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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
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**Enforcing EU law for a Europe that delivers**

# Enforcing EU law for a Europe that delivers

## I. INTRODUCTION

The European Union is a community of law, based on common values shared by Member States. Applying and enforcing EU law, and respect for the rule of law are at its very foundation. The law is the EU's best asset in delivering the benefits of the EU for people, businesses, and our environment. The principle of primacy of EU law is grounded in the principle of equality before the Treaties. It ensures equal rights for all across the EU, meaning that all provisions of EU law should have the same meaning and are to be applied in the same way in all Member States. The law is the basis on which the EU can make the most of the internal market, drive our transition to a greener and more digital Europe, and protect and promote our values, effective judicial cooperation, and the security of our Union. This is why the rules-based system is central to the EU's vision, in Europe and worldwide, a prerequisite for fairness, democracy and the respect for fundamental rights. The Commission is committed to stepping up its work to promote and uphold people's rights, fundamental freedoms and the rule of law. Key work streams such as the annual Rule of Law reports<sup>1</sup>, the European democracy action plan<sup>2</sup> and the renewed strategy for the implementation of the Charter of Fundamental Rights of the EU<sup>3</sup> ('the Charter') combine in a major intensification of work to strengthen the EU's legal and democratic foundations.

Enforcing EU law is central to this goal. This is one of the Commission's core missions, with the EU Treaties, which Member States have signed up to, entrusting the Commission with the role of 'Guardian of the Treaties'<sup>4</sup>, and of EU law more broadly. This overarching role gives the Commission central responsibility for enforcement. A key way in which it discharges this role is by working with Member States, as well as monitoring their implementation and application of EU law. This Communication sets out in more detail how the Commission fulfils this task as EU legislation is developed, transposed into national law, implemented, and applied in practice. In the same way as the Commission focuses on protecting the rule of law by preventing problems from emerging, the best way to enforce EU law is to prevent breaches from happening in the first place. Day-to-day cooperation between the Commission and the Member States is essential to ensure early compliance. But ultimately, infringement procedures, including the possibility to refer Member States to the Court of Justice of the European Union ('the Court of Justice'), are often needed to address breaches of EU law.

Effective enforcement ensures that people and businesses in the EU enjoy the benefits of commonly agreed rules as soon as possible and can count on their fundamental rights being respected at all times wherever they live or work in the EU. This is why the Commission

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<sup>1</sup> Commission Communication '2022 Rule of Law Report - The rule of law situation in the European Union', COM(2022) 500 final.

<sup>2</sup> Commission Communication 'On the European democracy action plan', COM(2020) 790 final.

<sup>3</sup> Commission Communication 'Strategy to strengthen the application of the Charter of Fundamental Rights in the EU', COM(2020) 711 final.

<sup>4</sup> Article 17 of the Treaty on the European Union.

supports Member States early in the process of integrating EU rules into their legal order, to ensure EU law is correctly implemented and applied from the outset. This also explains why the figures of infringement procedures alone are not necessarily a good measure of the Commission's enforcement efforts, which seek to avoid breaches from materialising and, if they occur, to bring these to an end as quickly as possible.

In addition to the Commission and national governments, other actors also play a key role in applying EU law effectively. Some have a formal role, such as national courts, national competition and regulatory authorities or statutory authorities like consumer or independent data protection supervisory authorities. Civil society and individuals also help to draw attention to possible breaches and the need for them to be addressed.

This Communication sets out how the Commission has deepened and developed its work on enforcement in order to ensure that EU law is upheld equally in all Member States and to maximise the concrete benefits that its implementation and enforcement work delivers in the everyday lives of people in the EU<sup>5</sup>.

## II. HARNESSING THE BENEFITS OF EU LAW

People and businesses count on the EU's commonly agreed rules to be swiftly and correctly implemented or transposed into national law, and fully applied by Member States. The enforcement of EU rules is essential for the delivery of the EU's policies and inextricably linked to policy making. EU legislation goes through a scrupulous process of evaluating existing national and EU legislation, consulting the public and assessing the environmental, social and economic impacts<sup>6</sup>. Its adoption is the result of an inclusive and transparent legislative process involving the European Parliament and the Council, so that politicians and policymakers have had their say on how laws under discussion will be implemented in practice. If the acts adopted are to deliver the impact intended, they need to be applied in all Member States in a way which is complete, correct, equal and timely.

### *Allowing people to work and carry out business anywhere in the EU*

EU rules on the **recognition of professional qualifications** make it easier for professionals to provide services around the EU, while guaranteeing improved protection for consumers. However, Member States had implemented these rules inconsistently, with more burdensome procedures for workers and self-employed persons in some Member States than in others. As a result of infringement procedures, Member States amended their legislation, making sure citizens and businesses benefit from the advantages of those rules.

<sup>5</sup> This Communication builds on and does not replace earlier Communications which define the operational framework and rules for the Commission's action on complaints and infringements. See in particular Commission Communication, 'EU law: Better results through better application' (C(2016)8600), (hereafter 'the 2016 Communication').

<sup>6</sup> In accordance with Better Regulation Guidelines, 3.11.2021 [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en)

In addition, after cooperation in the Single Market Enforcement Taskforce, Member States removed 217 professions from the list of professions for which a prior check was required, making it easier for workers to provide services in these Member States.

Improved coordination of national **social security systems** of the Member States also helps people to effectively exercise their right to free movement. To protect the free movement of workers and coordination of social security systems, the Commission launched procedures against two Member States for granting lower amounts of family benefits to EU nationals working there, when their children live in a Member State where the cost of living is considered to be lower. In one of those cases, the Commission's position has already been confirmed by the Court of Justice, which ruled that the adjustment of family benefits according to the state of residence of the beneficiary children is illegal.

The **SOLVIT** cooperation mechanism for resolving cross-border problems allows for possible breaches of EU law to be identified earlier and can provide immediate redress for the businesses or individuals affected. It addresses practical problems and barriers that people encounter when working, living or doing business in other Member States<sup>7</sup>. The national authorities which make up the SOLVIT network work together in applying EU rules and make extensive use of the help and the expertise provided by the Commission<sup>8</sup>. National SOLVIT centres not only find solutions for numerous individual situations, but also help to identify and address structural problems related to the application of EU law<sup>9</sup>.

Non-compliance comes at a cost. It can mean that protection of fundamental rights is delayed or narrower in scope, undermining rights such as equal treatment and free movement. It can perpetuate burdens on the public and businesses. It can mean that environmental damage lasts. It can mean that consumer or worker protection, or the protection of asylum seekers, is weakened or delayed. There is a particular impact on people working or travelling across borders, or crossing borders for other purposes<sup>10</sup>, who have to adapt to different rules depending on how EU law is applied. Misapplication of EU rules also distorts competition in the single market, undermining the level playing field for businesses across the EU.

Where Member States breach EU rules by introducing or tolerating obstacles within the single market to create advantages for businesses, the potential gains are often short-term, while the lasting impact on businesses can be much more damaging, making it far more difficult for all businesses to take advantage of the opportunities provided by the single market<sup>11</sup>.

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<sup>7</sup> Commission Recommendation of 17 September 2013 on the principles governing SOLVIT, C(2013) 5869 final.

<sup>8</sup> Commission Staff Working Document, 'SOLVIT's Helping Hand in the Single Market: celebrating 20 years', SWD(2022) 325 final.

<sup>9</sup> [https://ec.europa.eu/solvit/index\\_en.htm](https://ec.europa.eu/solvit/index_en.htm)

<sup>10</sup> For example, for education, healthcare, cultural and other leisure activities, etc.

<sup>11</sup> Commission Communication 'Long term action plan for better implementation and enforcement of single market rules', COM(2020) 94 final.

### ***Costs of applying rules incorrectly or incompletely***

Existing barriers within the **single market** are in many cases due to the incorrect or incomplete application of EU Treaties and legislation<sup>12</sup>. SMEs and start-ups are particularly affected since they are the first to be impacted by administrative burdens and complexity, especially when crossing borders to conduct business within the single market. Misapplication of rules also hampers the economies of scale offered by the single market, which is detrimental to consumers' interests. Inconsistent rules harm in particular cross-border regions<sup>13</sup>.

Strong enforcement of **competition rules** is essential for businesses and consumers to reap the benefits of the single market. Failure to properly apply those rules undermines the level-playing field for businesses, and consequently consumers may be faced with higher prices and less choice.

Implementing EU **environmental policy** and law is not only essential for a healthy environment, but also opens up new opportunities for economic growth, jobs, and competitiveness. Full implementation of EU environmental legislation could also save the EU economy around EUR 55 billion every year in health costs and direct costs to the environment<sup>14</sup>.

### ***Benefits from a swift implementation of the new EU tax rules***

New **value-added tax (VAT) rules for e-commerce** came into force in 2021 as part of work to ensure a more level playing field and simplify VAT rules. Online sellers can now register on an electronic portal ('one-stop shop') and take care of all their VAT obligations for sales across the EU. The Commission provided support and guidance on the new rules both to Member States and affected stakeholders. This helped smooth implementation of the new VAT e-commerce rules and the collection of EUR 8.8 billion in VAT revenues via the new portal, including EUR 700 million in new VAT revenues<sup>15</sup>, and the registration of 100 000 online sellers via the electronic platform.

Full and consistent application of EU rules by Member States is important for legal certainty and the trust placed by people and businesses in national institutions and the EU at large. This is particularly true when it comes to our shared values, fundamental rights, the rule of law, the EU's four fundamental freedoms, and the functioning of the single market. In striving for a Union of equality, it is key that equality and non-discrimination are respected throughout the

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<sup>12</sup> Commission Communication 'Identifying and addressing barriers to the Single Market', COM(2020) 93 final.

<sup>13</sup> Commission Report 'EU Border regions: Living labs of European integration', COM(2021) 393 final, and Commission Communication 'Boosting Growth and Cohesion in EU border regions', COM(2017) 534 final.

<sup>14</sup> More explanation on this figure can be found in the study '[Update of the costs of not implementing EU environmental law](#)', COWI and Eunomia, 2019.

<sup>15</sup> Data valid for the first six months of operation ([New EU VAT rules for e-commerce: Updated revenue figures point to a successful implementation \(europa.eu\)](#)).

EU and that citizens can benefit from the same level of protection of their rights wherever they live in the EU.

### ***Protecting EU citizenship***

Investor citizenship ('golden passport') schemes in certain Member States have caused great concern in recent years. The systematic granting of nationality, and thereby EU citizenship, in exchange for a pre-determined payment and without a genuine link with a Member State breaches the concept of EU citizenship as well as the principle of sincere cooperation. It also poses serious risks as regards security, money laundering, tax evasion and corruption. To stay firm on the stance that EU citizenship is not for sale and that any existing investor citizenship scheme should be repealed without delay, the Commission opened groundbreaking infringement procedures against two Member States, and ultimately referred one of them to the Court of Justice. In addition, the Commission has been in contact with another Member State, which has in the meantime abolished its investor citizenship scheme.

### ***Upholding equality and non-discrimination***

Respect for human dignity and equality are core values of the EU, enshrined in Article 2 of the Treaty on the European Union. These values are not mere ethical standards, but fundamental rights enshrined in the Charter<sup>16</sup> and general principles of EU law. The Commission took steps to protect the rights of LGBTIQ people, and ultimately referred one Member State to the Court of Justice over national legislation which discriminates against people on the basis of their sexual orientation or gender identity.

On gender equality, and more specifically in relation to social security, the Commission took steps against a Member State over its pension law, which indirectly discriminates against women in calculating the contribution period required to be entitled to a pension.

### ***Defending media freedom***

Guaranteeing media freedom and freedom of speech is the foundation of an open, democratic and sustainable digital society. Media service providers must be able to access the market under non-discriminatory, proportionate and objectively justified conditions, so they can work freely and independently everywhere in the European Union. The Commission referred a Member State to the Court of Justice for breaching internal market telecom rules and violating the freedom of speech as enshrined in the Charter.

### ***Supporting legal migration and equal treatment for third-country nationals***

At the same time, attracting talent from third countries is enriching for our society and beneficial to our economies. EU rules provide for common conditions of entry and residence for certain categories of nationals from non-EU countries, and for equal treatment with EU citizens in several areas. The Commission took steps against several Member

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<sup>16</sup> The right to non-discrimination is enshrined in the Charter, which prohibits discrimination based on any grounds.



States for introducing unjustified obstacles for third-country nationals to access jobs and engage in self-employed activities. The Commission also launched infringement procedures for excessive burdens in the processing of EU permits<sup>17</sup>. As a result, several Member States have amended their national legislation to comply with EU law, making it easier and more attractive for skilled third-country nationals to reside and work in Europe.

### ***Combating racist and xenophobic hate speech and hate crime***

Hate speech and hate crime not only damage the individuals affected and society at large, but also strike at the heart of EU values. The key to achieve effective enforcement is stepping up the implementation of the 2008 Framework Decision on combating hate speech and hate crime<sup>18</sup>. The Commission is determined to ensure an effective criminalisation of hate speech and hate crime and this strategy has resulted in significant progress in implementation across Member States. In this regard, its intention to proceed with infringement procedures, where necessary, was reconfirmed in its EU action plan against racism<sup>19</sup>. Following a series of infringement cases initiated between 2020 and 2021, several Member States have started procedures to amend their legislation, or have already adopted new legislative changes. For example, the amendments adopted in one Member State strengthen the criminalisation and prosecution of hate speech and hate crime offences and improve protection for minorities from those crimes.

### ***Combining forces against terrorism***

Acts of terrorism constitute one of the most serious violations of the fundamental freedoms on which the Union is founded. The terrorist attacks in EU Member States were a stark reminder that police and prosecutors need better tools to prevent and combat terrorist offences. The 2017 Directive on combating terrorism<sup>20</sup> is the cornerstone of the Member States' criminal justice response to terrorism and a key part of the EU Security Union framework. The Commission initiated proceedings against several Member States to ensure that the legal conditions are in place to enable national authorities to cooperate and exchange information on terrorist threats.

## **III. IMPLEMENTING AND APPLYING EU LAW: A COMBINED EFFORT**

The Commission oversees the respect of EU law by Member States and it makes use of a variety of tools to promote and enforce its correct application, including infringement proceedings. However, effective application and enforcement on the ground require several other actors to play their part as well. Enforcement is about cooperating and working hand in hand with Member States in the first instance, as well as with specialised authorities like

<sup>17</sup> [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-integration/work/single-permit-work\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-integration/work/single-permit-work_en)

<sup>18</sup> Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

<sup>19</sup> Commission Communication, 'A Union of equality: EU anti-racism action plan 2020-2025', COM(2020) 565 final.

<sup>20</sup> Directive (EU) 2017/541 of 15 March 2017 on combating terrorism.



consumer or data protection authorities, competition and regulatory authorities, NGOs, businesses and the public. For the system to function effectively, it relies both on the full commitment of national authorities responsible for the proper application and enforcement of the law, and the involvement of the public, civil society, business and others to identify potential breaches.

**National courts** are EU courts when applying EU law and they have a particularly important role in the enforcement chain. Where rights of EU citizens or businesses are affected within Member States, they must be granted access to rapid and effective national redress, in line with the principle of effective judicial protection<sup>21</sup>. This is why they must be independent, impartial and established by law.

At the same time, the courts in the Member States have the right, and in certain cases even the duty, to ask questions to the Court of Justice if they are unsure how to interpret or apply EU law. This dialogue by means of a preliminary reference to the Court of Justice is essential for the uniform application of EU law, based on the principle of primacy of EU law and for upholding citizens' rights<sup>22</sup>. The Commission systematically makes use of its right to submit observations in all preliminary questions proceedings before the Court of Justice<sup>23</sup>. If the Court finds a breach of EU law, the referring court has the obligation to remedy that breach in the concrete case before it.

In addition, the Commission not only monitors the individual Member State's compliance with the judgment, but also ensures that all other Member States equally apply the standard set by the Court of Justice. The increase in the number of preliminary rulings over time<sup>24</sup>, and the Commission's interventions in these cases, have therefore made an important contribution to stronger enforcement of EU law in the Member States. Furthermore, the Commission has launched infringement cases for breaches affecting the principles of autonomy, primacy, effectiveness and uniform application of Union law, as well as the respect of the authority of the Court of Justice.

The Commission implements the European judicial training strategy<sup>25</sup> to ensure that **justice professionals** like judges, prosecutors, lawyers and other professions involved in the administration of justice know EU law and EU judicial cooperation instruments, and have the right skills to uphold the rule of law and correctly and coherently apply EU law in their country.

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<sup>21</sup> Article 19(1), second subparagraph, of the Treaty on European Union and Article 47 of the EU Charter of Fundamental Rights.

<sup>22</sup> Cases of national rules or practices that impede the procedure for preliminary rulings, for example, because judges can incur disciplinary liability for submitting a preliminary reference or for applying EU law as interpreted by the Court of Justice, or where the national courts are prevented from acknowledging the primacy of EU law, have a systemic impact on enforcement of EU law.

<sup>23</sup> In competition and state aid matters, the Commission regularly provides assistance and intervenes in national court proceedings.

<sup>24</sup> The number of preliminary rulings showed a strong increase over the past 10 years, with 567 references for preliminary rulings in 2021, compared to 385 in 2010.

<sup>25</sup> Commission Communication 'Ensuring justice in the EU — a European judicial training strategy for 2021-2024', COM(2020) 713 final.

### *Advancing the implementation of EU taxation rules via intervention in preliminary rulings*

In the area of taxation, preliminary rulings are an essential avenue for the Commission to ensure that EU law is correctly applied.

For **direct taxation**, preliminary rulings deal with concrete cross-border obstacles to the freedom of movement, caused by national tax systems. For example, the Court of Justice held in a preliminary ruling that citizens giving money to a charity in another Member State should enjoy the same tax relief as when they would be giving money to a comparable charity in their own Member State<sup>26</sup>.

In **indirect taxation**, preliminary rulings followed by a dialogue between the Commission and Member States have led Member States to amend their legislation. This was the case for one Member State on the use of vehicles with foreign registration plates<sup>27</sup>, and for another Member State with regard to restrictive conditions on VAT rules<sup>28</sup>.

**National parliaments** also have an important role to play, namely working together with national governments on adopting laws to transpose EU directives and implement certain regulations through national law. The Commission adopted a strict line on the non-transposition of directives, using the full potential of the Article 260(3) TFEU instrument introduced by the Lisbon Treaty: the Commission automatically opens cases and systematically asks the Court to impose financial sanctions when Member States fail to transpose directives on time. This approach has had a significant impact and non-communication cases which the Commission had to refer to the Court of Justice have dropped by more than half since the entry into force of the Lisbon Treaty. Nevertheless, the number of infringement cases launched because Member States have not communicated their transposition measures to the Commission by the deadline set in the EU directives still remains high. National legislators have an important role in ensuring that transposition is both timely and complete: when notifying transposition measures to the Commission, Member States need to explain in a clear and transparent manner how each provision of a directive has been transposed<sup>29</sup>.

**Other key bodies** with an important role to play in enforcing EU law include sectoral regulatory, inspection and enforcement bodies, national and regional supervisory authorities, prosecutors, national ombudspersons and equality bodies. The Commission focuses its enforcement action on ensuring that national authorities are sufficiently equipped and able to

<sup>26</sup> . Judgement of the Court of Justice in case C-318/07, Persche.

<sup>27</sup> Judgment of the Court of Justice in case C-274/20, GN and WX v Prefettura di Massa Carrara – Ufficio Territoriale del Governo di Massa Carrara.

<sup>28</sup> Judgment of the Court of Justice in case C-335/19, E. Sp. z o.o. Sp. k. v Minister Finansów.

<sup>29</sup> In its judgment in case C-543/17, Commission v Belgium, the Court of Justice clarified that Member States have an obligation to provide to the Commission sufficiently clear and precise information on which provisions of national law transpose the Directive.

carry out their duties by looking at conflicts of interest, independence<sup>30</sup> and staffing of such authorities. The Commission also actively supports Member States' implementation efforts with technical and financial support and with expertise underpinning structural reforms<sup>31</sup>, as well as specialised training programmes<sup>32</sup>. For instance, the Commission has provided grants to national data protection supervisory authorities to assist in their work of enforcing the General Data Protection Regulation<sup>33</sup>. The Commission also launched infringement procedures against Member States to ensure that these authorities are independent, and equipped with the necessary powers to sanction breaches of that regulation.

Specific EU initiatives have also helped, with cross-border redress mechanisms such as SOLVIT, the European Small Claims procedure, or the European Online Dispute Resolution. In the financial sector, the three European supervisory authorities<sup>34</sup> have the power to conduct reviews of national competent authorities to assess the convergence of national provisions adopted in the implementation of Union law. They are also competent to investigate and take action in case national competent authorities fail to comply with their obligations under EU law. This contributes to ensuring the consistent and effective application of EU law in the financial sector.

### ***The role of the European Consumer Centres<sup>35</sup> in enforcing consumer law***

**European Consumer Centres** are key in detecting and taking action against potential widespread breaches of consumer law. This has included action to ensure that online accommodation reservation systems are free from manipulative techniques such as hiding sponsoring in ranking, unduly putting time pressure on users, or misrepresenting rebates.

In 2020, following a **dialogue with the Commission and national authorities**, leading booking accommodation platforms made changes in the way they presents offers, discounts and prices to consumers so that users are able to make informed comparisons in line with the requirements of EU consumer law. This included avoiding presenting an offer as being time-limited if the same price would remain available afterwards, and clarifying how results are ranked. A similar dialogue led a major online marketplace to bring its cancellation

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<sup>30</sup> This is the case for example of National Regulatory Authorities' independence in the energy sector, which is a core principle of the third energy package, and is also key for ensuring effective consumer protection, as confirmed by the Court of Justice (case C-718/18 Commission v Germany).

<sup>31</sup> For instance, through the Technical Support Instrument and TAIEX-EIR-peer-to-peer tool.

<sup>32</sup> For instance, the Commission has developed an EU environmental law training package ([https://ec.europa.eu/environment/legal/law/training\\_package.htm](https://ec.europa.eu/environment/legal/law/training_package.htm)).

<sup>33</sup> Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>34</sup> The European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

<sup>35</sup> The European Consumer Centers Network (ECC NET) connects national authorities responsible for enforcing EU consumer protection laws ([https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/european-consumer-centres-network-ecc-net\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/european-consumer-centres-network-ecc-net_en)). Cooperation in this field covers consumer rules in various areas such as unfair commercial practices, e-commerce, geo-blocking, package holidays, online selling, and passenger rights.

practices in line with EU consumer rules in 2022. This will make it much easier for consumers to unsubscribe from premium services than used to be the case, needing just two clicks with a prominent and clear ‘cancel button’.

### ***Training SMEs in consumer law***

The Consumer Law Ready<sup>36</sup> project is an EU-wide training programme in consumer law for small and medium-sized enterprises. A lead trainer appointed in each Member State provides training to intermediaries who then train SMEs. This will help minimise breaches and increase awareness of how EU consumer law works.

## **IV. SMART ENFORCEMENT - PREVENTING BREACHES OF EU LAW FROM THE OUTSET**

To anticipate and avoid infringements from occurring, implementation and enforcement issues are already considered when the Commission is designing proposals for EU legislation. Implementation strategies<sup>37</sup> prepared by the Commission in cooperation with national administrations help to identify the main challenges that Member States face in transposing and applying EU legislation, and set out the tools that the Commission uses to support compliance.

### ***Helping Member States to prepare for implementation***

The **Health Technology Assessment Regulation**<sup>38</sup> aims to improve EU patients’ access to innovative technologies in the area of health, such as in relation to medicines and medical devices. The Commission published a rolling plan<sup>39</sup> to support national authorities, health technology developers and stakeholders in implementation of this legislation once it starts to apply in 2025.

To avoid diverging interpretations of newly adopted EU law and to foster a common understanding of existing rules, the Commission provides practical guidance<sup>40</sup> to Member States, businesses, stakeholders, and the public on how to understand and apply specific aspects of EU law.

This guidance can, for instance, take the form of guidelines on the interpretation and application of EU law or ‘Frequently Asked Questions’ published online. They have been issued in all major policy areas. In particular, the Commission uses guidelines to accompany Member States through the transposition process for directives and application of regulations,

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<sup>36</sup> <http://www.consumerlawready.eu/>

<sup>37</sup> Better Regulation Guidelines, 3.11.2021, [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en)

<sup>38</sup> Regulation (EU) 2021/2282 of 15 December 2021 on health technology assessment.

<sup>39</sup> [https://health.ec.europa.eu/system/files/2022-05/hta\\_htar\\_rolling-plan\\_en.pdf](https://health.ec.europa.eu/system/files/2022-05/hta_htar_rolling-plan_en.pdf)

<sup>40</sup> The final and authoritative interpretation of EU law can only be provided by the Court of Justice.

usually starting right after the adoption of an act, as well as to consolidate the case-law of the Court of Justice<sup>41</sup>.

### ***Commission guidance to help with the practical application of legislation***

Commission guidance on the application of Article 17 of the **Copyright Directive**<sup>42</sup> supports the consistent application of new rules on content-sharing platforms across Member States. The guidance is a practical document to clarify the situation for users and rights holders about what can and cannot be uploaded without the consent of the holder of the copyright, and when the platforms can be requested to remove or review content uploaded by users.

Following the adoption of the **Mobility Package**<sup>43</sup>, the Commission issued guidance documents in the form of ‘Questions and Answers’ and Guidance notes on the interpretation of several sets of new rules relating in particular to driving times<sup>44</sup>, posting of drivers<sup>45</sup>, smart tachographs<sup>46</sup>, and the obligation of the return of vehicles to the operational center<sup>47</sup>, in order to assist stakeholders to correctly apply these rules and Member States to transpose them and enforce them consistently.

The Commission also deploys a wide range of other *meeting-based tools*, such as committees, networks, expert groups and workshops, to promote effective implementation of EU law across policy areas. These groups allow Member States to share good practices and discuss problems encountered in applying EU legislation. The Commission can then identify implementation difficulties at an early stage and work on possible remedies, including the use of IT tools to support more efficient and effective implementation. A key forum for improving application and enforcement is the Single Market Enforcement Task Force, set up following the European Council’s conclusions on industrial policy in 2020<sup>48</sup>. A core part of its work is to look at barriers to enforcement of the single market rules and to devise practical solutions.

### ***Preventing barriers in the single market before they materialise***

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<sup>41</sup> For instance, the Commission has produced several general interpretative guidelines concerning the nature protection Directives, [https://ec.europa.eu/environment/nature/natura2000/management/guidance\\_en.htm](https://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm)

<sup>42</sup> Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market.

<sup>43</sup> [https://transport.ec.europa.eu/transport-modes/road/mobility-package-i\\_en](https://transport.ec.europa.eu/transport-modes/road/mobility-package-i_en)

<sup>44</sup> Regulation (EC) No 561/2006 of 15 March 2006 on the harmonisation of certain social legislation relating to road transport.

<sup>45</sup> Directive (EU) 2020/1057 of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

<sup>46</sup> Regulation (EU) No 165/2014 of 4 February 2014 on tachographs in road transport.

<sup>47</sup> Regulation (EC) No 1071/2009 of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator.

<sup>48</sup> [https://single-market-economy.ec.europa.eu/single-market/single-market-enforcement-taskforce\\_en](https://single-market-economy.ec.europa.eu/single-market/single-market-enforcement-taskforce_en)



The **Single Market Transparency Directive**<sup>49</sup> requires Member States to **notify draft national technical regulations** to the Commission, before their adoption, to avoid the creation of barriers to the single market. This notification mechanism has given rise to a positive practice of information exchange, dialogue, and cooperation between the Member States and the Commission, and among Member States. It also shares good practices to solve common problems regarding technical regulations, especially in newly regulated sectors such as digital services and new technologies. The mechanism has not only succeeded in avoiding new rules that breach EU law, but also helped apply the principle of mutual recognition.

In the area of services, the notification procedure under the Services Directive<sup>50</sup> aims to prevent the creation of unjustified regulatory barriers to the single market. The Commission actively encourages transparency about Member States' measures on services and makes continued efforts to increase the efficiency of that notification procedure.

The **Proportionality Test Directive** is another tool that prevents new barriers to the single market for professional services. Any new national professional regulations must be subject to a thorough assessment and proof of proportionality is necessary before adoption.

### *Working with Member States to improve enforcement*

The Web Accessibility Directive expert group (WADEX)<sup>51</sup> was set up to assist the Commission in implementing the **Web Accessibility Directive**<sup>52</sup> and to provide a forum for the exchange of good practices and experiences in the field of web accessibility among Member States. In 2020-2022, monthly webinars were held, which helped to ensure that Member States followed a common approach and that the first reports by Member States on monitoring websites and mobile apps were submitted in a timely and effective way. According to these reports, over 10 000 websites and 300 mobile apps were tested by the Member States during this period. This exercise contributed to an increased awareness and improved accessibility of public sector online content on websites and mobile apps.

### *Using IT tools to facilitate compliance and enforcement*

The **Internal Market Information System (IMI)**<sup>53</sup> is an online IT tool that facilitates administrative cooperation on single market legislation for Member States' public administrations. This can help the public and businesses operating across borders. It is environmentally friendly, secure and multilingual, and it reduces administrative burden and supports 19 policy areas.

It can be adapted to support specific purposes. For example, in 2022, three new Commission modules were launched to facilitate cross-border enforcement of the new rules

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<sup>49</sup> Directive (EU) 2015/1535 of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codifying Directive 98/34/EC).

<sup>50</sup> Directive 2006/123/EC of 12 December 2006 on services in the internal market.

<sup>51</sup> <https://digital-strategy.ec.europa.eu/en/policies/web-accessibility-expert-group>

<sup>52</sup> Directive (EU) 2016/2102 of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies.

<sup>53</sup> [https://ec.europa.eu/internal\\_market/imi-net/index\\_en.htm](https://ec.europa.eu/internal_market/imi-net/index_en.htm)

introduced by the Mobility Package, in particular on posting of drivers, return of a driver and return of a vehicle. In addition, the new public interface connected to IMI was created in order to make it easier for road transport operators to **submit posting declarations** to competent authorities of Member States where they post their drivers. Road transport operators throughout Europe can now submit their posting declaration completely online in a very simple way, saving time and money. Since the launch, more than 10 million posting declarations have been submitted.

Beyond committees and expert groups, the Commission also organises **bilateral meetings with Member States to review compliance across a specific policy area**. These compliance meetings allow the Commission and the relevant Member State to review all open infringement and EU Pilot procedures in that particular field. They have proven useful in identifying and resolving cross-cutting issues, saving time by addressing several cases in one meeting and developing mutual understanding between national authorities and Commission services.

### *Linking EU policies and support*

Financial support from the EU has also proven to be an effective tool to encourage Member States to carry out reforms and, where appropriate, to accelerate achievement of the objectives laid down in EU law. This support includes European structural and investment funds such as the European Maritime, Fisheries and Aquaculture Fund or Cohesion Policy funds, funding through the Customs and Fiscalis programmes, and grants and loans under the Recovery and Resilience Facility<sup>54</sup> (RRF).

The aim of the RRF is to mitigate the economic and social impact of the coronavirus pandemic and to make European economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the green and digital transitions. The Facility is a temporary recovery instrument. It allows the Commission to raise funds to help Member States implement reforms and investments, included in their own national plans, in line with the EU's priorities, and which address challenges identified in country-specific recommendations under the European Semester framework of economic and social policy coordination. Although the RRF is not an enforcement tool, those priorities, translated into milestones and targets, need to be met for Member States to receive disbursements.

### *The RRF helping the EU achieve its target of climate neutrality*

To accelerate the green transition, in particular in view of the 'Fit for 55' objectives, many Member States are focusing on the transport and buildings sectors in their national recovery and resilience plans. The Facility will be used, amongst other things, to support investments for the thermal renovation of buildings, to green the vehicle fleet and to support the modal

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<sup>54</sup> [https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility\\_en](https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en)  
Established by Regulation (EU) 2021/241 of 12 February 2021 establishing the Recovery and Resilience Facility.



shift towards rail transport. As an example, in one Member State, the plan will finance a grant allocated to homeowners to help pay for heating replacement, ventilation, or for energy audits for single-family houses or apartments in collective housing. These investments will finance the thermal renovation of 400 000 households in that Member State.

The use of **co-financing conditions** attached to the disbursement of, for instance, regional funds, to develop infrastructure under EU cohesion policy, has also proven to be a strong incentive for Member States to accelerate and improve their compliance with the related EU law.

### *Using financing conditions to drive compliance in the water and waste sector*

The investment required to reach full compliance with EU legislation in sectors such as water or waste management is high: the total cumulative expenditure needed for compliance by 2030 for water supply and sanitation amounts to EUR 255 billion across the 27 Member States<sup>55</sup>. Similarly, the additional investment needed to comply with circular economy and waste management targets is estimated at between EUR 13 billion and EUR 28 billion per year to 2030<sup>56</sup>. This is needed to upgrade the waste system by improving collection, sorting, bio waste treatment, reprocessing and digitalising registries.

Some Member States rely, for instance, on EU cohesion funds to finance the necessary investments. However, access to EU co-financing is conditional upon specific requirements<sup>57</sup>. Member States only receive the co-financing if they meet a number of conditions set out in EU law (such as preparing waste management plans or planning for required investments in the water sector). This ensures that EU co-financing will be used efficiently and will make it possible to put in place key environmental infrastructure and to meet the standards set by the EU waste and water legislation.

Respect for the rule of law is key for the sound financial management of the Union budget and for effective use of Union funding. Since 1 January 2021, the Conditionality Regulation<sup>58</sup> is in place, protecting the EU budget from being affected by breaches of the rule of law in Member States. The Commission published guidelines on the application of the general

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<sup>55</sup> OECD, 'Financing Water Supply, Sanitation and Flood Protection: Challenges in the EU Member States and Policy Options', OECD Studies on Water, OECD Publishing, Paris, <https://doi.org/10.1787/6893cdac-en>.

<sup>56</sup> Commission Communication 'Environmental Implementation Review 2022 – Turning the tide through environmental compliance', COM(2022) 438 final.

<sup>57</sup> Called ex -ante conditionalities (for the 2014-2020 programming period) or enabling conditions (for the 2021-2027 programming period).

<sup>58</sup> Regulation (EU, Euratom) 2020/2092 of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

regime of conditionality on 2 March 2022. A first proposal for a Council Implementing Decision was adopted on 18 September 2022<sup>59</sup>.

Beyond financial support, the Commission also provides tailor-made technical expertise to EU Member States to design and implement reforms under the Technical Support Instrument. The Technical Support Instrument supports national authorities in improving their capacity to design, develop and implement resilience-enhancing reforms in several domains (administrative cooperation, rule of law, reform of the justice systems, strengthening of financial supervision and reinforcement of the fight against fraud, corruption and money laundering).

### ***Promoting good public administration through PACE (Public Administration Cooperation Exchange)***

Public administrations are the direct interface between the EU and citizens, as they translate EU law and programmes into concrete actions. The quality of public administrations is a defining factor for the competitiveness of Member States, and therefore of the EU as a whole<sup>60</sup>. The Commission is piloting, under the Technical Support Instrument, an initiative for Public Administration Cooperation Exchange (PACE) through which officials can be temporarily seconded to another Member State. This programme allows participants to gain knowledge and skills, to create bonds and ultimately to contribute to the creation of a genuine European administrative space.

## **V. EARLY DETECTION AND RESOLUTION OF BREACHES OF EU LAW**

### ***Increased transparency and monitoring mechanisms to identify issues***

Increased transparency, publication of compliance information and regular monitoring mechanisms have also proved effective in encouraging Member States towards faster compliance or at least, in identifying areas that require further attention.

When reports on these issues are published, they allow the public to follow their Member State's performance and level of compliance in specific policy areas, raise awareness among businesses, and encourage public debate. Scoreboards and other similar assessments help to focus this work, with tools such as the Single Market Scoreboard<sup>61</sup>, the European Semester's country-specific reports<sup>62</sup>, the Environmental Implementation Review<sup>63</sup> and its accompanying

<sup>59</sup> Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, COM(2022) 485 final.

<sup>60</sup> Commission Staff Working Document, 'Supporting public administrations in EU Member States to deliver reforms and prepare for the future', SWD(2021) 101.

<sup>61</sup> <https://single-market-scoreboard.ec.europa.eu/>

<sup>62</sup> [https://ec.europa.eu/info/publications/2022-european-semester-country-reports\\_en](https://ec.europa.eu/info/publications/2022-european-semester-country-reports_en)

<sup>63</sup> [https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review\\_en](https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review_en)

environmental infringements interactive map<sup>64</sup>, or the publication of Commission reactions to Member State notifications under the Single Market Transparency Directive. Other instruments, such as the Rule of Law Report or the EU Justice Scoreboard<sup>65</sup>, provide country-specific insight into developments in the Member States, which have a key role to play in the effective enforcement of EU law. A well-functioning national justice system is essential for providing effective judicial protection of rights which citizens and businesses derive from EU law. In some specific policy areas, the Commission publishes information about the state of transposition of directives by Member States<sup>66</sup>.

The Commission also frequently reports on the implementation of specific instruments or areas of EU law. These reports not only aim to inform the public about the areas where their rights are at risk but also seek to identify general trends and issues, helping enforcement action against Member States and inspiring a possible review of the law.

### **Schengen evaluation**

A well-functioning Schengen area<sup>67</sup> depends on the correct and effective implementation of the Schengen acquis and on mutual trust among Member States. The Schengen Evaluation and Monitoring Mechanism<sup>68</sup> provides for objective and impartial evaluations, to quickly identify deficiencies in the application of Schengen rules and to ensure they are swiftly addressed. The Commission and Member States carry out evaluation visits, which are followed by Council recommendations to the Member States for remedial action. The mechanism has been updated and improved<sup>69</sup>, and a more streamlined procedure ensures that serious deficiencies in particular are addressed promptly.

### **Rule of Law Report**

The annual Rule of Law Report<sup>70</sup> is at the centre of the European Rule of Law Mechanism<sup>71</sup>. In July 2022, the Commission presented its third annual Rule of Law Report, along with its 27 country-specific chapters. The Report is the result of close dialogue with national authorities and stakeholders, and covers all Member States on an objective and impartial basis, looking at the four key pillars for the rule of law: justice systems, the anti-

<sup>64</sup> [https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review\\_en#environmental-infringements-map-and-dashboard](https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review_en#environmental-infringements-map-and-dashboard)

<sup>65</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en)

<sup>66</sup> [https://finance.ec.europa.eu/regulation-and-supervision/enforcement-and-infringements-banking-and-finance-law/monitoring-banking-and-finance-directives\\_en](https://finance.ec.europa.eu/regulation-and-supervision/enforcement-and-infringements-banking-and-finance-law/monitoring-banking-and-finance-directives_en)

<sup>67</sup> The Schengen Area is an area without internal borders, within which citizens and many non-EU nationals staying legally in the EU can freely circulate without being subject to border checks. Since 1985, it has gradually grown and encompasses almost all EU Member States and a few associated non-EU countries.

<sup>68</sup> [https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/schengen-evaluation-and-monitoring\\_en](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/schengen-evaluation-and-monitoring_en)

<sup>69</sup> Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

<sup>70</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report_en)

<sup>71</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en)

corruption framework, media pluralism and freedom, and other institutional issues linked to checks and balances. Since 2022, the Report comes with specific recommendations addressed to each Member State. In line with the preventive nature of the report, the objective of the recommendations is to assist and support Member States in their efforts to take forward ongoing or planned reforms and help them identify where improvements, follow-up to recent changes or reforms are needed<sup>72</sup>.

### ***Carrying out audits to verify compliance***

In some areas of EU law, the Commission carries out audits to verify if Member States comply with EU rules in practice and to assess national controls.

Audits are an essential tool for protecting the EU budget. They help detect irregular payments and recover amounts unduly spent by the Member State for not complying with the rules and principles of sound financial management. Recommendations resulting from audits and action plans instigated by the Member States at the request of the Commission often directly lead to improved implementation of rules by Member States' authorities.

### ***Protecting EU standards of food and feed safety***

People in the EU expect high standards of food and feed safety and of animal and plant health. These standards are protected by controls, including audits, in Member States and in non-EU countries that export plants, animals and food to the EU. In 2019-2020, the Commission carried out 170 audits and similar checks on the official control systems of the Member States, resulting in 527 recommendations to Member States. In an overwhelming number of cases, Member States took corrective action, or provided satisfactory commitments to address the shortcomings. In 2020, around 17 million operators in the agri-food chain were subject to official controls by national authorities. They carried out more than four million controls on these operators. This has helped national authorities to better enforce the EU's high standards of food and feed safety.

### ***Drawing up action plans to improve compliance with common rules for fisheries***

The Commission inspects Member States to verify how they implement fisheries controls. If it identifies systematic control deficiencies, it draws up action plans together with Member States, in order to strengthen their control systems. These action plans help the Commission to follow up on implementation and progress in Member States' fisheries control systems, which are essential for ensuring sustainable fisheries and healthy fish stocks. This has resulted in more reliable catch reporting and improved systems for detecting infringements of the common fisheries policy.

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<sup>72</sup> Commission Communication, '2022 Rule of Law Report The rule of law situation in the European Union' COM(2022) 500 final.

### ***Ensuring the regularity of payments in agriculture field***

The Commission carries out regular audits in Member States to verify Member States' respect of the EU legislation regulating the support provided via the Common Agricultural Policy to farmers and other beneficiaries. In case of non-compliances or system control deficiencies, the Commission can suspend or recover EU financing from the Member States. These financial corrections have proved to be effective mechanisms for correcting the errors made and for protecting the EU budget. In addition, to strengthen the Member State's control systems, the Commission requests the Member State to implement an action plan.

### ***Pre-infringement process (EU Pilot)***

Where the Commission, despite its preventive efforts and support to Member States, identifies a possible breach of EU law, it may decide to use a pre-infringement process, known as EU Pilot<sup>73</sup>. This tool is used when it offers an added value: in 2021, out of 302 infringement cases opened by the Commission after own-initiative investigations or following complaints<sup>74</sup>, 33 were preceded by an EU Pilot process. This is a tool that can be used where it is likely to lead to swifter compliance than a formal infringement procedure. It allows the Commission to resolve a number of cases at the EU Pilot stage without the need to move to an infringement procedure. This may be the case, for example, if the issues at stake are of a technical nature. It can also prove useful in cases where the Commission wishes to collect factual or legal information needed to carry out its assessment<sup>75</sup>. It is not used where the breach is well-evidenced, obvious or self-acknowledged, nor is it used for more sensitive issues where discussions at technical level are less likely to lead to a successful outcome. The Commission also has to guard against the risk that such a process causes unnecessary delay: if the procedure becomes excessively lengthy without substantial progress, or if there is a lack of cooperation from the Member State, the Commission terminates the EU Pilot process and switches to an infringement procedure.

Over time, the EU Pilot process has proven its value. It has used an approach of harnessing openness and mutual trust between Member States and the Commission to bring about compliance more quickly. In 2021, over 80% of EU Pilot processes were resolved satisfactorily. Where it does not succeed, recourse is made to infringement proceedings.

### ***EU Pilot to ensure that people can use their IBAN account in any Member***

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<sup>73</sup> EU Pilot is an instrument of cooperation and dialogue between the Commission and the Member States related to issues of (potential) non-compliance with EU law. The Commission's use of EU Pilot is set out in specific internal guidelines, revised in July 2020.

<sup>74</sup> This excludes infringement cases triggered automatically for non-transposition of a Directive self-acknowledged by a Member State.

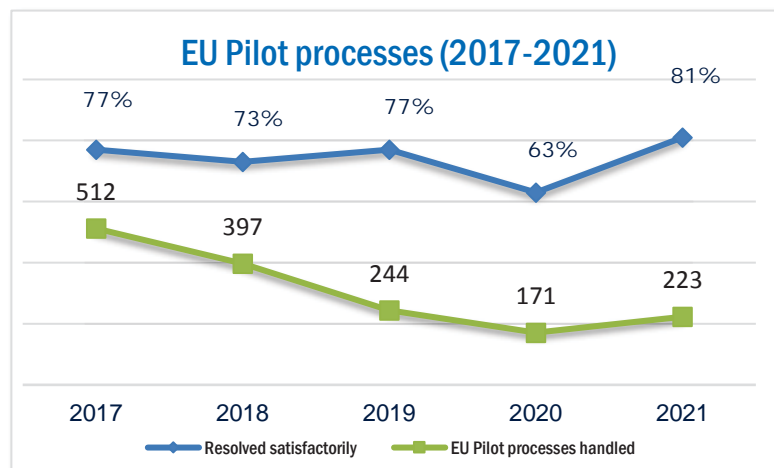
<sup>75</sup> The large majority of infringement procedures are opened without a preceding EU Pilot process.

## State

The Single Euro Payments Area (SEPA) Regulation<sup>76</sup> aims to ensure that any EU bank account can be used for credit transfers and direct debit cross-border as easily as domestically. However, in some Member States, key recipients of payments such as telecom companies or taxation or social security authorities did not accept the IBAN code, so that accounts in other EU countries could not be used to set up direct debits or to transfer funds such as tax returns or pensions. Between 2016 and 2021, the Commission started EU Pilot processes with five Member States. As a result, their legal framework has been amended or is being amended to combat the breaches and to ensure appropriate sanctions. In three cases, the Commission also launched infringement procedures to ensure that national competent authorities are sufficiently empowered to monitor compliance and impose sanctions. This has also resulted in legislative changes to give the authorities the powers needed.

### *EU Pilot to improve cross-border access to healthcare<sup>77</sup>*

Patients have the right to access healthcare in any Member State and to be reimbursed for care abroad by their home country. As some Member States incorrectly transposed EU rules on patients' rights in cross-border healthcare into national legislation, the Commission opened EU Pilot processes to swiftly improve the access to safe and high quality cross-border healthcare in these countries. While infringement procedures have been launched against three Member States, the EU Pilot process led to a successful outcome with nine Member States. In the majority of those cases, the Member States amended legislation or administrative practices to align it with EU rules. As a consequence, patients benefit from less burdensome requirements for prior authorisation, lighter administrative procedures and more transparent information about cross-border healthcare, with the overall effect that patients now have easier access to healthcare services in other Member States.



<sup>76</sup> Regulation (EU) No 260/2012 of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro.

<sup>77</sup> 'Cross-border healthcare' means healthcare provided or prescribed in a Member State other than the Member State of affiliation.



## VI. EFFECTIVE USE OF INFRINGEMENT PROCEDURES

The Commission's enforcement policy has evolved over time. Since 2017, the Commission has increasingly focused its efforts on issues where its interventions can maximise added value and make a difference in the lives and activities of as many people and businesses as possible. The Commission therefore continues to pursue the strategic approach, objectives and priorities that it set itself in the 2016 Communication 'EU law: Better results through better application'.

The primary purpose of the infringement procedure is to ensure that the Member States give effect to EU law in the general interest, not to provide individual redress. So the Commission's strategic approach means that infringement procedures rarely focus on individual matters, but rather on systemic and structural issues affecting a large number of persons or businesses in a given Member State or across the Union.

### ***Addressing many individual misapplications in one infringement procedure***

In the environment field, the Commission used to open individual cases for a single non-compliant landfill, or one agglomeration that was non-compliant with urban waste water legislation. It now focuses on systemic cases, tackling sometimes hundreds of agglomerations in one urban waste water treatment case or dozens of landfills in waste cases. These are much more efficient in bringing all regions in a Member State towards compliance by means of a single infringement procedure.

### ***Pursuing issues of general principle raised by a complaint***

The right to freedom of association, enshrined in the Charter, constitutes one of the essential bases of a democratic and pluralistic society. In this regard, in an infringement procedure initiated by the Commission and informed by a complaint, the Court of Justice ruled that national legislation of one Member State impeded the free movement of capital and the fundamental rights to protection of personal data and freedom of association.

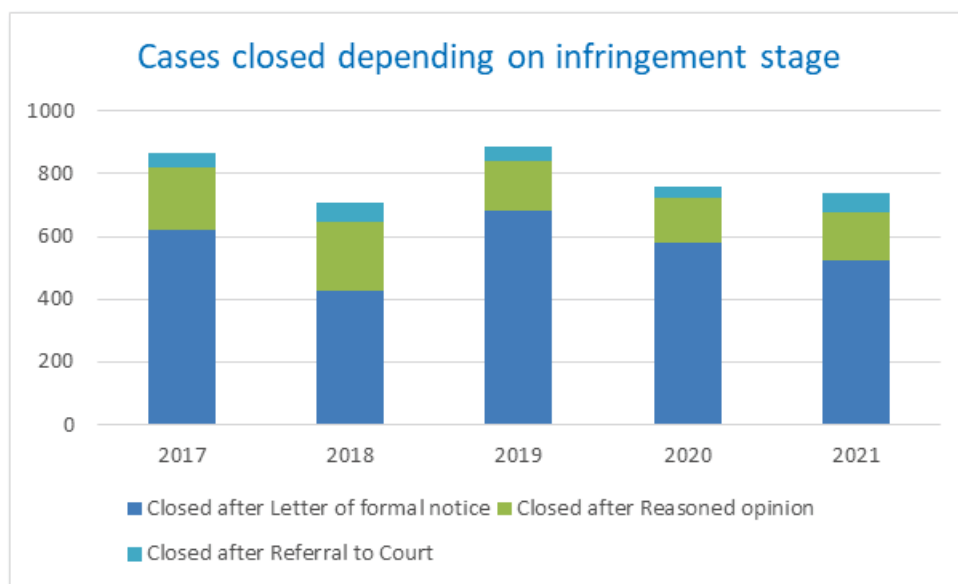
Isolated instances of possible wrongful application of EU law, which do not raise general issues of principle (such as the incorrect transposition of a directive or impeding the procedure for preliminary rulings), lacking evidence of a general practice or of systemic shortcomings, are dealt with more effectively by redress bodies closer to those affected by the infringement. These can offer swift and direct solutions. Apart from the difficulty of investigating such instances on the ground and the length of an infringement procedure at EU level, a judgment by the Court of Justice is addressed to a Member State and can only indirectly address an individual's problem. The Court of Justice cannot order the Member State to pay damages to an individual adversely affected by an infringement of EU law. To seek compensation or have a national measure annulled, complainants must still take their case to a national court.



The Commission receives about 4 000 complaints each year<sup>78</sup>. It also receives many petitions relating to EU law, forwarded by the Petitions Committee of the European Parliament. Even if the Commission does not investigate every single possible misapplication of EU law, it continues to value complaints, written questions and petitions as a source of information in broader cases related to systemic or structural breaches of EU law in Member States.

This strategic approach requires that national rules provide effective redress procedures for a breach of EU law, through an independent and efficient judicial system. This is why the Commission gives particular priority to infringements that affect the capacity of national judicial systems to contribute to the effective application of EU law. In parallel, the Commission also focuses its enforcement efforts on ensuring that national authorities and regulatory bodies are equipped to provide effective redress, in terms of powers and resources, and that national measures implementing EU law provide for appropriate penalties for breaches of EU law.

The Commission's objective is to make sure that Member States comply with EU law as soon as possible. It welcomes the fact that the majority of infringements are resolved in an early stage of the procedure<sup>79</sup> – over 90% of infringement cases are settled before being referred to the Court of Justice. Resolving issues without having to bring the matter before the Court of Justice ensures earlier compliance and saves time and money. Member States are required to make every effort to comply with the Court's ruling as soon as possible. However, if despite the Court's ruling, the Member State still does not rectify the breach, the Commission may refer the case back to the Court of Justice and ask for financial penalties to be imposed on the Member State<sup>80</sup>.



<sup>78</sup> Mostly received through the online complaint form available here: [https://ec.europa.eu/assets/sg/report-a-breach/complaints\\_en/](https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/). Reference to 'complaints' includes so-called 'multiple complaints', where the Commission under one complaint file handles a very large number of identical complaints.

<sup>79</sup> In 2021, 69% of infringement cases were closed after an initial letter of formal notice.

<sup>80</sup> Based on Article 260(2) TFEU.

### ***Effective infringement action***

EU law on **air pollution** is an area in which ensuring compliance may have a high economic cost, but where failure to comply with EU law costs lives and causes grave illness. It has resulted in a high number of infringement procedures. By July 2022, the Commission had initiated 28 infringement cases concerning failure by 18 Member States to apply the Ambient Air Quality Directive<sup>81</sup>. 15 cases have been referred to the Court of Justice, and 10 of these have resulted in a ruling. One of these cases constitutes a second referral to the Court, so it may lead to fines. These enforcement efforts have been instrumental in driving down the number of air quality zones exceeding the legal limits for particulate matters from 91 in 2019 to 55 in 2021<sup>82</sup>, and the number of zones with excess nitrogen dioxide from 68 to 23 in 2021. This means that people in several cities across Europe can now enjoy cleaner air. Applying EU air quality legislation has helped to drive a drop in premature deaths linked to air pollution by one third since 2005, with over 150 000 lives saved as a result<sup>83</sup>.

The Commission pays particular attention to the **protection of European forests**, as they store significant carbon stocks, they remove carbon from the atmosphere and they are of paramount importance for biodiversity and the provision of critical ecosystem services. When Member States systemically failed to avoid deterioration of forest habitats from illegal logging or irregular forest management practices, the Commission has initiated infringement action, using satellite images as a means to demonstrate the deterioration of forest habitats. Several infringement procedures are on-going against four Member States, with a ruling already issued by the Court of Justice in one of these cases. In similar Court proceedings relating to the protection of forests, the Commission invoked Article 279 of the TFEU, asking the Court to impose interim measures to avoid irremediable damage to our forests. The Court of Justice subsequently ordered the Member State concerned to cease active forest management operations and the removal of centuries-old dead spruces in order to protect forest habitats, or it would otherwise impose a daily fine until the order was complied with.

The Commission uses every means at its disposal to protect European businesses against barriers to accessing **public procurement**. This includes ensuring a proper enforcement of the existing rules to avoid abuse of direct awards or the removal of restrictions to subcontracting, which are key to allowing SMEs to participate in tender procedures, both across borders and at national level.

In the area of **services**, the Commission launched infringement procedures against ten Member States for imposing restrictions on certain services provided in particular by architects, engineers, accountants and tax advisers, lawyers and in the construction and building sector. These restrictions made it difficult for such companies to operate cross-

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<sup>81</sup> Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe.

<sup>82</sup> The update for 2021 is based on latest air quality data available at time of writing, namely for 2020.

<sup>83</sup> Source: European Environment Agency.

border and scale up. Consequently, people and businesses were unable to benefit from the most competitive and innovative services available on the EU market. Following those infringement procedures, Member States amended their legislation.

European consumers should face no barriers or friction in accessing goods and services online across borders, regardless of their location, residence, or nationality. The Commission has supported Member States in applying the **Geo-blocking Regulation**<sup>84</sup>, which protects consumer access to e-commerce websites against discrimination on the basis of nationality, place of residence or place of establishment for customers shopping online. But Member States' responsibilities include the requirement to set out how and by whom the rules would be enforced. In this context, in 2019, the Commission launched infringement procedures against nine Member States. By 2021, all Member States had fulfilled their obligations, with competent authorities appointed across all Member States. This helped, for example, to prepare an EU-wide investigation into a prominent online search engine over unjustified geo-blocking practices<sup>85</sup>.

To uphold the **rule of law**, and more specifically to protect judicial independence and ensure the effective judicial protection by independent national courts, the Commission took action against one Member State because it had adopted legislation that lowered the retirement age of judges, combined with an entirely discretionary power of the executive to prolong active mandates, forcing a number of judges in active duty into retirement. The Commission brought the case before the Court of Justice, which confirmed the breach of EU law. As a result, the Member State repealed its retirement rules for judges and reinstated the judges that had been forced to retire.

Following the receipt of complaints pointing to a lack of implementation of the **metering and billing rules** for heat and hot water in households under the **Energy Efficiency Directive**<sup>86</sup>, the Commission opened an infringement procedure. Since the directive had not been transposed in the Member State concerned, the Commission decided to refer the case to the Court of Justice. After the Court issued its ruling, the Member State adopted the necessary legislation. People living in multi-apartment buildings now have the right to have heat and hot water meters installed individually, so that they can monitor their individual energy consumption and take measures to reduce consumption.

The Commission opens infringement procedures either on its own initiative, as a follow-up to a complaint or automatically every two months, namely non-communication cases triggered by a self-declared failure by Member States to transpose EU directives fully by the deadline. Pursuing cases of late transposition of directives into national law has been and remains a priority for the Commission, since these delays prevent the benefits of agreed EU rules from

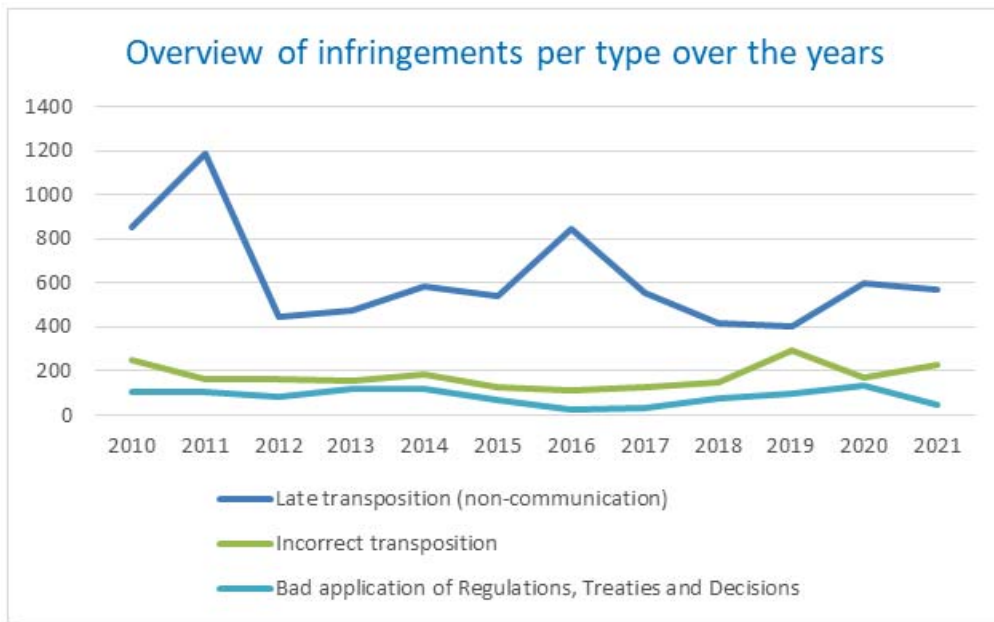
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<sup>84</sup> [Short-term review of the Geo-blocking Regulation](#)

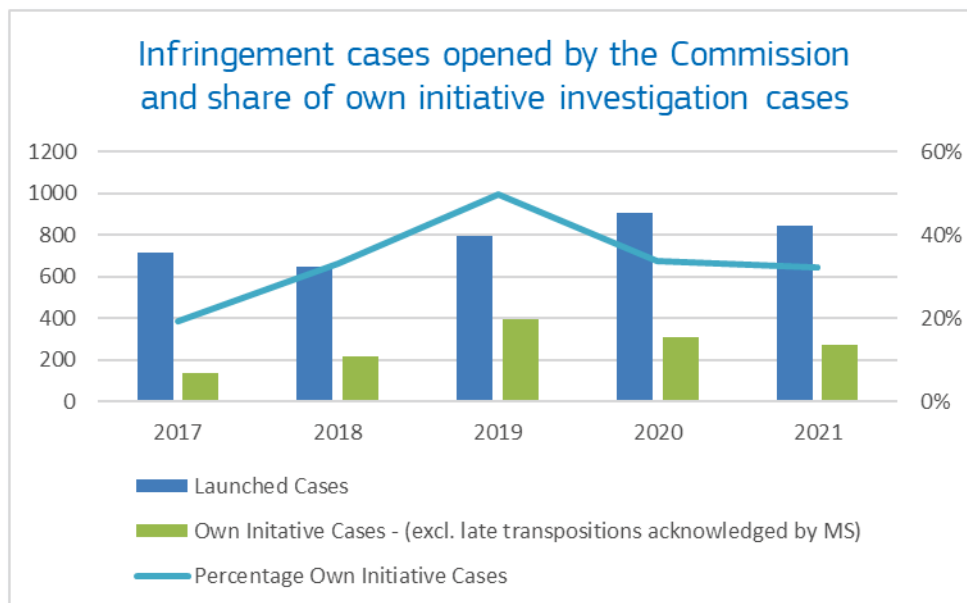
<sup>85</sup> [https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-and-search-engines\\_en#google](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-and-search-engines_en#google)

<sup>86</sup> Directive 2012/27/EU of 25 October 2012 on energy efficiency.

materialising. Over time, there have been less cases of Member States missing the deadline to transpose directives, leading to an overall decrease of infringement procedures<sup>87</sup>.



In recent years, a larger proportion of cases are opened following **the Commission's own investigations**<sup>88</sup>. These own-initiative infringement cases have made it possible for the Commission to further its strategic approach to enforcement, pursuing priority cases as set out in the 2016 Communication, including the incorrect transposition of directives and acting swiftly and firmly on infringements which obstruct fundamental freedoms and values of the EU.



<sup>87</sup> Since 2011, the number of late transposition cases has dropped from over 1,000 to around 500 annually.

<sup>88</sup> These exclude non-communication cases opened automatically for failure to transpose directives, and complaints-based cases.

## VII. FAST AND EFFECTIVE REACTION TO CRISES

Crises or emergency situations, such as the COVID-19 pandemic and the Russian war of aggression against Ukraine, put the Member States' full compliance with the EU's four fundamental freedoms and the functioning of the single market to the test. Under difficult circumstances, there may be a temptation to favour domestic considerations over the proper application of EU law. However, the effective enforcement of EU law remains key for people and businesses to ensure that they can continue to enjoy the protection and legal certainty offered by EU law, and that essential goods and services are delivered where they are most needed.

Recent crises have shown both the need for and the ability of the EU to adapt. The Commission has used a wide variety of steps to help Member States and the public adapt to changing circumstances, from proposing new legislation to amend rules, to guidance, financial support, coordination among relevant authorities and specific dialogues. Infringement procedures have also been used where necessary. This comprehensive approach has helped to ensure that EU law continues to apply during a crisis. This in turn has contributed to a widespread sense that the EU has been able to react to these crises more effectively together than would have been possible through national responses alone.

Some EU rules already have a significant inbuilt flexibility that was put to good use in the crisis, such as the general escape clause in the Stability and Growth Pact or the action taken under the Temporary Protection Directive<sup>89</sup>. The Commission has adopted Temporary Frameworks<sup>90</sup> to enable Member States to use the flexibility in State aid rules to support the economy. The Commission made proposals to apply specific derogations from rules about company meetings, as well as adjusting time limits in areas such as tax returns. In other cases, guidelines brought clarity to the existing rules, such as those for the 'Green Lanes' initiative to ensure the continued flow of goods in the single market and to enable the free movement of critical workers during the pandemic, or to help with the recognition of diplomas held by people fleeing Ukraine. Specific measures also helped to show Member States that there were clear alternatives to national solutions: the EU Digital COVID Certificate preserved free movement of persons by giving national authorities a means to check the status of all certificate holders moving around the EU. By the end of 2021, Member States had issued more than 1 billion certificates. These measures all preserved the integrity of EU law, while allowing essential flexibility.

There were nevertheless cases where Member States sought to override EU rules. For example, at the beginning of the COVID-19 pandemic some Member States unilaterally introduced export restrictions on medicines or protective equipment, or took steps to favour domestic producers or service providers in sectors such as food and travel. The Commission

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<sup>89</sup> Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

<sup>90</sup> [State aid Temporary Framework in the context of the coronavirus outbreak and Temporary Crisis Framework in the context of Russia's invasion of Ukraine.](#)

stayed vigilant in the face of these threats to the single market and many protectionist measures set up by Member States in the first months of the pandemic were relatively swiftly repealed. The Commission also took infringement action against national protectionist measures in the wake of the invasion of Ukraine, such as export bans in several economic sectors, for example on cereals and construction materials, or applying discriminatory fuel pricing against vehicles with foreign licence plates.

Following the Russian invasion of Ukraine, the Commission adopted measures to facilitate transport, transit, and exchanges with Ukraine, including an ‘action plan for EU-Ukraine Solidarity Lanes to facilitate Ukraine’s agricultural export and bilateral trade with the EU’<sup>91</sup>, and thus to mitigate the effect of this crisis on the transport of goods. The Commission suspended import duties for one year on all Ukrainian exports to the European Union. It also took steps to strengthen the implementation and enforcement of sanctions against listed Russian and Belarussian persons and entities. The Commission issued a number of guidance documents on the interpretation of sanctions, providing Member States with clarifications to new questions and continued support to ensure correct enforcement.

The Commission activated emergency tools under EU law to mitigate the impact of the energy crisis. On a proposal from the Commission, the co-legislators adopted rules to ensure the filling of gas storages<sup>92</sup> so that sufficient gas is available during the 2022 winter season, which has a direct impact on people and businesses. The Commission also swiftly proposed new rules on coordinated demand-reduction measures for gas<sup>93</sup>, and on an emergency intervention to address high energy prices<sup>94</sup>. These emergency interventions represent a further step in the Commission's work to ensure that the EU legal framework provides a robust and efficient response to crisis situations.

The Commission is also drawing lessons and looking at how EU rules need to have inbuilt flexibility and coordination mechanisms, so that if crisis strikes, action can take place within a predetermined legal framework. Based on the experience gained as a result of the COVID-19 pandemic, the Commission adopted a contingency plan for transport<sup>95</sup>, which provides a toolbox for dealing with any type of transport crisis and notably ensures that EU legislation is amended and enforced to respond appropriately to such events if and when they occur. Similarly, in its December 2021 proposal to amend the Schengen Borders Code<sup>96</sup>, the Commission introduced a coordination mechanism to deal with health threats at external borders and a new Schengen safeguard mechanism to provide a common response at the internal borders in situations of threats affecting Member States. Under the European Health

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<sup>91</sup> Commission Communication, ‘An action plan for EU-Ukraine Solidarity Lanes to facilitate Ukraine's agricultural export and bilateral trade with the EU’, COM(2022) 217 final.

<sup>92</sup> Regulation (EU) 2022/1032 of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage.

<sup>93</sup> Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas (based on Article 122 of the Treaty on the Functioning of the European Union).

<sup>94</sup> Proposal for a Regulation on an emergency intervention to address high energy prices, COM(2022) 473 final.

<sup>95</sup> Commission Communication, ‘A contingency plan for transport’, COM(2022) 211 final.

<sup>96</sup> Proposal for a Regulation amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, COM(2021) 891 final.



Union, the Commission also created the European Health Emergency Preparedness and Response Authority (HERA), to boost Europe's ability to prevent and rapidly respond to cross-border health emergencies, and to strengthen the implementation of emergency measures. Furthermore, the Single Market Emergency Instrument<sup>97</sup> will allow for swift reactions in crisis situations in order to maintain the circulation of goods and people, and to safeguard the access to vital supplies and services.

### *Using the varied enforcement toolbox in a crisis*

The COVID-19 pandemic caused severe disruption to the travel industry and several Member States felt a need to respond. National measures which saw people whose holidays had been cancelled receive only travel vouchers or long postponed reimbursements were not in line with travellers' rights to reimbursement under EU law. As a first step, the Commission provided early guidance on the application of EU **passenger rights** legislation<sup>98</sup> and issued a Recommendation on vouchers offered as an alternative to reimbursement for cancelled travel, also highlighting how Member States could support the financial liquidity of transport operators<sup>99</sup>. It also worked with the Consumer Protection Cooperation<sup>100</sup> enforcement authorities on dialogues with airlines. As a result, in 2022, 16 major European airlines agreed on a response that included the reimbursement of over 500 000 flight vouchers which had been imposed on consumers whose flights had been cancelled during the pandemic. The Commission also launched infringement proceedings against Member States that had enacted rules contravening the EU Passenger Rights Regulation<sup>101</sup> or the Package Travel Directive<sup>102</sup>. The vast majority of them swiftly brought their practice in line with EU law and only one case needed to be referred to the Court of Justice.

## **VIII. CONCLUSION**

The enforcement of EU law is and will remain one of the Commission's core priorities. This Communication has set out the wide and diverse range of measures taken by the Commission to enforce EU law, always in line with our ultimate objective: to drive positive change and ensure that people and businesses enjoy the full benefits of EU law. There can be many

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<sup>97</sup> Proposal for a Regulation establishing a Single Market emergency instrument and repealing Council Regulation No (EC) 2679/98, COM(2022) 459 final.

<sup>98</sup> Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with COVID-19 2020/C 89 I/01.

<sup>99</sup> Commission Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic.

<sup>100</sup> [https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/consumer-protection-cooperation-network\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/consumer-protection-cooperation-network_en)

<sup>101</sup> Regulation (EC) No 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

<sup>102</sup> Directive (EU) 2015/2302 of 25 November 2015 on package travel and linked travel arrangements.

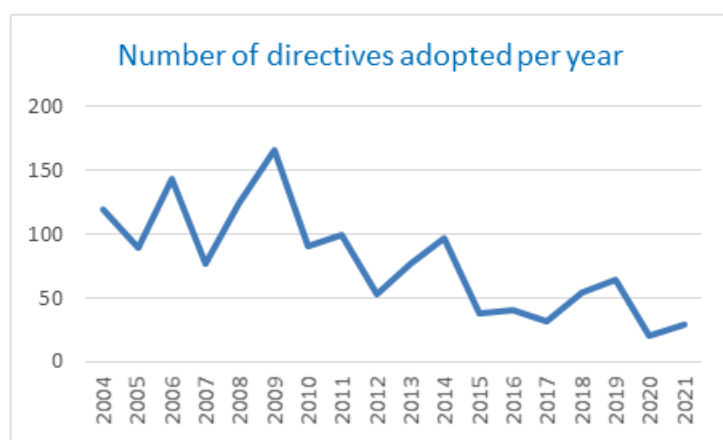


triggers for lack of or incorrect implementation, and the Commission has developed a varied toolbox to respond.

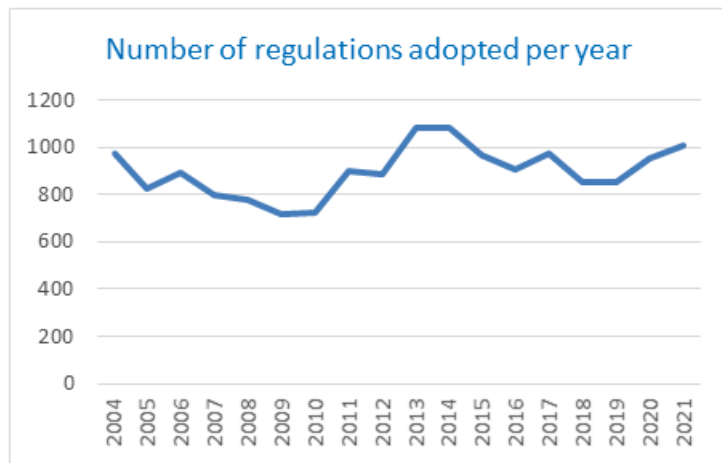
A comprehensive, smart and strategic approach to enforcement has brought direct benefits – from cleaner air, higher water quality standards, safer transport, and better consumer protection, to the upholding of the EU’s fundamental rights and freedoms. In all these instances, working with Member States is key: the implementation and application of EU law is the result of a combined effort, and compliance is dependent on Member States taking the necessary steps to avoid and promptly correct any breach, including through an effective national justice system with independent courts.

Enforcement of EU law is not a one-off event but requires a steady and sustained effort by the Commission and the Member States, to ensure the consistent and effective application of EU rules and to prevent potential problems. Our fast-paced international environment, unexpected crises and new enforcement challenges require the Commission to continuously assess ways to further improve the implementation and application of our commonly agreed rules. A stocktaking exercise is currently under way within the Commission and with Member States to ensure that the right enforcement tools are available to make EU law work in practice<sup>103</sup>. In particular, this exercise evaluates whether the current way of managing complaints, EU Pilot processes and infringements continue to be fit for purpose. A number of improvements to enforcement activities are already under consideration as part of this analysis.

Over time, the number of new directives has declined, while there is an increasing use of **regulations** as a legislative tool. The Commission has a well-established system of monitoring and enforcing the swift and correct transposition of directives. The implementation and enforcement of regulations is equally important – and although regulations have direct effect, this often relies on the work of national authorities. Some regulations require changes in national legislation, and many give to national agencies or regulators responsibilities essential to put the legislation into practice. The Commission will therefore step up its efforts to monitor and enforce the implementation and application of regulations in a more systematic and strategic manner.



<sup>103</sup> Commission Communication ‘Better Regulation: Joining forces to make better laws’, COM(2021)219.



The Commission attaches great importance to **transparency**. It helps the wider public engage in the shared responsibility of enforcement and promotes faster compliance by Member States. This is why the Commission has gradually increased the information made public concerning its enforcement activities. An annual report on monitoring the application of EU law<sup>104</sup> sets out key trends, details the cooperation with Member States and explains major infringement decisions. A public register on infringement cases<sup>105</sup> provides up-to-date information on the last step taken in each case. The Commission publishes press releases on all infringement decisions taken, with additional information on the most important decisions. However, the public and civil society have identified a number of areas with potential for more transparency, such as the pre-infringement (EU Pilot) process, overviews of cases and up-to-date statistics on the Commission's enforcement action. The Commission will continue to improve and increase the information made publicly available, in a systematic and easily accessible manner. The stocktaking exercise will look more precisely at what additional information should be made public and through which means, in close cooperation with Member States.

Finally, the stocktaking exercise will also look at ways to improve the **cooperation** between the Commission and Member States in relation to the swift and correct transposition of directives.

The Commission will report on the outcome of the stocktaking exercise in the course of 2023.

<sup>104</sup> [https://ec.europa.eu/info/publications/annual-reports-monitoring-application-eu-law\\_en](https://ec.europa.eu/info/publications/annual-reports-monitoring-application-eu-law_en)

<sup>105</sup> [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement\\_decisions/?lang=code=en](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang=code=en)