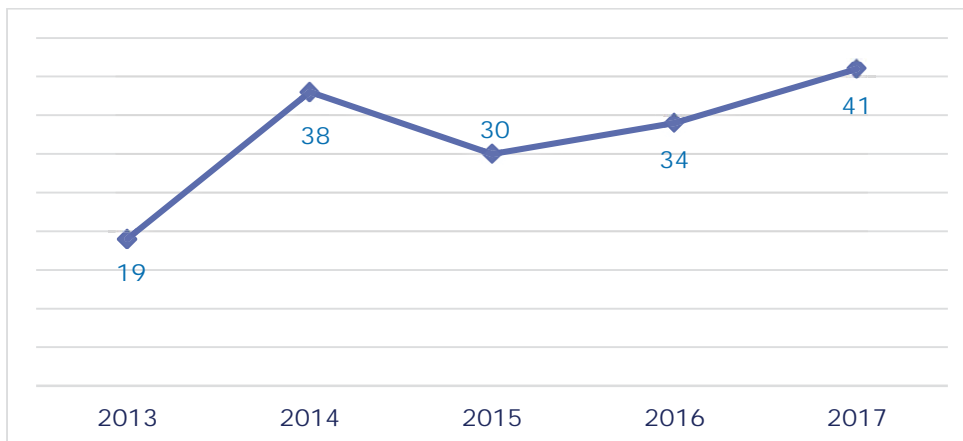
- a) The Commission opened 48 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following.
- *Hungary*: Incompatibility of the Hungarian law on foreign-funded civil society organisations law with the free movement of capital, right to freedom of association and the rights to protection of private life and personal data enshrined in the EU Charter of Fundamental Rights<sup>2</sup>.
  - *Poland*: Incompatibility of the Polish law on the Ordinary Courts Organisation with EU law because of:
    - a) discrimination on the basis of gender due to the introduction of a different retirement age for female judges (60 years) and male judges (65 years) contrary to Article 157 TFEU and the Directive on gender equality in employment; and
    - b) the discretionary power of the Minister of Justice to prolong the mandate of judges who have reached the retirement age which undermines the independence of Polish courts, in breach of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights<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.

<sup>2</sup> [IP/17/1982](#); [IP/17/3663](#) and [IP/17/5003](#).

<sup>3</sup> [IP/17/2205](#); [IP/17/3186](#) and [IP/17/5367](#).

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2013-2017)



### 2. New late transposition infringement cases opened in 2017: main policy sectors

All 41 new late transposition cases concerned the judicial cooperation in criminal matters (23 cases) and financial crime (18 cases).

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

- a) The Commission opened 41 cases for late transposition in 2017. They concern:
  - the Directive on the European Investigation Order in criminal matters (19 Members States concerned)<sup>4</sup>;
  - the Fourth Anti-Money Laundering Directive (18 Members States concerned)<sup>5</sup>;
  - the Directive on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings (9 Members States concerned)<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 2017

- *Germany*: Incorrect transposition into national law of the Directive on unfair commercial practices<sup>7</sup>.
- *Italy and Lithuania*: Incorrect transposition into national law of the Directive on package travel<sup>8</sup>. Under the Directive, organisers of package tours must have insolvency protection guaranteeing that consumers receive a refund and are repatriated if the organiser becomes insolvent<sup>9</sup>

<sup>4</sup> Directive [2014/41/EU](#).

<sup>5</sup> Directive [2015/849/EU](#).

<sup>6</sup> Directive [2013/48/EU](#).

<sup>7</sup> Directive [2005/29/EC](#).

<sup>8</sup> Council Directive [90/314/EEC](#).

<sup>9</sup> [MEMO/17/4767](#).

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2017 in this area.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Belgium*: When determining the competent jurisdiction in relation to employment contracts of members of an airline crew, the Court used a set of indicators to determine the “Member State where the employee habitually carries out his work” and retained that the “home base” amounts to a significant indicator. The Court also underlined that the jurisdiction clauses obliging those aircrew members to bring actions in Ireland were not enforceable against the employees as not meeting the conditions of the Regulation in question<sup>10</sup>.
- *Germany*: The legal aid granted by the Member State of the court hearing a case, in which a natural person domiciled or resident in another Member State has submitted a legal aid application in the context of a cross-border dispute, also covers the costs paid by that person for the translation of the supporting documents necessary for the processing of that application<sup>11</sup>.
- *Germany*: The Rome III Regulation<sup>12</sup> does not apply to private divorce (i.e. a divorce which is not pronounced by a court or public authority), such as a unilateral declaration made by a spouse before a religious court (for example, under sharia law). The Rome III Regulation aims at facilitating cross-border divorces by determining which national law, of all those potentially applicable, should be applied by the courts of Member States to resolve the divorce<sup>13</sup>.
- *Germany*: The concept of ‘basic rate’, referred to in the Directive on consumer rights<sup>14</sup>, means that charges for the use of a telephone helpline operated by the trader, in order to contact him in relation to a concluded contract, may not exceed the cost of a call to a standard geographic landline or mobile telephone line. This is regardless of whether the relevant trader does or does not make a profit through that telephone helpline<sup>15</sup>.
- *Ireland*: An EU citizen who, after more than 1 year, has ceased to work in a self-employed capacity in another Member State for reasons beyond his control retains the status of self-employed person and, consequently, a right to reside in that Member State<sup>16</sup>.
- *Greece*: A law that lays down, as a criterion for admission to a police school, a minimum height requirement irrespective of sex may constitute indirect sex discrimination against women. The objective of ensuring the effective accomplishment of the task of the police could be achieved by measures that are less disadvantageous to women, such as a pre-selection of candidates allowing their physical ability to be assessed<sup>17</sup>.
- *Spain*: The fact that a person is imprisoned, without the prospect of being released in the near future, when an expulsion decision is adopted does not exclude that his conduct represents a genuine threat to a fundamental interest of the society of the host Member

<sup>10</sup> Moreno Osacar [C-169/16](#), Noguiera and Others [C-168/16](#).

<sup>11</sup> Jan Šalplachta, [C-670/15](#).

<sup>12</sup> Regulation [\(EU\) No 1259/2010](#).

<sup>13</sup> Sahyouni, [C-372/16](#) and Court press release [No 137/17](#).

<sup>14</sup> Directive [2011/83/EU](#).

<sup>15</sup> Zentrale zur Bekämpfung des unlauteren Wettbewerbs, [C-568/15](#) and Court press release [No 21/17](#).

<sup>16</sup> Gusa, [C-442/16](#) and Court press release [No 144/17](#).

<sup>17</sup> Kalliri, [C-409/16](#) and Court press release [No 106/17](#).

State. Therefore, expulsion while the person is already in prison may be considered justified<sup>18</sup>.

- *Croatia*: Notaries, acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an 'authentic document', do not fall within the concept of 'court' within the meaning of EU legislation<sup>19</sup>. Thus, the writs of execution which they issue may not be recognised or enforced in other Member States as judicial decisions<sup>20</sup>.
- *Netherlands*: A third-country national may, as the parent of a minor child who is an EU citizen, rely on a derived right of residence in the EU. The fact that the other parent, an EU citizen, could assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but is not in itself a sufficient ground to refuse a residence permit. National authorities must also determine whether there is, between the child and the third-country national parent, such a relationship of dependency that a decision to refuse a right of residence to that parent would compel the child to leave the EU<sup>21</sup>.
- *Poland*: Member States may not impose mandatory liquidation on companies that wish to transfer their registered office to another Member State. The transfer of the registered office of such a company, even with no change in the location of its real head office, falls within the scope of the freedom of establishment protected by EU law<sup>22</sup>.
- *Romania*: When a financial institution grants a loan denominated in a foreign currency, it must provide the borrower with sufficient information to enable him to take a prudent and well-informed decision and to evaluate the economic consequences of such clause on his financial obligations<sup>23</sup>.
- *United Kingdom*: Once an EU citizen acquires the citizenship of another EU Member State, the Free Movement Directive ceases to apply to him/her.<sup>24</sup> Consequently, as a general rule his/her spouse cannot benefit from a derived right of residence in that EU Member State on the basis of the Directive unless this would be necessary to ensure the effective exercise, by the EU citizen concerned, of his/her freedom of movement and of the rights which the Treaties affords him/her<sup>25</sup>.

## VIII. OUTLOOK

Important implementation work in 2018 includes:

- closely monitoring the application of the:
  - General Data Protection Regulation<sup>26</sup>;
  - Regulation on insolvency proceedings<sup>27</sup>.
- closely monitoring that Member States transpose on time the:
  - Directive on the protection of natural persons with regard to the processing of personal data by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data<sup>28</sup>;
  - Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal law<sup>29</sup>;
  - Directive on package travel and linked travel arrangements<sup>30</sup>;

<sup>18</sup> Directive [2004/38/EC](#), E, [C-193/16](#).

<sup>19</sup> Regulations [\(EC\) No 805/2004](#) and [\(EU\) No 1215/2012](#).

<sup>20</sup> Pula Parking, [C-551/15](#) and Court press release [No 25/17](#).

<sup>21</sup> Chavez-Vilchez, [C-133/15](#) and Court press release [No 48/17](#).

<sup>22</sup> Polbud — Wykonawstwo, [C-106/16](#) and Court press release [No 112/17](#).

<sup>23</sup> Andriuc and Others, [C-186/16](#) and Court press release [No 103/17](#).

<sup>24</sup> Directive [2004/38/EC](#).

<sup>25</sup> Lounes, [C-165/16](#) and Court press release [No 121/17](#).

<sup>26</sup> Regulation [\(EU\) 2016/679](#).

<sup>27</sup> Regulation [\(EU\) No 2015/848](#).

<sup>28</sup> Directive [2016/680/EU](#).

<sup>29</sup> Directive [2016/343/EU](#).



- Council Directive on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries<sup>31</sup>.
- assessing that Member States correctly transpose the:
  - Consumer Rights Directive<sup>32</sup>;
  - Unfair Commercial Practices Directive<sup>33</sup>;
  - Procedural rights of suspects and accused persons<sup>34</sup>.
- ensuring appropriate follow-up to the Court's preliminary rulings concerning:
  - free movement rights of same sex couples<sup>35</sup>;
  - citizenship of the Union<sup>36</sup>;
  - data protection<sup>37</sup>.

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<sup>30</sup> Directive [2015/2302/EU](#).

<sup>31</sup> Directive [2015/637/EU](#).

<sup>32</sup> Directive [2011/83/EU](#).

<sup>33</sup> Directive [2005/29/EC](#).

<sup>34</sup> Directives [2012/13/EU](#) and [2010/64/EU](#).

<sup>35</sup> Coman, [C-673/16](#).

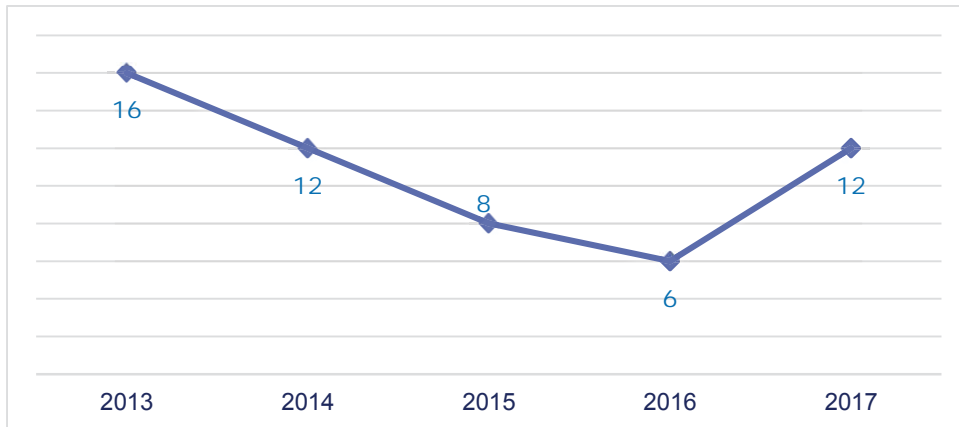
<sup>36</sup> Tjebbes, [C-221/17](#).

<sup>37</sup> Google Spain, [C-131/12](#).

Maritime affairs and fisheries

I. COMPLAINTS

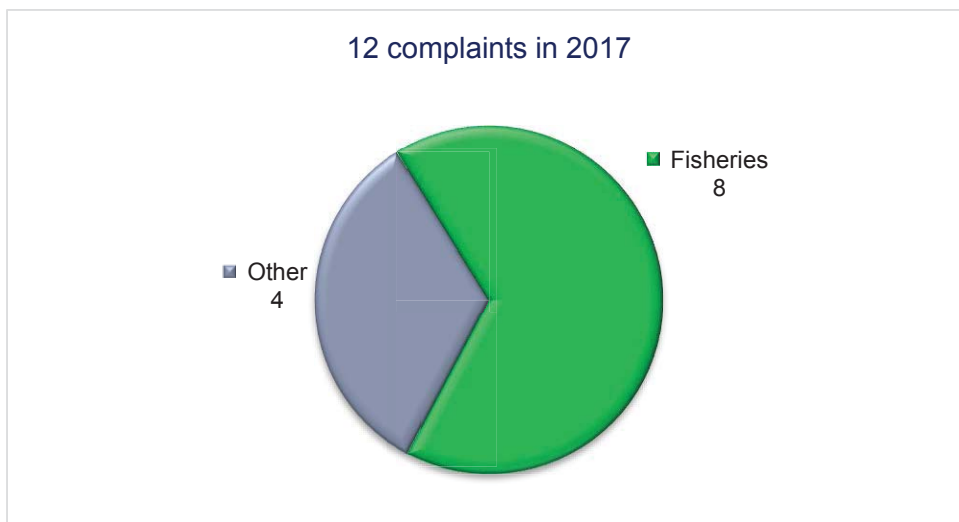
1. New complaints received from members of the public (2013-2017)



2. Public complaints open at year-end

17	>	Complaints open at end-2016
12	>	New complaints registered in 2017
5	>	Complaints handled in 2017
<hr/>		
= 24	>	Complaints open at end-2017

3. New complaints registered in 2017: main policy sectors

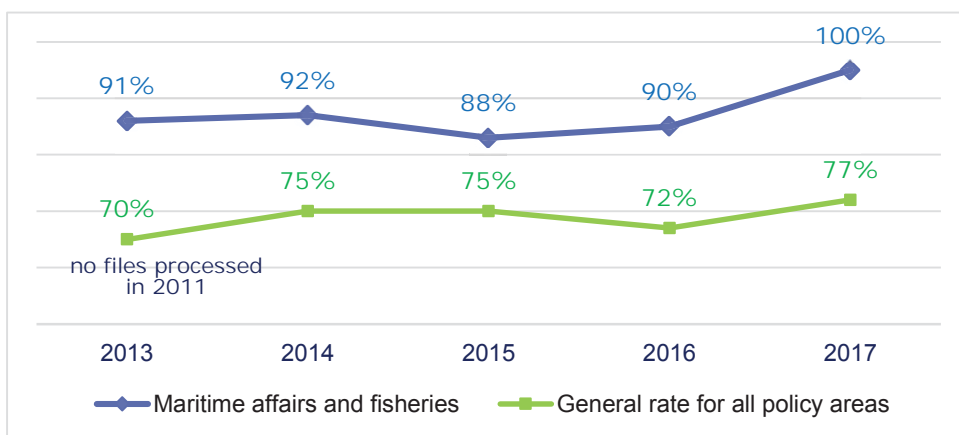


## II. EU PILOT

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

There were 2 EU Pilot files registered in 2017, and 12 EU Pilot files remained open at end-2017.

### 2. EU Pilot files: policies' combined resolution rate in 2013-2017



## III. OWN-INITIATIVE CASES

### New own-initiative infringement cases

In 2017, 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.

## IV. INFRINGEMENT CASES

### Key infringement cases and referrals to the Court

- a) The Commission opened one new infringement case in 2017. This, and other major ongoing infringement cases, concern:
  - *Bulgaria, Greece, Croatia, Cyprus and Finland*: non-communication of national measures transposing the Maritime Spatial Planning Directive<sup>1</sup>;
  - *Portugal*: lack of action in preventing, deterring and eliminating illegal, unreported and unregulated fishing by Portuguese-flagged vessels in the waters under the responsibility of the Northwest Atlantic Fisheries Organisation<sup>2</sup>;
  - *Romania*: failure to comply with the principle of equal access to EU waters and resources<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.

<sup>1</sup> Directive [2014/89/EU](#); [MEMO/17/1935](#).

<sup>2</sup> [MEMO/17/3494](#).

<sup>3</sup> [MEMO/17/234](#).

## V. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2017

These concerned:

- *Spain, France, Croatia and Lithuania*: non-communication of national measures transposing the Maritime Spatial Planning Directive<sup>4</sup>;
- *Greece*: non-compliance with the Mediterranean Regulation regarding the obligation to adopt a national management plan for fisheries conducted by boat seines within its territorial waters<sup>5</sup>.

## VI. IMPORTANT JUDGMENTS

### 1. Court rulings

There were no major Court rulings in 2017 in this area.

### 2. Preliminary rulings

There were no major preliminary rulings in 2017 in this area.

## VII. OUTLOOK

Important implementation work in 2018 includes:

- action to ensure the complete and correct transposition by Member States of the Maritime Spatial Planning Directive<sup>6</sup>;
- preparing a revision of the fisheries control system, following the recent comprehensive evaluation of the implementation and impact of the Control Regulation<sup>7</sup>;
- giving appropriate follow-up to the recommendations formulated in the assessment of Member States' sanctioning systems for contraventions of the common fisheries policy rules, with particular focus on how to improve the effectiveness of those systems and how to prioritise investigations of the deficiencies found;
- addressing, through action plans provided for by the Control Regulation, certain systemic irregularities in Member States' fisheries control systems, where appropriate<sup>8</sup>;
- following up on the implementation of the constituent components of the common fisheries policy, and more specifically on the application of the landing obligation set out in the basic common fisheries policy Regulation<sup>9</sup>.

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

<sup>5</sup> Regulation [\(EC\) No 1967/2006](#).

<sup>6</sup> Directive [2014/89/EU](#).

<sup>7</sup> Regulation [\(EC\) No 1224/2009](#).

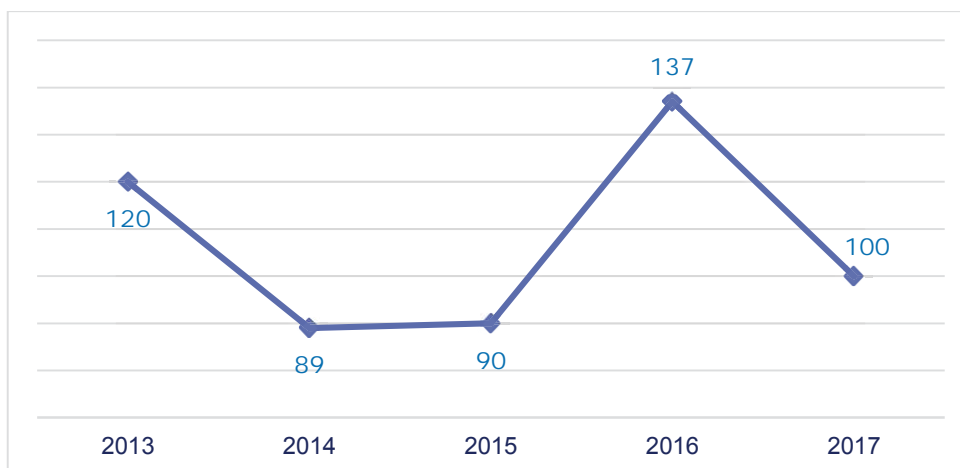
<sup>8</sup> Regulation [\(EC\) No 1224/2009](#).

<sup>9</sup> Regulation [\(EU\) No 1380/2013](#).

Migration and home affairs

I. COMPLAINTS

1. New complaints received from members of the public (2013-2017)



2. Public complaints open at year-end

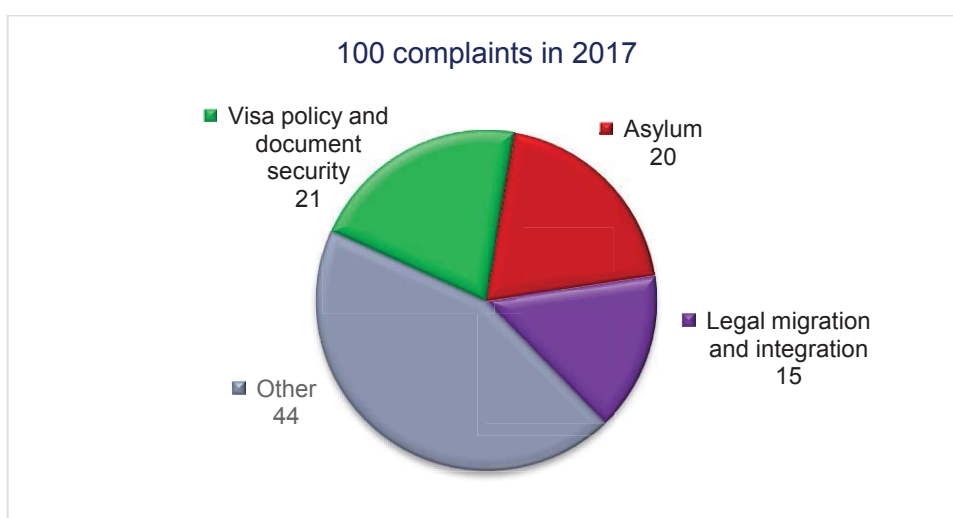
100 > Complaints open at end-2016

100 > New complaints registered in 2017

83 > Complaints handled in 2017

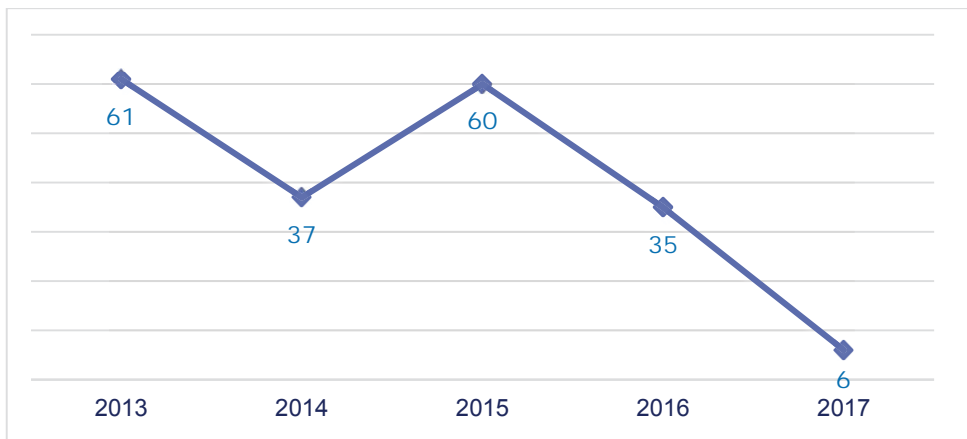
100  
+ 17  
= 117 > Complaints open at end-2017

3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

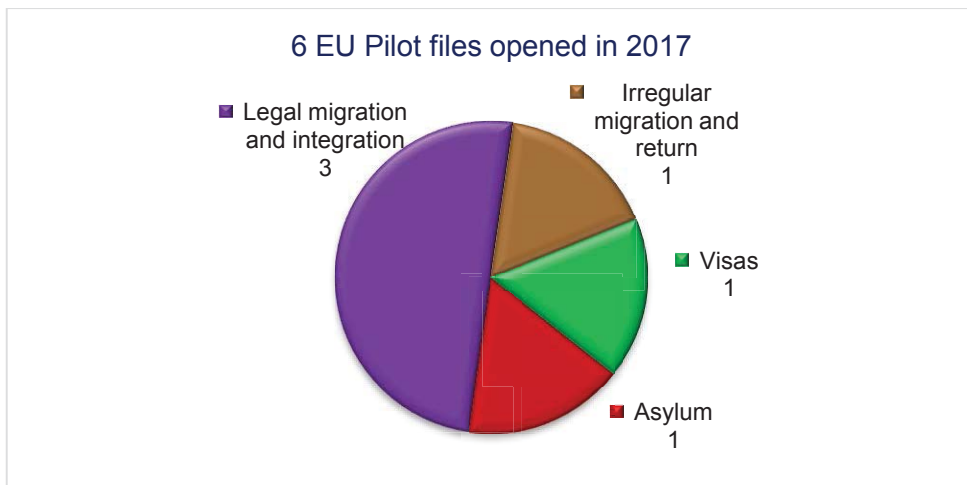
### 1. New EU Pilot files (2013-2017)



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

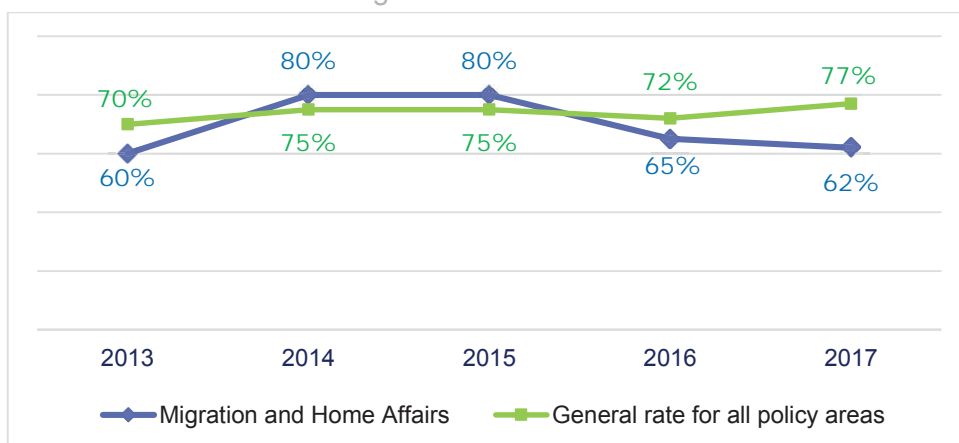
At the end of 2017, 48 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2017: main policy sectors



### 4. EU Pilot files: resolution rate for policies (2013-2017)

Monitoring the application of European Union law  
2017 Annual Report  
Migration and home affairs



### III. OWN-INITIATIVE CASES

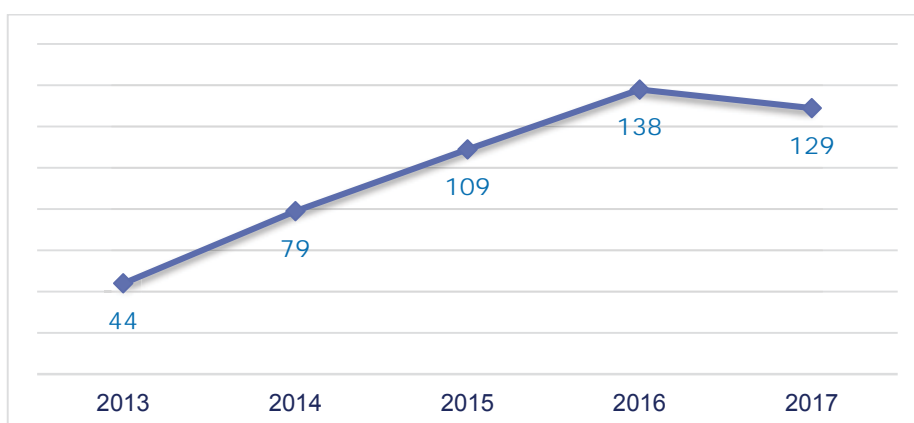
#### New own-initiative infringement cases

In 2017, the Commission opened own-initiative infringement cases over:

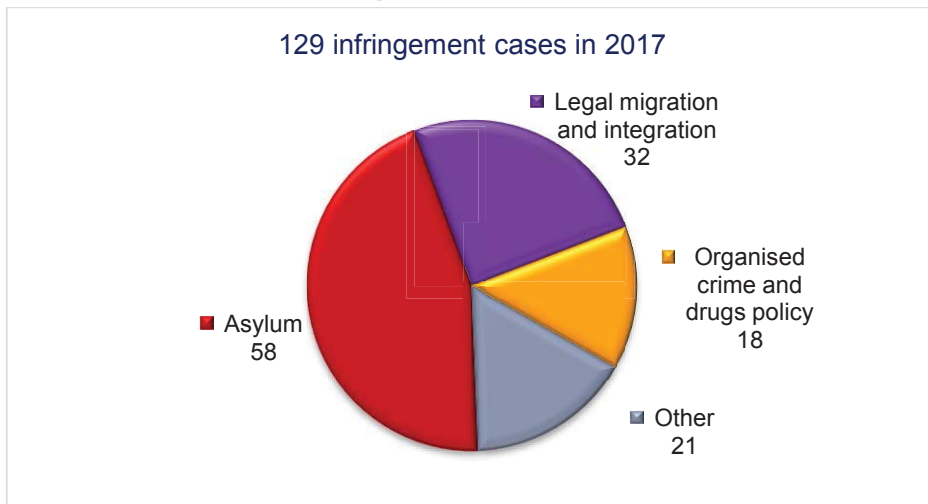
- legal migration and integration;
- asylum;
- visa policy and document security;
- information systems for borders and security.

### IV. INFRINGEMENT CASES

#### 1. Infringement cases open on 31 December (2013-2017)

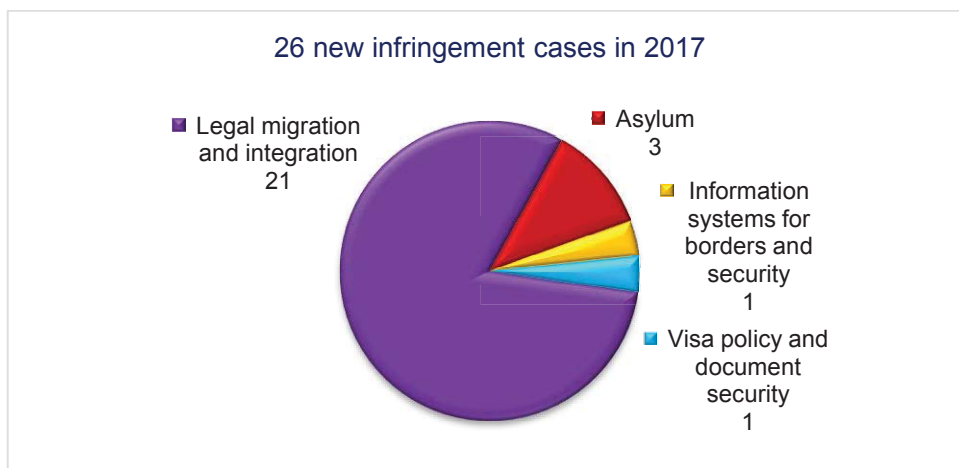


#### 2. Infringement cases open on 31 December 2017: main policy sectors





### 3. New infringement cases opened in 2017: main policy sectors



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

a) The Commission opened 26 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following.

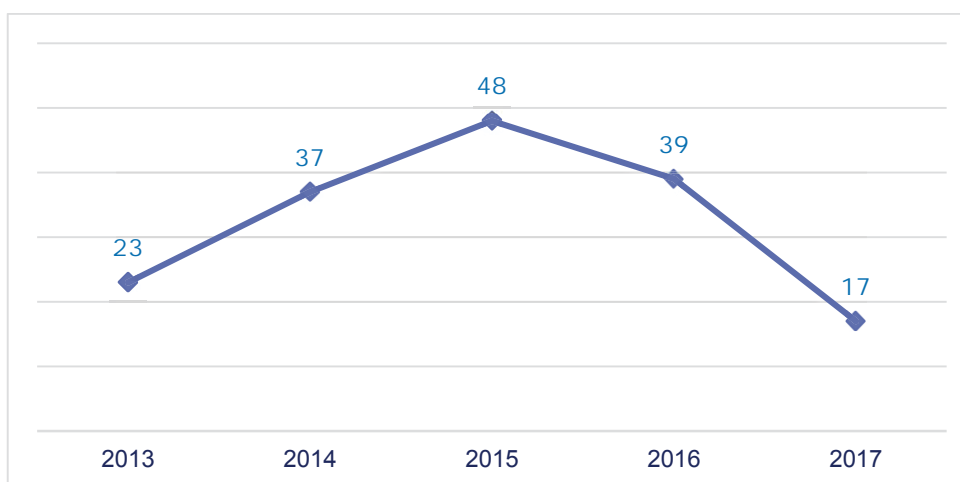
- *Bulgaria*: Lack of implementation of certain obligations under EU document security legislation<sup>1</sup>.
- *Czech Republic, Hungary and Poland*: non-compliance with the obligations under the 2015 Council Decisions on relocation of migrants from Greece and Italy<sup>2</sup>.
- *Ireland, Greece, Croatia and Italy*: Failure to fully implement the Prüm Decisions, which set up an information-exchange tool that can offer automated comparison of DNA profiles, fingerprint data and vehicle registration data<sup>3</sup>.
- *Ireland*: failure to implement the Schengen Information System<sup>4</sup>.
- *France, Cyprus and Romania*: failure to fully implement the Regulation on explosives precursors, which restricts and controls access to several dangerous chemicals that could be used by terrorists to manufacture homemade explosives<sup>5</sup>.
- *Croatia*: Failure to correctly fingerprint asylum seekers and irregular migrants apprehended after crossing an external border and to transmit this data to the central Eurodac database<sup>6</sup>.
- *Hungary*: incorrect implementation of the EU asylum and migration *acquis*<sup>7</sup>.
- *Luxembourg*: non-communication of national measures taken to implement the 'Swedish initiative'<sup>8</sup>. This allows for more effective information and intelligence sharing between Member States' law enforcement authorities when conducting criminal investigations or criminal intelligence operations<sup>9</sup>.

<sup>1</sup> Commission Decisions [C\(2013\) 6181](#) and [C \(2013\)6178](#).  
<sup>2</sup> Council Decisions [\(EU\) 2015/1523](#) and [2015/1601](#); [IP/17/5002](#).  
<sup>3</sup> Council Decisions [2008/615/JHA](#) and [2008/616/JHA](#).  
<sup>4</sup> Council Decision [2002/192/EC](#).  
<sup>5</sup> [MEMO/17/234](#).  
<sup>6</sup> [MEMO/17/1577](#).  
<sup>7</sup> [IP/17/5023](#).  
<sup>8</sup> Council Decision [2006/960/JHA](#).  
<sup>9</sup> [MEMO/17/3494](#).

- b) The Commission referred three cases to the Court under Article 258 TFEU. These concerned:
- *Czech Republic, Hungary and Poland*: non-compliance with the obligations under the 2015 Council Decisions on relocation of migrants from Greece and Italy;<sup>10</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 (2013-2017)



### 2. New late transposition infringement cases opened in 2017: policy sectors

There are 17 new transposition infringement cases, all concerning the intra-corporate transfer directive<sup>11</sup> (legal migration and integration area).

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

- a) The Commission opened 17 cases for late transposition in 2017. All concern:
- the Directive on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer<sup>12</sup>.
- b) The Commission referred one case to the Court under Articles 258 and 260(3) TFEU. It concerns:
- *Belgium*: for failing to fully implement the Single Permit Directive, which introduces simplified procedures and a common set of rights for non-EU workers<sup>13</sup>.

<sup>10</sup> Council Decisions [\(EU\) 2015/1523](#) and [2015/1601](#), Commission v Poland, [C-715/17](#), [IP/17/5002](#), Commission v. Hungary, [C-718/17](#), [IP/17/5002](#), Commission v. Czech Republic, [C-719/17](#), [IP/17/5002](#).

<sup>11</sup> Directive [2014/66/EU](#).

<sup>12</sup> Directive [2014/66/EU](#).

<sup>13</sup> Directive [2011/98/EU](#), Commission v Belgium, [C-564/17](#), [IP/17/1953](#).

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2017

These concerned:

- *Bulgaria and Italy*: disproportionate fees for issuing residence permits to third-country nationals;
- *Germany*: non-compliance with the Schengen Borders Code<sup>14</sup>;
- *Germany*: failure to communicate national measures transposing the Directive on trafficking in human beings<sup>15</sup>;
- *Estonia, Greece, Lithuania and Poland*: lack of implementation of certain obligations under EU document security legislation<sup>16</sup>;
- *Estonia, Latvia, Lithuania, Malta and Romania*: non-communication of national measures transposing the Directive on seasonal workers<sup>17</sup>;
- *Ireland*: failure to communicate national measures transposing the Directive on attacks against information systems<sup>18</sup>;
- *France, Cyprus and Lithuania*: failure to implement completely the Regulation on explosives precursors, which restricts and controls access to several dangerous chemicals that could be used by terrorists to manufacture homemade explosives;
- *France, Cyprus, Latvia, Lithuania and Slovakia*: non-communication of national measures transposing the Directive on intra-corporate transfer<sup>19</sup>;
- *France, Italy and Latvia*: non-communication of national measures transposing the amendment of Long-Term Residents Directive<sup>20</sup>;
- *Italy, Cyprus, Malta, Portugal, Romania and Finland*: non-communication of national measures transposing the 'Qualifications' Directive<sup>21</sup>;
- *Italy*: alleged violations of obligations under the Dublin Regulation and the Directive on asylum procedures<sup>22</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>23</sup>

- The Court upheld the validity of the provisional mechanism for the mandatory relocation of asylum seekers set up by the 2015 Council Decisions on relocation of migrants from Greece and Italy<sup>24</sup>. The Court dismissed the actions for annulment brought by *Hungary and Slovakia*<sup>25</sup>.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

<sup>14</sup> Regulation (EU) [2016/399](#).

<sup>15</sup> Directive [2011/36/EU](#).

<sup>16</sup> Commission Decisions [C \(2013\) 6181](#) and [C \(2013\) 6178](#).

<sup>17</sup> Directive [2014/36/EU](#).

<sup>18</sup> Directive [2013/40/EU](#).

<sup>19</sup> Directive [2014/66/EU](#).

<sup>20</sup> Directive [2011/51/EU](#).

<sup>21</sup> Directive [2011/95/EU](#).

<sup>22</sup> Regulation [No 343/2003/EC](#) and Directive [2005/85/EC](#).

<sup>23</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>24</sup> Council Decisions [\(EU\) 2015/1523](#) and [2015/1601](#); [IP/17/5002](#).

<sup>25</sup> *Slovakia v. Council*, [C-643/15](#) and *Hungary vs Council*, [C-647/15](#) and Court press release [No 91/17](#).

- *Belgium*: The denial of refugee status due to participation in terrorist activities is not confined to the commitment of a terrorist act. An asylum application can be rejected if the asylum-seeker participated in the activities of a terrorist network, for example by providing logistical support to the terrorist group, even without personally committing or instigating terrorist acts<sup>26</sup>.
- *Belgium*: Member States are not required, under EU law, to grant a humanitarian visa to persons who wish to enter their territory with a view to applying for asylum. They remain free to do so, on the basis of their national law. EU law establishes only the procedures and conditions for issuing visas for transit through or intended stays on the territory of the Member States not exceeding 90 days<sup>27</sup>.
- *Czech Republic*: A Member State may not detain an applicant of international protection for the purpose of securing a procedure for his transfer to another Member State, if the objective criteria for assessing the risk of absconding are not defined in its legislation (even if those criteria are apparent from the case-law or the administrative practice of that Member State)<sup>28</sup>.
- *Germany*: The efficient management of migration flows may justify a national measure requiring nationals of third countries under the age of 16 to hold a residence permit in order to enter and reside in that Member State. However, such a measure is not proportionate where it concerns child nationals of third countries born in the Member State in question and one of whose parents is a Turkish worker lawfully residing in that Member State<sup>29</sup>.
- *Germany*: Member States enjoy a wide discretion in refusing to admit third country students who plan to carry out research in that Member State in a field that is sensitive for public security, if the elements available provide a sufficiently solid factual basis to fear that the knowledge acquired by that person during research may subsequently be used for purposes contrary to public security<sup>30</sup>.
- *Greece*: A Member State may adopt an order for the removal of a citizen who constitutes a serious threat to public security based on the sole finding that a previous exclusion order was still valid<sup>31</sup>.
- *Spain*: A decision to expel a third country long-term resident may not be adopted for the sole reason of having been sentenced to a term of imprisonment of more than one year. Before taking such decision, Member States must consider the duration of residence, the age of the person, the consequences for the person and family members and links with the country of residence<sup>32</sup>.
- *Italy*: National courts may dismiss an appeal against a decision rejecting a manifestly unfounded application for international protection without hearing the applicant. In such a case the factual circumstances should leave no doubt as to whether that decision was well founded, and during the proceedings at first instance the applicant should have been given the opportunity of a personal interview<sup>33</sup>.
- *Italy*: In line with the principle of equal treatment, a third-country national holding a single permit should also be entitled to the benefit for households<sup>34</sup>.
- *Netherlands*: Actions by armed forces during periods of armed conflict, within the meaning of international humanitarian law, may constitute 'terrorist acts' for the purposes

<sup>26</sup> Mostafa Lounani, [C-573/14](#).

<sup>27</sup> X and X, [C-638/16](#) and Court press release [No 24/17](#).

<sup>28</sup> Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v Salah Al Chodor and others, [C-528/15](#).

<sup>29</sup> Tekdemir v Kreis Bergstraße, [C-652/15](#).

<sup>30</sup> Fahimian, [C-544/15](#).

<sup>31</sup> Petrea, [C-184/16](#).

<sup>32</sup> Lopez Pastuzano, [C-636/16](#).

<sup>33</sup> Moussa Sacko, [C-348/16](#).

<sup>34</sup> Martínez Silva, [C-449/16](#).

of EU law (despite the fact that some international conventions exclude them). Consequently, preventative measures may be applied to the perpetrator of the act<sup>35</sup>.

- *Netherlands*: The starting point of the duration of an entry ban, which in principle may not exceed 5 years, must be calculated from the date on which the person concerned actually left the territory of the Member States<sup>36</sup>.
- *Austria*: Where the transfer of a third-country national to the Member State that, according to the Dublin mechanism, is responsible for examining his application for international protection does not take place within the six-month time limit, the responsibility for examination is transferred automatically to the Member State which requested that charge be taken of the person concerned. It is not necessary for the Member State responsible to refuse to take charge of that person<sup>37</sup>.
- *Poland*: The Regulation establishing a Community Code on Visas<sup>38</sup> requires Member States to provide for an appeal procedure against decisions refusing visas. The procedural rules are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. The proceedings must guarantee a judicial appeal<sup>39</sup>.
- *Poland*: On the basis of the Visa Code<sup>40</sup> and the Charter of Fundamental Rights, visa applicants have the right to a non-arbitrary treatment of their visa application and that this right is to be protected by a judicial appeal procedure<sup>41</sup>.
- *Slovenia*: The transfer of an asylum-seeker to the Member State responsible for examining the asylum application cannot go ahead if it might result in a risk of the person concerned suffering inhuman or degrading treatment. The transfer of an asylum-seeker with a particularly serious mental or physical illness that would risk worsening that person's health would constitute inhuman and degrading treatment<sup>42</sup>.
- *Sweden*: National legislation that prescribes a general and indiscriminate obligation on providers of electronic communications services to retain data is contrary to EU law. Such interference with the right to private life could only be justified by the objective of fighting serious crime<sup>43</sup>.

## VIII. OUTLOOK

Important implementation work in 2018 includes:

- closely monitoring that Member States transpose on time the:
  - Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing<sup>44</sup>;
  - Directive on the use of passenger name record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime;<sup>45</sup>
  - Directive on combating terrorism<sup>46</sup>;
- assessing that Member States correctly and completely transpose and implement the:

<sup>35</sup> A, B, C, D, [C-158/14](#).

<sup>36</sup> Mossa Ouhrami, [C-225/16](#).

<sup>37</sup> Majid Shiri, [C-201/16](#).

<sup>38</sup> Regulation [\(EC\) No 810/2009](#).

<sup>39</sup> Soufiane Hassani, [C-403/16](#).

<sup>40</sup> Regulation No [810/2009](#).

<sup>41</sup> Soufiane Hassani, [C-403/16](#).

<sup>42</sup> C. K., H. F., A. S., [C-578/16](#).

<sup>43</sup> Tele2 Sverige and Watson and Others, [C-203/15](#) and [C-698/15](#).

<sup>44</sup> Directive [2016/801/EU](#).

<sup>45</sup> Directive [2016/681/EU](#).

<sup>46</sup> Directive [2017/541/EU](#).

Monitoring the application of European Union law  
2017 Annual Report

Migration and home affairs

- Directives on seasonal workers and on intra-corporate transfer<sup>47</sup>;
  - Directives on asylum procedures and on reception conditions<sup>48</sup>;
  - Directive against trafficking in human beings<sup>49</sup>;
  - Directive on the freezing of proceeds of crime and confiscation of assets<sup>50</sup>;
  - Directive against sexual exploitation of children<sup>51</sup>;
  - Directive on attacks against information systems<sup>52</sup>.
- ensuring appropriate follow-up to Court's preliminary rulings concerning:
    - data retention<sup>53</sup>;
    - appeal procedures for challenging decisions refusing a visa<sup>54</sup>.

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<sup>47</sup> Directives [2014/36/EU](#) and [2014/66/EU](#).

<sup>48</sup> Directives [2013/32/EU](#) and [2013/33/EU](#).

<sup>49</sup> Directive [2011/36/EU](#).

<sup>50</sup> Directive [2014/42/EU](#).

<sup>51</sup> Directive [2011/93/EU](#).

<sup>52</sup> Directive [2013/40/EU](#).

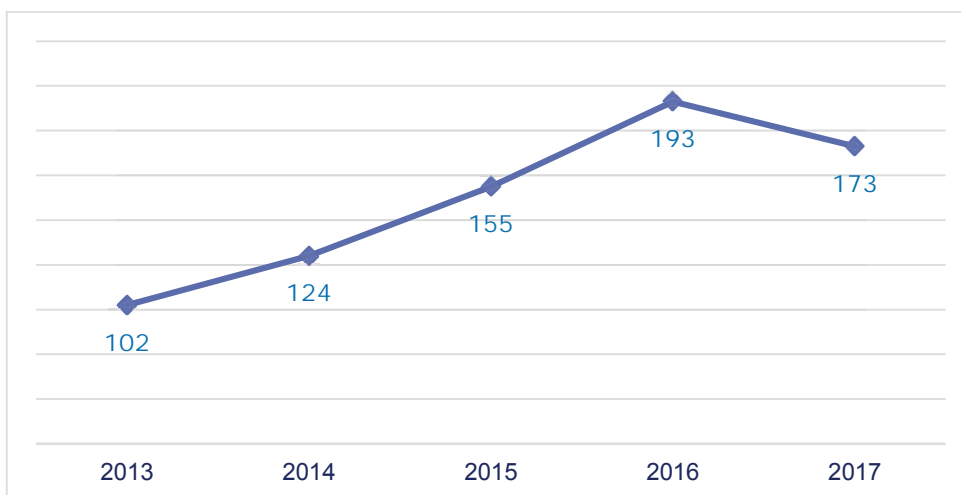
<sup>53</sup> Privacy International, [C-623/17](#).

<sup>54</sup> El Hassani, [C-403/16](#).

Mobility and transport

I. COMPLAINTS

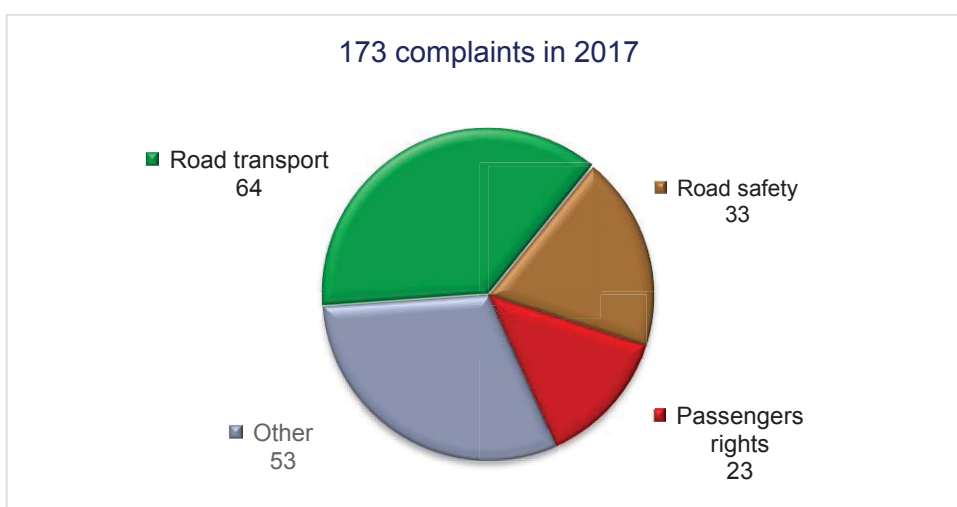
1. New complaints received from members of the public (2013-2017)



2. Public complaints open at year-end

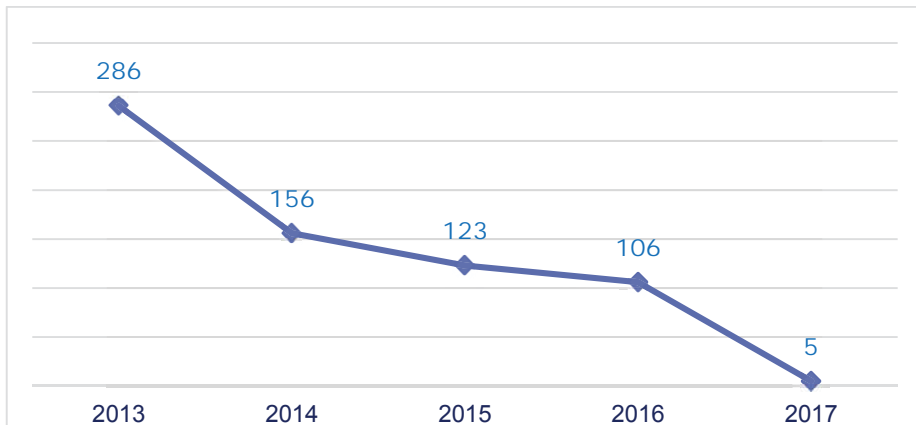
43	>	Complaints open at end-2016
173	>	New complaints registered in 2017
135	>	Complaints handled in 2017
<b>= 81</b>	>	<b>Complaints open at end-2017</b>

3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

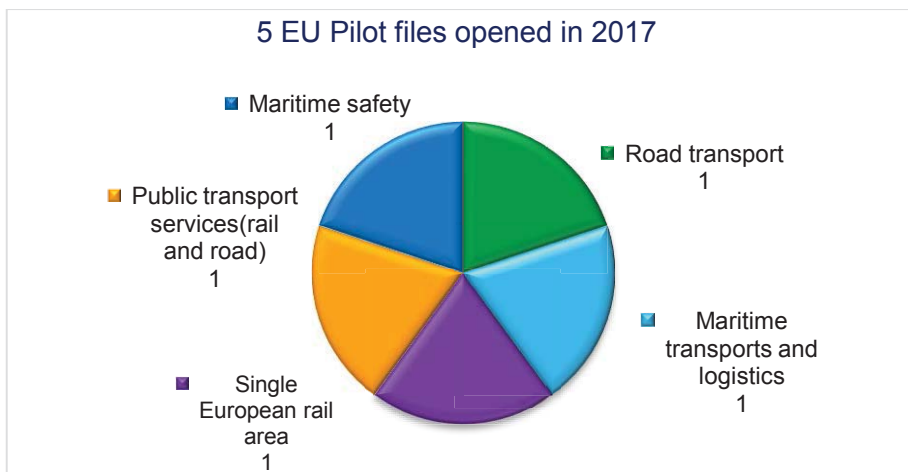
### 1. New EU Pilot files (2013-2017)



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

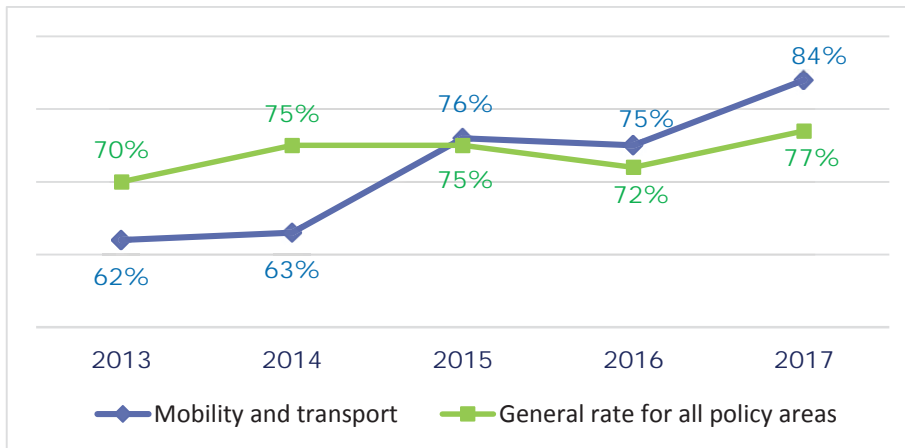
At the end of 2017, 20 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2017: main policy sectors



### 4. EU Pilot files: resolution rate for policies (2013-2017)





### III. OWN-INITIATIVE CASES

#### New own-initiative infringement cases

In 2017, the Commission opened own-initiative infringement cases over:

- *Sustainable transport:*
  - implementation of Directive on the deployment of alternative fuels infrastructure<sup>1</sup>.
- *Road sector:*
  - restrictions on freedom of establishment and free movement of goods in international transport by imposing disproportionate penalties for offences regarding a heavy goods vehicles tolling scheme.
- *Air sector:*
  - incorrect implementation of rules on civil aviation security and management of civil-military airspace.
- *Maritime sector:*
  - training of seafarers<sup>2</sup>.

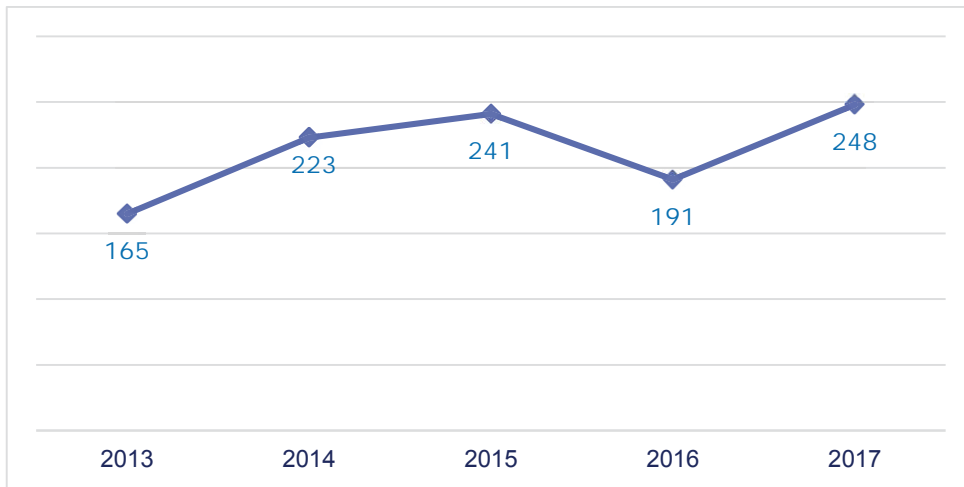
### IV. INFRINGEMENT CASES

#### 1. Infringement cases open on 31 December (2013-2017)

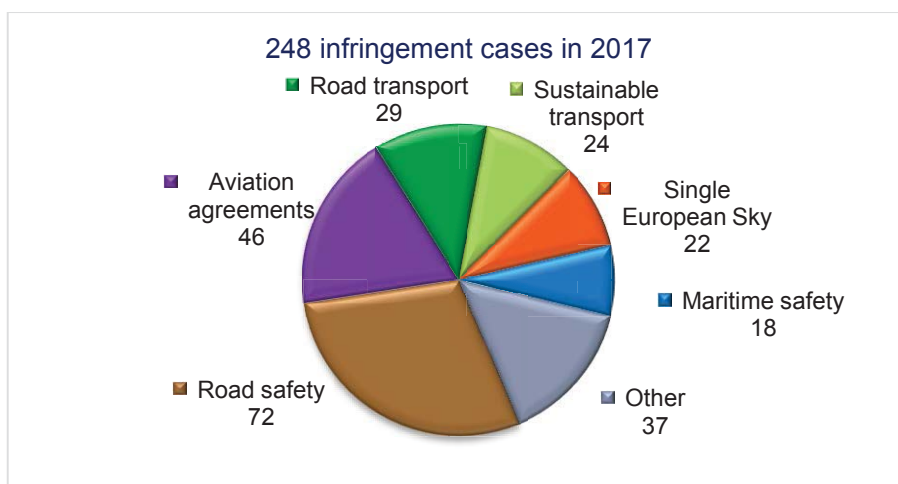
<sup>1</sup> Directive [2014/94/EU](#).

<sup>2</sup> Directive [2008/106/EC](#).

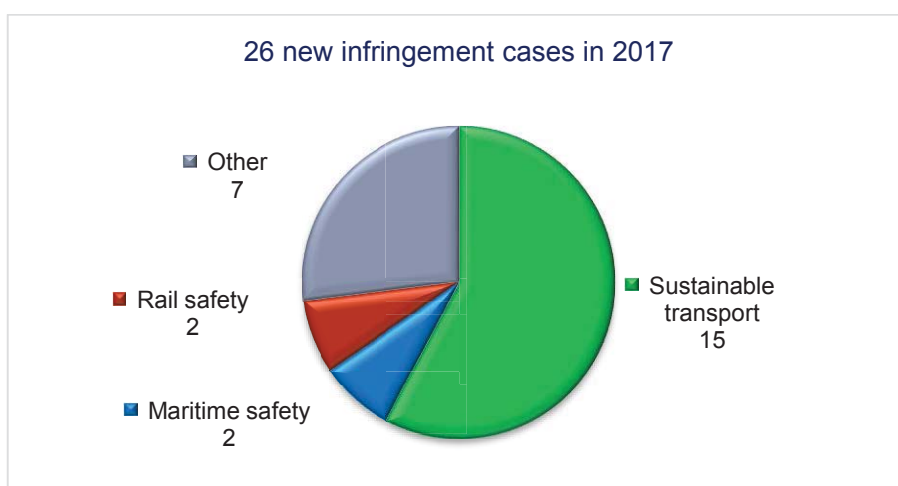
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2017 Annual Report  
Mobility and transport



## 2. Infringement cases open on 31 December 2017: main policy sectors



## 3. New infringement cases opened in 2017: main policy sectors



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

- a) The Commission opened 26 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following:
- *Belgium*: incorrect implementation of the Airspace Regulation and the Regulation on common rules for the flexible use of airspace<sup>3</sup>;
  - *Belgium, Ireland and Portugal*: bad application of the Directive on the investigation of accidents in the maritime transport sector<sup>4</sup>;
  - *Bulgaria, Spain, Finland and Sweden*: incorrect transposition of the Directive on airport charges<sup>5</sup>;
  - *France and Italy*: the prohibition on the transfer of public funds from infrastructure management to transport activities and the need to ensure that funds paid for

<sup>3</sup> Regulation [551/2004](#) and Regulation [2150/2005](#).

<sup>4</sup> Directive [2009/18/EC](#), [MEMO/17/1045](#).

<sup>5</sup> Directive [2009/12/EC](#).

activities relating to the provision of passenger transport services are shown separately in the relevant accounts<sup>6</sup>;

- *Austria*: restrictions on the provision of transport services and free movement of goods deriving from the national law on posting of workers<sup>7</sup>.

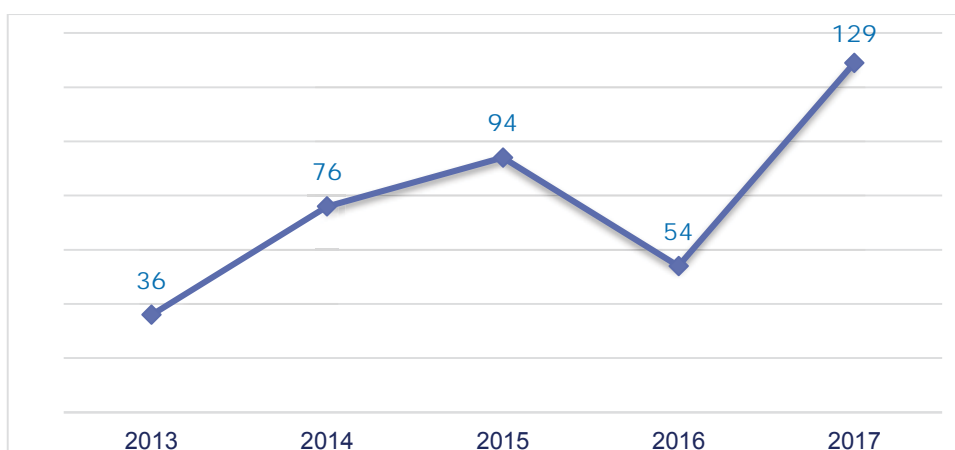
b) The Commission referred five cases to the Court under Article 258 TFEU. They concern:

- *Spain*: failure to comply with the rules on access to the occupation of road transport operator<sup>8</sup>;
- *Poland*: implementation of the Directive on axle weights limits<sup>9</sup>;
- *Portugal*: incorrect transposition of the Directive on driving licences<sup>10</sup>;
- *Portugal*: incorrect transposition of the Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations<sup>11</sup>;
- *Portugal*: lack of certified quality management system for the Portuguese administration's flag State-related activities<sup>12</sup>.

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

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2013-2017)



<sup>6</sup> Directive [2012/34/EU](#).

<sup>7</sup> Directive [96/71/EC](#), [IP/17/1053](#).

<sup>8</sup> Regulation (EC) No [1071/2009](#), Commission v Spain, [C-181/2017](#), [IP/16/3651](#), [MEMO/16/3644](#).

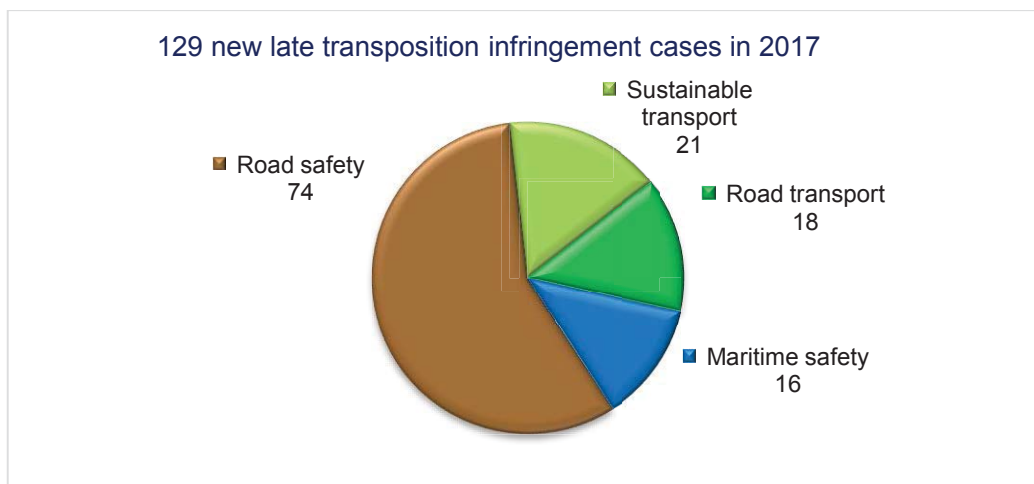
<sup>9</sup> Directive [96/53/EC](#), Commission v Poland, [C-127/17](#), [IP/16/3649](#), [MEMO/16/3644](#).

<sup>10</sup> Directive [2006/126/EC](#), Commission v Portugal, [C-170/17](#), [IP/17/241](#).

<sup>11</sup> Directive [2009/15/EC](#), Commission v Portugal, [C-383/17](#), [IP/17/1052](#).

<sup>12</sup> Directive [2009/21/EC](#), Commission v Portugal, [C-382/17](#), [IP/17/1052](#).

## 2. New late transposition infringement cases opened in 2017: main policy sectors



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

- a) The Commission opened 129 cases for late transposition in 2017. Most concern the:
- Roadworthiness package (56 cases)<sup>13</sup>;
  - Directive on the deployment of alternative fuels infrastructure (21 cases)<sup>14</sup>;
  - Directive on port reception facilities for ship-generated waste and cargo residues (11 cases)<sup>15</sup>.
- b) The Commission did not refer any case to the Court under Articles 258 and 260(3) TFEU.

## VI. EARLY RESOLUTION OF INFRINGEMENT CASES

### Major cases closed without a Court judgment in 2017

These included the following:

- *Belgium, Bulgaria, Denmark, Germany, Croatia, Cyprus, Austria, Portugal, Romania, Slovenia and Finland*: non-communication of national measures transposing the Directive on port reception facilities for ship-generated waste and cargo residues<sup>16</sup>;
- *Bulgaria, Czech Republic, Denmark, Germany, Ireland, Croatia, Cyprus, Luxembourg, Slovenia, Finland and United Kingdom*: incorrect implementation of the Directive on driving licences<sup>17</sup>;
- *Bulgaria, Ireland, Spain, France, Cyprus, Latvia, Luxembourg, Hungary Poland, Portugal, Slovenia and United Kingdom*: non-communication of national measures transposing the Directive on marine equipment<sup>18</sup>;
- *Germany and Slovenia*: non-implementation of Regulations in the area of aviation safety (lack of appropriate recourses)<sup>19</sup>;

<sup>13</sup> Directive [2014/45](#), Directive [2014/46](#), Directive [2014/47](#).

<sup>14</sup> Directive [2014/94/EU](#).

<sup>15</sup> Directive [2015/2087/EU](#) amending Directive [2000/59/EC](#).

<sup>16</sup> Directive [2015/2087/EU](#) amending Directive [2000/59/EC](#).

<sup>17</sup> Directive [2006/126/EC](#).

<sup>18</sup> Directive [2014/90/EU](#).

- *Croatia and United Kingdom*: non-communication of national measures transposing the Directive on the deployment of alternative fuels;<sup>20</sup>
- *Austria*: non-compliance with the Directive establishing a single European railway area (separation of accounts)<sup>21</sup>;
- *Romania*: non-communication of national measures transposing the Directive on the charging of heavy goods vehicles for the use of certain infrastructures<sup>22</sup>;
- *Sweden*: non-communication of national measures transposing the Directive on maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic<sup>23</sup>.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings<sup>24</sup>

The Court gave the following rulings.

- *Spain*: Spain failed to comply with a 2014 Court judgment on freedom of establishment at Spanish ports<sup>25</sup>. The Court ordered Spain to pay a lump sum of EUR 3 million<sup>26</sup>;
- *Germany*: Member States have to ensure that accounts of railway undertakings are kept in a way that makes it possible to monitor the prohibition of transferring public funds earmarked for the management of railway infrastructure to transport services<sup>27</sup>.
- *Germany*: Germany failed to fulfil its port security obligations in relation to port boundaries, port security assessments and port security officers<sup>28</sup>;
- *Portugal*: Portugal failed to fulfil its obligations under the Directive on driving licences as it failed to connect to the 'Resper' network<sup>29</sup>.

### 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Czech Republic*: A collision between an aircraft and a bird is an extraordinary circumstance exempting the carrier from the obligation to pay compensation in the event of significant delay. That delay cannot be justified by the alleged need to carry out a second check where an authorised expert found that the aircraft was airworthy after the collision<sup>30</sup>.
- *Germany*: EU law precludes the application of national provisions providing for a review of the equity of charges for the use of railway infrastructure, on a case-by-case basis, by the ordinary courts and the possibility, if necessary, of amending the amount of those charges, independently of the monitoring performed by the regulatory body provided for in EU law<sup>31</sup>.

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<sup>19</sup> Regulation [748/2012](#), Regulation [1321/2014](#).

<sup>20</sup> Directive [2014/94/EU](#).

<sup>21</sup> Directive [2012/34/EU](#).

<sup>22</sup> Directive [2011/76/EU](#).

<sup>23</sup> Directive [2015/719/EU](#) amending Council Directive [96/53/EC](#).

<sup>24</sup> These rulings are almost exclusively handed down on infringement procedures.

<sup>25</sup> Commission v Spain, [C-576/13](#).

<sup>26</sup> Commission v Spain, [C-388/16](#).

<sup>27</sup> Directive [91/440/EEC](#) and Directive [2001/14/EC](#), Commission v Germany, [C-482/14](#).

<sup>28</sup> Directive [2005/65/EC](#), Commission v Germany, [C-58/16](#).

<sup>29</sup> Directive [2006/126/EC](#), Commission v Portugal, [C-665/15](#).

<sup>30</sup> Marcela Pešková and Jiří Peška, [C-315/15](#).

<sup>31</sup> CTL Logistics GmbH, [C-489/15](#).

- *Spain*: An intermediation service whose purpose is to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys must be considered as a 'service in the field of transport'. The service in question is consequently covered by the common transport policy<sup>32</sup>.
- *Netherlands*: Where a flight was cancelled, the air carrier has to pay compensation if that information was not communicated to the passenger at least 2 weeks before departure time. This holds even where the information reached, at least 2 weeks before the same time, the travel agent through which the carriage contract had been entered into<sup>33</sup>.
- *Romania*: National provisions terminating the authorisation to ride mopeds without holding a driving licence, the issue of which is subject to passing tests or examination, are compliant with EU law<sup>34</sup>.

## VIII. OUTLOOK

Important implementation work in 2018 includes:

- monitoring and assessing national measures transposing the Directives on:
  - periodic vehicle inspections<sup>35</sup>;
  - vehicle registration documents<sup>36</sup>;
  - roadside inspections of commercial vehicles<sup>37</sup>;
  - the deployment of alternative fuels infrastructure<sup>38</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>32</sup> Asociación Profesional Elite Taxi, [C-434/15](#).

<sup>33</sup> Bas Jacob Adriaan Krijgsman, [C-302/16](#).

<sup>34</sup> Costin Popescu, [C-632/15](#).

<sup>35</sup> Directive [2014/45/EU](#).

<sup>36</sup> Directive [2014/46/EU](#).

<sup>37</sup> Directive [2014/47/EU](#).

<sup>38</sup> Directive [2014/94/EU](#).

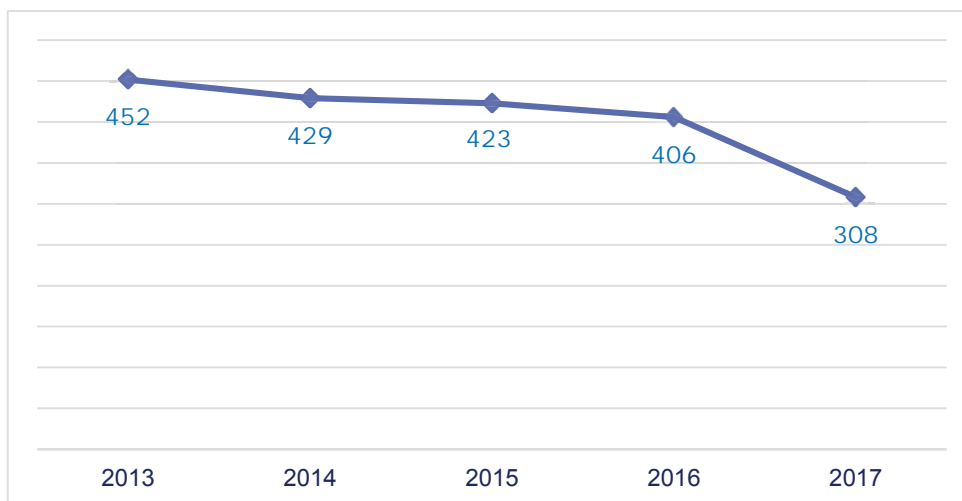
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2017 Annual Report  
Mobility and transport



Taxation and customs union

I. COMPLAINTS

1. New complaints received from members of the public (2013-2017)



2. Public complaints open at year-end

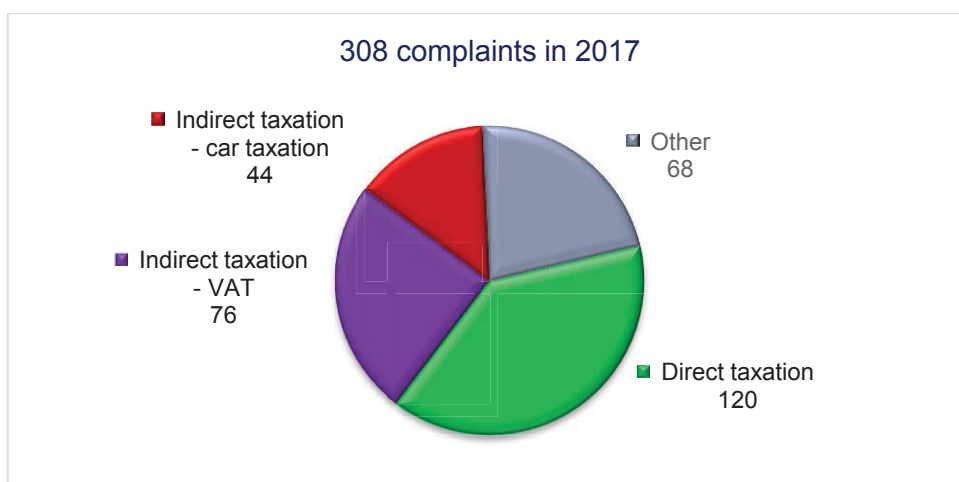
340 > Complaints open at end-2016

308 > New complaints registered in 2017

296 > Complaints handled in 2017

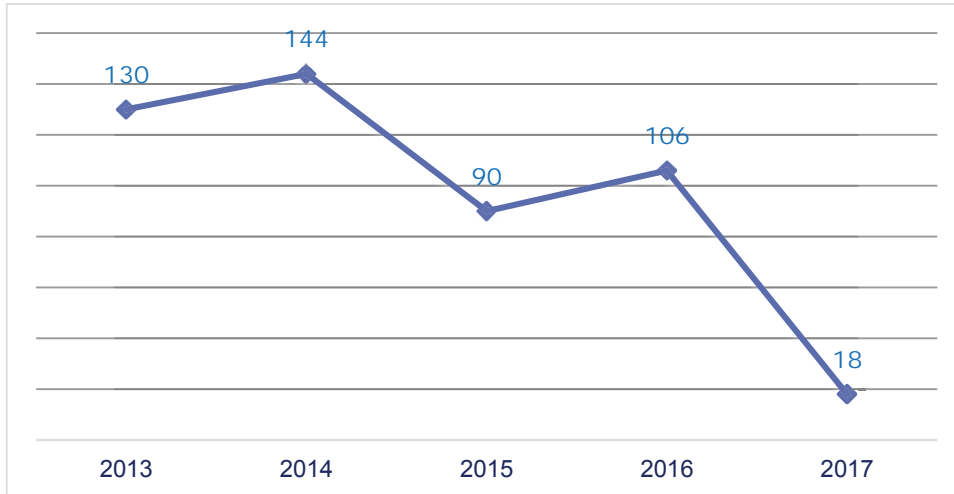
**= 352** > Complaints open at end-2017

3. New complaints registered in 2017: main policy sectors



## II. EU PILOT

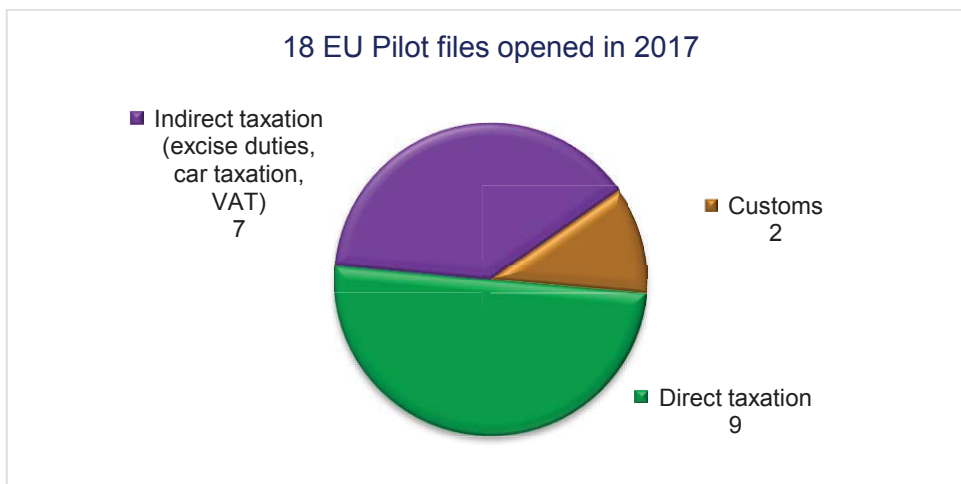
### 1. New EU Pilot files (2013-2017)



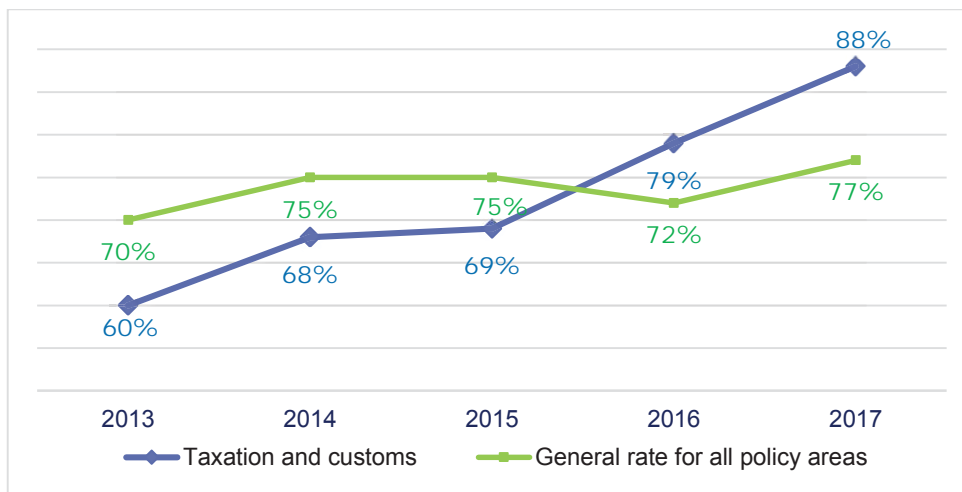
### 2. EU Pilot files open at year-end

At the end of 2017, 94 EU Pilot files remained open.

### 3. New EU Pilot files opened in 2017: main policy sectors



#### 4. EU Pilot files: resolution rate for policies (2013-2017)



### III. OWN-INITIATIVE CASES

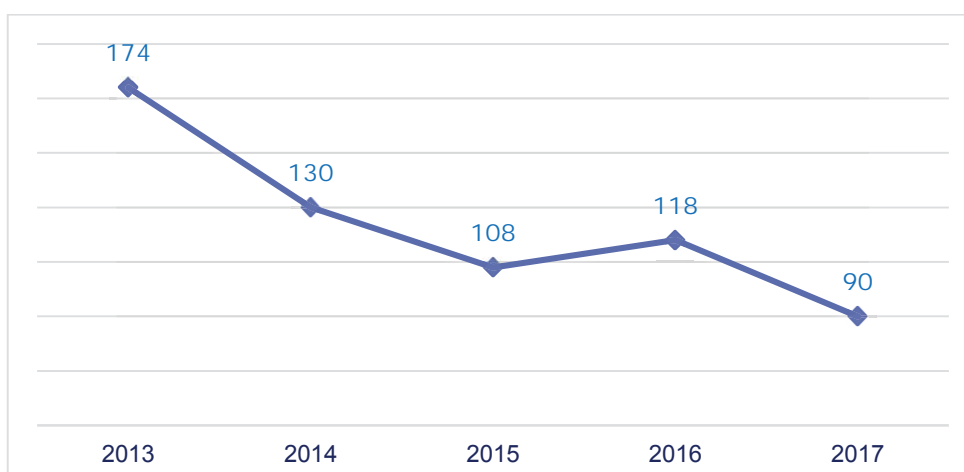
#### New own-initiative infringement cases

In 2017, the Commission opened own-initiative infringement cases over the following:

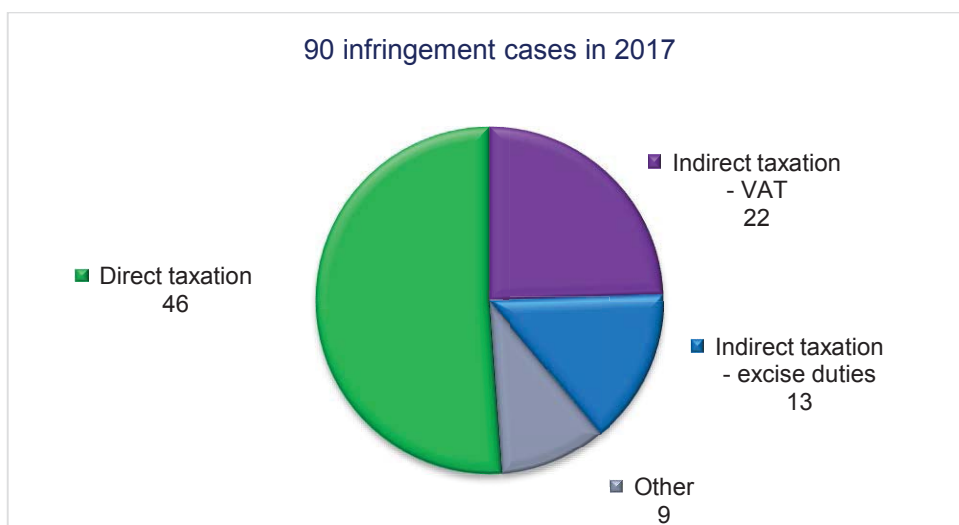
- cash control and fees with an equivalent effect to a customs duty; and
- domestic and cross-border VAT refunds.

### IV. INFRINGEMENT CASES

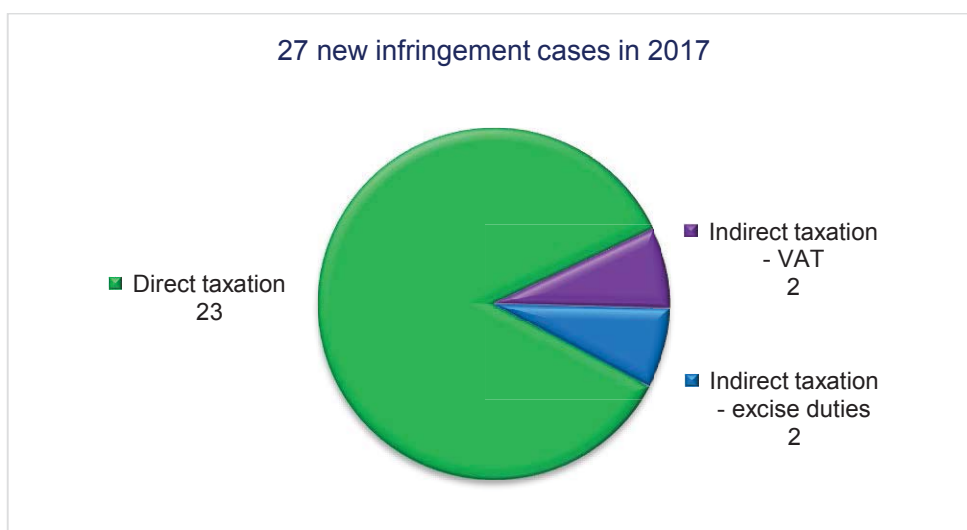
#### 1. Infringement cases open on 31 December (2013-2017)



## 2. Infringement cases open on 31 December 2017: main policy sectors



## 3. New infringement cases opened in 2017: main policy sectors



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

- a) The Commission opened 27 new infringement cases in 2017. These, and other major ongoing infringement cases, include the following:
- *Germany*: reluctance by the tax administration to inform VAT refund applicants in certain cases may result in EU businesses losing those refund rights;
  - *Spain*: the penalty regime under the 'Modelo 720' (a compulsory declaration on tax residents' assets located abroad) may be disproportionate and thus contrary to, among other things, the free movement of capital<sup>1</sup>;
  - *Italy*: discriminatory fiscal treatment of green electricity and discriminatory taxation rules against non-Italian citizens relating to real estate;
  - *Hungary and Bulgaria*: cash control, proportionality of national fines;

<sup>1</sup> [MEMO/17/234](#).

- *Hungary*: excessive reporting obligations on businesses under the Electronic Road Cargo Monitoring System which may violate the equal treatment of intra-EU and domestic transports.
- b) The Commission referred four cases to the Court under Article 258 TFEU.
- *Belgium*<sup>2</sup>: The Belgian tax laws apply different methods when assessing rents earned from real estate. They attribute a higher value to real estate located abroad than to comparable real estate in Belgium. The rules thus favour investment in Belgian real estate over that in other Member States. This may be contrary to the free movement of capital.
  - *Ireland*<sup>3</sup>: Ireland does not properly apply the EU rules on fiscal marking<sup>4</sup> of fuels. Under the rules fishing vessels (among others) may benefit from a lower tax rate on their fuels; however, private leisure boats must use fuel subject to a standard rate. In addition, private leisure boats using marked fuel risk heavy penalties abroad charged by the authorities of other Member States.
  - *France*<sup>5</sup>: The case concerns failure to fully comply with the following criteria laid down in an earlier Court judgment on tax treatment of dividends<sup>6</sup>. First, the tax already paid by non-French subsidiaries is not taken into account. Second, the tax credit is limited to one third of the dividend redistributed by a non-French subsidiary, which discriminates between dividends received from companies in other Member States and those of French origin. Finally, the requirement of proof is still maintained to restrict companies' right to a refund.
  - *United Kingdom*<sup>7</sup>: This case also concerns failure to properly apply the EU rules on fiscal marking of fuels<sup>8</sup>. Under the rules fishing vessels, among others, may benefit from a lower tax rate on their fuels; by contrast, private leisure boats must use fuel subject to a standard rate. UK law does not require fuel distributors to have separate fuel tanks for marked and standard fuel. Thus, private leisure boat owners often have no choice but to buy marked fuel which is not intended for them. In addition, private leisure boats using marked fuel risk heavy penalties abroad charged by the authorities of other Member States.
- c) The Commission did not refer any cases to the Court under Article 260(2) TFEU.

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<sup>2</sup> Commission v Belgium, [C-110/17](#).

<sup>3</sup> Directive [2003/96/EC](#), Directive [96/60/EC](#), Commission v Ireland, [C-504/17](#), [IP/14/2138](#), [MEMO/14/2130](#).

<sup>4</sup> The fuel that may benefit from a reduced tax rate has to be marked by coloured dye.

<sup>5</sup> Commission v France, [C-416/17](#), [IP/16/4216](#).

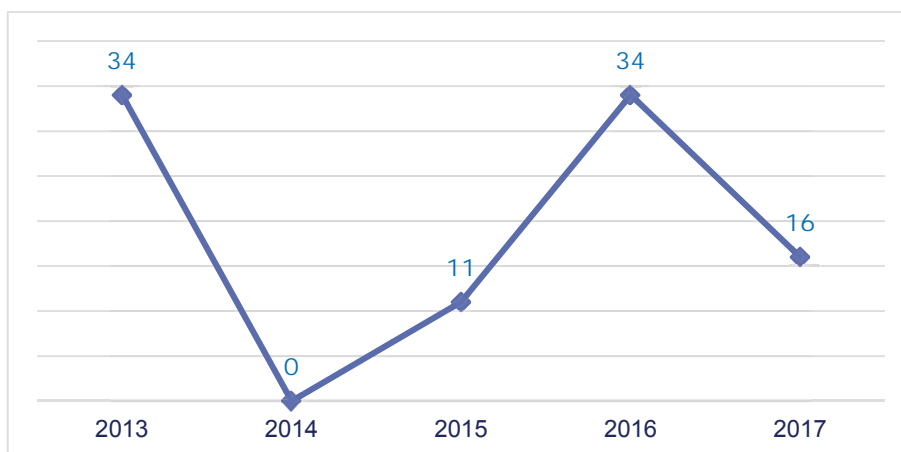
<sup>6</sup> Accor SA, [C-310/09](#).

<sup>7</sup> Commission v United Kingdom, [C-503/17](#), [IP/14/810](#).

<sup>8</sup> The fuel that may benefit from a reduced tax rate has to be marked by coloured dye.

## V. TRANSPOSITION OF DIRECTIVES

### 1. New late transposition infringement cases (2013-2017)



### 2. New late transposition infringement cases opened in 2017: main policy sectors

All 16 new late transposition infringement cases opened in 2017 concern direct taxation.

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

- a) The Commission opened 16 cases for late transposition in 2017. Most concern:
  - the Directives amending the Directive on mandatory automatic exchange of information in the field of taxation<sup>9</sup> (DAC 3 and DAC 4)<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 2017

These concerned the following.

- *Denmark*: Incorrect implementation of the EU Customs Code by not requiring certain data for a customs declaration<sup>11</sup>.
- *Germany*: Lack of definition of 'normal residence' for the purpose of temporary car import from another Member State; refusal to exempt from motor vehicle tax the cars of people who return to their non-German place of normal residence every weekend but during the working week commute between their temporary residence and working place, both in Germany.
- *Germany*: The special maintenance allowance under inheritance law. This was extended to non-German surviving spouses (registered partners) upon inheriting a German estate or investment when neither the deceased nor the heirs are tax-resident in Germany<sup>12</sup>.

<sup>9</sup> Directive [2011/16/EU](#).

<sup>10</sup> Council Directives [2015/2376/EU](#) and [2016/881/EU](#).

<sup>11</sup> Regulation [\(EC\) No 2286/2003](#).

<sup>12</sup> [MEMO/17/3494](#).

- *Italy*: Systematic and unexplained refusal of applications from customs agents to operate as direct representatives in the simplified customs procedures.
- *Finland*: Disproportionate taxation of vehicles leased or rented in other Member States when their limited duration of use in Finland is precisely known.

## VII. IMPORTANT JUDGMENTS

### 1. Court rulings

The Court gave the following rulings.

- *Germany*: As the VAT Directive exempts from VAT all services provided by cost-sharing groups<sup>13</sup> to their members (under certain common conditions), the German rule that restricted this kind of VAT exemption to cost-sharing groups operating in the medical and healthcare sector violated EU law<sup>14</sup>.
- *Ireland*: The legislation levied the full amount of car tax on leased or rented vehicles even if the precise duration of the lease or rent is known (e.g. based on a leasing or rental contract). Even though the amount levied in excess is refunded once the vehicle is registered in another country, the rules qualify as a disproportionate obstacle to the freedom to provide services<sup>15</sup>.
- *Greece*: Legacies bestowed on certain non-profit entities established in Greece benefited automatically from a preferential tax rate of 0.5 %; however, similar non-profit entities from other Member States could benefit from this tax rate only in case of reciprocity (without it, the tax rate varied 20-40 %). As the Greek measure could vastly reduce the value of the bequeathed property, it restricted the free movement of capital<sup>16</sup>.
- *Luxembourg*: Contrary to the strict conditions in the VAT Directive on exempting from VAT services provided by cost-sharing groups<sup>17</sup>, Luxembourgish law allowed the exemption only if the members' taxed activities did not exceed 30 % (or in some cases 45 %) of their annual turnover. In addition, group members were allowed to deduct the VAT charged to the group on its purchases of goods and services. Lastly, operations by a member in his or her own name but on behalf of the group were regarded as outside the scope of VAT, with these rules considered as incompatible with the VAT Directive by the Court<sup>18</sup>.
- *Portugal*: National rules provided that cigarettes released for consumption in a given year may no longer be marketed or sold to the public after the expiry of a three-month time limit starting from the first day of the following year, even where there is no increase in the excise duty in that following year<sup>19</sup>. These rules were not in line with the Excise Duty Directive<sup>20</sup> and the principle of proportionality.

<sup>13</sup> Associations of taxpayers who come together to purchase services from third parties.

<sup>14</sup> Commission v Germany, [C-616/15](#), [IP/15/4493](#).

<sup>15</sup> Commission v Ireland, [C-552/15](#), [IP/15/5355](#), [MEMO/15/5356](#).

<sup>16</sup> Commission v Greece, [C-98/16](#), [MEMO/17/3494](#).

<sup>17</sup> Associations of taxpayers who come together to purchase services from third parties.

<sup>18</sup> Commission v Luxembourg, [C-274/15](#), [IP/14/161](#), [MEMO/14/116](#).

<sup>19</sup> Commission v Portugal, [C-126/15](#), [IP/14/809](#), [MEMO/14/470](#).

<sup>20</sup> Directive [2008/118/EC](#).

## 2. Preliminary rulings

The Court gave the following preliminary rulings.

- *Belgium*: Article 56 TFEU and Article 36 EEA preclude the Belgian national legislation that imposes discriminatory conditions for savings deposits in order to benefit from a tax exemption<sup>21</sup>.
- *Belgium*: The Parent-Subsidiary Directive<sup>22</sup> precludes the Belgian legislation on the 'Fairness Tax'. This taxes dividends received from subsidiaries and exempted under the Directive in the hands of the parent company when they are redistributed by that company<sup>23</sup>.
- *Belgium*: Belgian rules are contrary to the free movement of workers in requiring resident workers to register their own car in Belgium if the car is already registered in another Member State and is intended to be used primarily in that other State<sup>24</sup>.
- *Germany*: In relation to customs valuation, a flat-rate adjustment based on transfer pricing arrangements, and made after the accounting period, cannot be taken into account when establishing the transaction value of imported goods<sup>25</sup>.
- *Germany*: The German anti-abuse measures concerning dividend payments to foreign companies without genuine activity were incompatible, in the respective tax years, with both the Parent-Subsidiary Directive and the freedom of establishment<sup>26</sup>.
- *Germany*: It is incompatible with the free movement of workers that German law does not allow residents working in another Member State to deduct, from their income tax base, pension and health insurance contributions which were deducted from their wages in the Member State of employment, in contrast to comparable contributions paid to the German social security. This also applies where under a double-taxation Convention the income from the source state must not be taxed in the worker's Member State of residence but merely increases the tax rate to be applied to other income<sup>27</sup>.
- *France*: The Parent-Subsidiary Directive<sup>28</sup> precludes a tax measure providing for the levy of a tax on dividends redistributed by a French parent company coming from that company's non-resident subsidiaries<sup>29</sup>.
- *Luxembourg*: In the context of information exchange between Member States, the right to an effective remedy under the EU Charter of Fundamental Rights requires that the information holder should be able to contest the legality of an information request before a court if it is subject to a fine in case of non-compliance<sup>30</sup>.
- *Netherlands*: The 'cost of transport' as defined in the Community Customs Code is not necessarily limited to the amounts charged by the carriers which themselves carry out the transport of the imported goods<sup>31</sup>.
- *Netherlands*: under the Combined Nomenclature, the classification of video footage lasting longer than 30 minutes does not change if it is divided into parts shorter than

<sup>21</sup> Van der Weegen and Others, [C-580/15](#).

<sup>22</sup> Directive [2011/96/EU](#).

<sup>23</sup> X, [C-68/15](#).

<sup>24</sup> Criminal proceedings against Mr U, [C-420/15](#).

<sup>25</sup> Hamamatsu Photonics Deutschland GmbH, [C-529/16](#).

<sup>26</sup> Deister, [C-504/16](#) and Juhler Holding, [C-613/16](#).

<sup>27</sup> Bechtel & Bechtel, [C-20/16](#).

<sup>28</sup> Directive [2011/96/EU](#).

<sup>29</sup> AFEP and Others, [C-365/16](#).

<sup>30</sup> Berlioz Investment Fund, [C-682/15](#).

<sup>31</sup> The Shirtmakers BV, [C-59/16](#).



30 minutes. This remains so either when during the playback the user is unable to perceive the transition from one file to the next, or when he must play each file separately<sup>32</sup>.

- *Netherlands*: Screws to be used for medical implant purposes should be classified as orthopaedic articles under the Combined Nomenclature and not as 'regular' screws, even if they 'entirely correspond' to ordinary screws<sup>33</sup>.
- *Portugal*: For an intra-Community supply transaction to benefit from the VAT exemption set out in the VAT Directive, the purchaser should neither have to acquire a VAT identification number valid for the purpose of carrying out intra-Community transactions nor include that number in the VIES system. These are merely formal requirements which cannot undermine the vendor's right to be exempt from VAT where the substantive conditions are satisfied<sup>34</sup>.
- *United Kingdom*: The case concerned the interpretation of the words 'contract for hire which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment', used in the VAT Directive. The Court held that this phrase must be interpreted as applying to a leasing contract with an option to purchase if the contract's financial terms suggest that exercising the option appears to be the only economically rational choice to be made by the lessee at the time of performing the contract in full<sup>35</sup>.

## VIII. OUTLOOK

Important implementation work in 2018 includes:

- *Indirect taxation*:
  - focusing on infringements with a strong impact on the functioning of the internal market and the economy;
  - following up on the horizontal application of Court judgments;
  - monitoring cases affecting the economic situation of businesses (VAT refund) and cases aiming to remove obstacles to the free circulation of goods and services.
- *Direct taxation*:
  - assessing the conformity of the rules on mandatory automatic exchange of information on taxation. This will concern in particular the Directives on:
    - the automatic exchange within the EU of information relative to financial income, including dividends and capital gains, and account balances<sup>36</sup>;
    - the mandatory automatic exchange of information in the field of taxation<sup>37</sup>; and
    - country-by-country reporting of information by multinationals to tax authorities<sup>38</sup>.
- *Customs*:
  - focusing on cases where there is a significant financial impact on the collection of the EU's traditional own resources and where it is considered that the EU's exclusive competence in the customs area needs to be defended.

<sup>32</sup> GROFA GmbH and GoPro Cooperatief, Joined Cases [C-435/15](#) and [C-666/15](#).

<sup>33</sup> Stryker EMEA Supply Chain BV, [C-51/16](#).

<sup>34</sup> Euro Tyre BV, [C-21/16](#).

<sup>35</sup> Mercedes-Benz Financial Services UK, [C-164/16](#).

<sup>36</sup> Directive [2014/107/EU](#).

<sup>37</sup> Directive [2015/2376/EU](#).

<sup>38</sup> Directive [2016/881/EU](#).



## Methodology and explanations

### I. ANNEX I — POLICY AREAS

#### 1. Complaints

##### **First chart: New complaints received from members of the public (2013-2017)**

This shows the number of public complaints the Commission registered in the given policy field in 2013-2017.

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

This starts with the number of open complaints carried over from 2016 (first column). The second column shows the number of new complaints registered in 2017. The third column shows the number of complaints on which the Commission took a decision in 2017. The fourth column shows the number of complaints open at the end of 2017 (calculated by taking the first figure, adding the second and subtracting the third).

##### **Third chart: New complaints registered in 2017: 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 2017. 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 (2013-2017)**

This shows the number of EU Pilot files the Commission opened in the given policy area in 2013-2017.

##### **Second chart: New EU Pilot files opened in 2017: 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 2017. 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: resolution rate for policies in 2013-2017**

The resolution rate in the given policy field is the percentage of EU Pilot files handled in that field for which the Commission accepted the Member States' responses. The chart shows the 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 2017. The list is not exhaustive.

### 4. INFRINGEMENT CASES

#### First chart: Infringement cases open on 31 December (2013-2017)

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 2017 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 2013 to 2017:

- 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 2017: main policy sectors

This shows, for the given policy area, the sectors in which the most infringement cases were still open on 31 December 2017. The number of sectors shown varies according to the breadth of each policy area.

#### Third chart: New infringement cases opened in 2017: main policy sectors

This shows, for the given policy area, the sectors in which the most infringement cases were launched in 2017.

#### 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 2017 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 2017. 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 2017.

## 5. TRANSPOSITION OF DIRECTIVES

### **First chart: New late transposition infringement cases (2013-2017)**

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 2017, 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 2017. For example, if the Commission opened a late transposition infringement procedure in March 2017 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 2017 as a result of the Member State notifying complete transposition.

### **Second chart: New late transposition infringement cases opened in 2017: main policy sectors**

This shows the policy sectors in which the most late transposition procedures were launched in 2017.

### **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) over 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 2017.

## 6. EARLY RESOLUTION OF INFRINGEMENT CASES

### **Major cases closed without a Court judgment in 2017**

This section contains a list of the most important infringement cases the Commission closed in the given policy area in 2017 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 2017. 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.