

Special report

## Enforcing EU law

The Commission has improved its management of infringement cases, but closing them still takes too long



EUROPEAN  
COURT  
OF AUDITORS

# Contents

	Paragraph
<b>Executive summary</b>	I-X
<b>Introduction</b>	01-17
<b>Procedures to detect potential non-compliance with EU law</b>	05-11
<b>The Commission's handling of infringement cases and its monitoring and reporting</b>	12-17
<b>Audit scope and approach</b>	18-21
<b>Observations</b>	22-75
<b>The Commission has improved its management to detect potential infringements, but timeliness is still a challenge</b>	22-47
Better prioritisation since 2017 helped to decrease the duration of transposition and conformity checks, but half still take longer than the benchmarks	23-28
Despite efforts of the Commission, assessing complaints takes more than a year and complainants are not always informed of progress made	29-40
EU Pilot procedures became more focused, but criteria for prolonging cases are not defined	41-47
<b>Most infringement cases are resolved before sanctions are proposed, but they last too long</b>	48-64
The percentages of infringement cases that take longer than benchmark deadlines are rising	48-58
In some cases, member states have not rectified breaches of EU law despite being sanctioned for years	59-64
<b>The Commission regularly monitors and reports on EU law enforcement but adherence to benchmarks is not covered by the reporting</b>	65-75
The Commission undertakes regular reviews of its enforcement actions, but its recommendations are not focused on improving adherence to benchmarks	66-67
Themis has improved case management, but lacks some functionalities	68-69

The Commission publishes pertinent but not complete information on the enforcement of EU law 70-75

**Conclusions and recommendations** 76-83

## **Annexes**

**Annex I – Governance in implementation and enforcement of EU law**

**Annex II – Commission’s monitoring benchmarks**

**Annex III – Outline of data methodology**

**Annex IV – Case studies (complaints)**

**Annex V – Overview of 31 infringement case studies**

**Annex VI – Financial sanctions**

## **Abbreviations**

## **Glossary**

## **Replies of the Commission**

## **Timeline**

## **Audit team**

## Executive summary

**I** The Commission, as “the guardian of the Treaties”, is responsible for overseeing the application of EU law by member states and taking appropriate action to enforce compliance. EU regulations apply automatically; directives require full “transposition” (incorporation) into national law. However, in both cases, member states are responsible for implementation. The Commission has the discretionary power to initiate formal infringement procedures if breaches are detected. In its [2017 Communication, EU law: Better results through better application](#), the Commission updated its enforcement strategies and monitoring benchmarks to focus on serious breaches. Since December 2020, it has also rolled out “Themis”, a new case management system for EU law enforcement procedures.

**II** The objective of our audit was to assess whether the Commission’s management ensured timely detection, follow-up, and appropriate monitoring and reporting of infringement cases against member states. We examined the Commission’s processes to promote effective implementation for monitoring progress and for deterring non-compliance, with the ultimate aim of enhancing its framework for enforcing EU law.

**III** We conclude that while the Commission has improved its management to detect and correct infringements of EU law, it still takes too long to close infringement cases. The Commission regularly monitors and reports on EU law enforcement but adherence to benchmarks is neither improving nor reported.

**IV** We found that the time taken by the Commission to complete transposition and conformity checks has decreased since 2017. However, half of these checks still took longer than the benchmarks. Outsourcing checks has led to even longer completion times, highlighting the need for adequate planning.

**V** The Commission registers complaints from the public about potential breaches of EU law. It set a benchmark of 1 year from complaint registration to sending a letter of formal notice or closure, but this benchmark was not met in 38 % of cases from 2012 to 2023, and handling times have increased since 2021. The Commission set criteria for prioritising complaints, but some of these criteria can be interpreted differently by the different services. The Commission also receives petitions from the European Parliament. If after preliminary assessment, these are pursued, they become Commission own-initiative cases. However, as there is currently no link between the Commission’s internal petitions database and the “Themis” case management system, the Commission lacks statistics on the number of petitions followed up.

**VI** The Commission's [2017 Communication](#) proposed increasing efficiency in infringement handling by limiting use of the informal "EU Pilot" dialogue between the Commission and member states before launching formal infringement procedures. From 2012-2023, 74 % of closed informal dialogue cases resulted in the member state complying with the EU law without a formal infringement procedure, but average handling times remained long (2023: 28.4 months).

**VII** We found that, for an increasing share of infringement cases the time it takes to resolve them exceeds the benchmark deadlines. In 2023, 72 % cases where member states failed to notify transposition measures or notified partial transposition for a directive took longer than the 1-year benchmark. On average, the 3-year benchmark for cases of bad application and non-conformity was met between 2012 and 2022, but not in 2023.

**VIII** Most cases are resolved before the Commission proposes financial sanctions. However, we found that some member states have been paying for several years without rectifying breaches of EU law.

**IX** The Commission reviews its enforcement actions in regular coherence reports, but these have not included specific and actionable recommendations to improve adherence to benchmarks. Themis has streamlined case management but still lacks some relevant functionalities, hindering effective monitoring. The Commission publishes pertinent but not complete information on the enforcement of EU law that is accurate overall, but data on adherence to benchmarks is not complete.

**X** We recommend that the Commission should:

- improve planning and documentation of transposition and conformity checks;
- improve handling of complaints, petitions and informal dialogues;
- reinforce infringement case management and update, where necessary, the methodology for proposing sanctions; and
- enhance monitoring and reporting on enforcement activities.

# Introduction

**01** The principal power conferred on the EU by its founding treaties is the power to make laws that apply to member states<sup>1</sup>. Effective enforcement by the Commission ensures that people and businesses in the EU enjoy the benefits of commonly agreed rules as soon as possible and can count on respect for their fundamental rights wherever they live or work in the EU<sup>2</sup>.

**02** Member states are obliged to take all national legal measures necessary to apply EU law. The Commission, as “the guardian of the Treaties”<sup>3</sup>, is responsible for overseeing the application of EU law by member states and taking appropriate action to enforce compliance. The number and extent of measures they must take depends on the subject matter, scope and complexity of the legislation and type of legal act, see *Figure 1*.

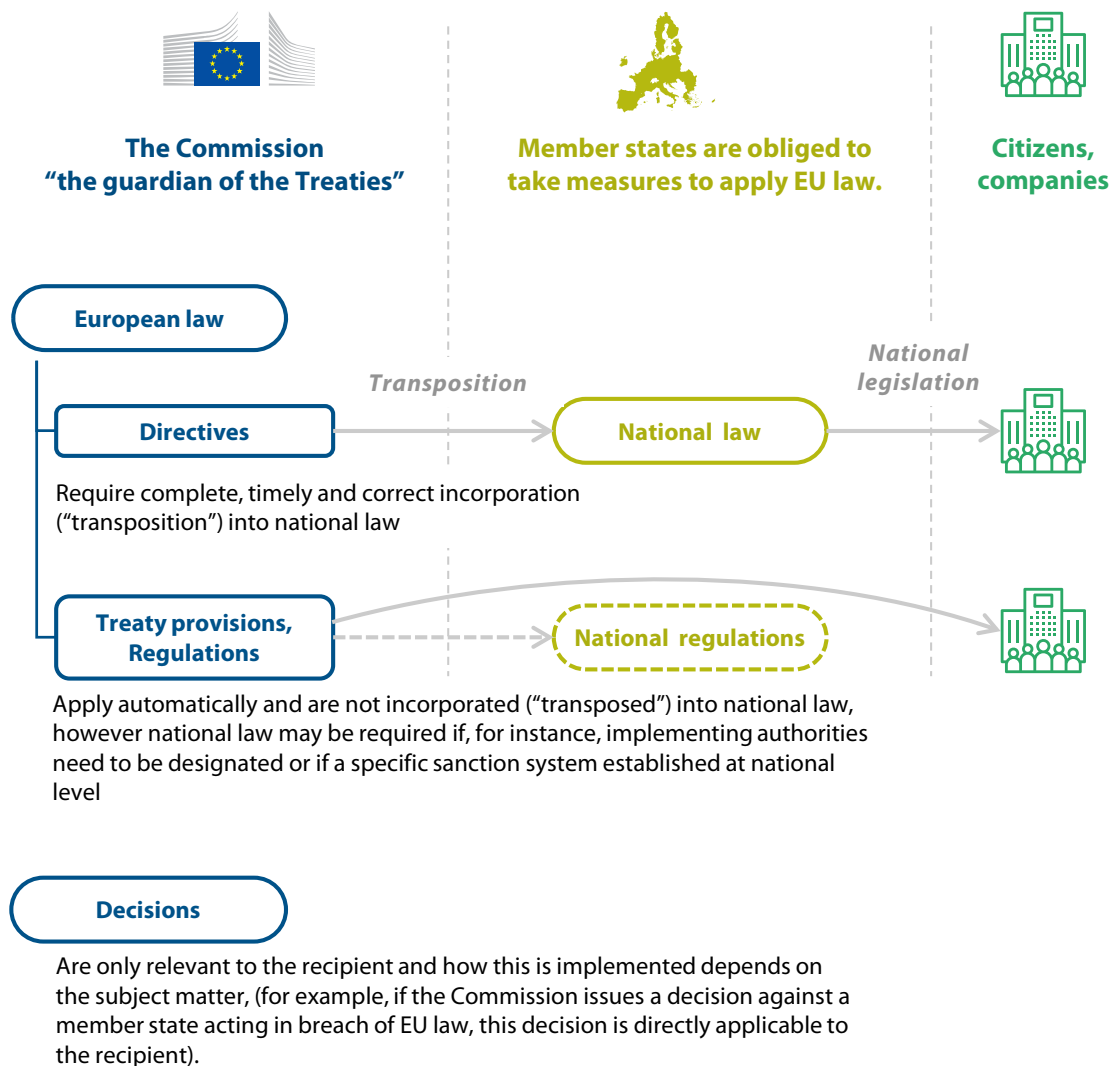
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<sup>1</sup> Article 1 TEU, Articles 1, 4(3) and 5 TFEU.

<sup>2</sup> Commission, *Enforcing EU law for a Europe that delivers* (COM(2022) 518 final), p. 1.

<sup>3</sup> Article 17(1) TEU.

Figure 1 – Applicability of EU legal acts



Source: ECA, based on Commission documents.

**03** Whichever Commission directorate-general (DG) prepares draft legislation is usually also responsible for its oversight. Oversight can also be shared with agencies and other bodies (e.g., the European Supervisory Authority in the context of financial services). The Commission coordinates all oversight activities through the Secretariat-General and an internal network of DG infringement correspondents, who act as points of contact.

**04** The Commission uses different tools and procedures to ensure that member states correctly transpose and apply EU law, and to detect and address potential breaches. When preventive tools fail and there is a suspected breach, the Commission may initiate infringement procedures and may bring the case to the Court of Justice of the EU. The correction of any breaches remains fully under the responsibility of member states. For additional details, see [Annex I](#).

## Procedures to detect potential non-compliance with EU law

**05** While EU regulations are immediately applicable in all member states, member states must notify the Commission of the measures they have taken to transpose any new or revised EU directives into their national law. They must provide the notification by a specified date (the transposition deadline is usually 2 years after directive's adoption) and also provide explanatory documents. After receiving such notifications, the Commission uses:

- transposition checks, to ensure that member states' national transposition measures cover each obligation in each article of the directive<sup>4</sup>; and
- conformity checks, to assess the conformity of the national implementing measures with the directive's provisions<sup>5</sup>.

**06** Where there is no notification of transposition measures, or transposition is only partial (for example, if transposition measures notified do not cover the whole territory of the member state or where the notification is incomplete), the Commission can initiate infringement procedures for non-communication (NCM). Where a member state fails to correctly transpose the provisions of a directive, the Commission can initiate infringement procedures for non-conformity (NCF), see [Figure 2](#). Stemming from the Court of Justice judgment [C-543/17](#)<sup>6</sup> of July 2019, the member states have to provide explanatory documents for every directive and the Commission considers insufficient explanations as an absence of transposition measures.

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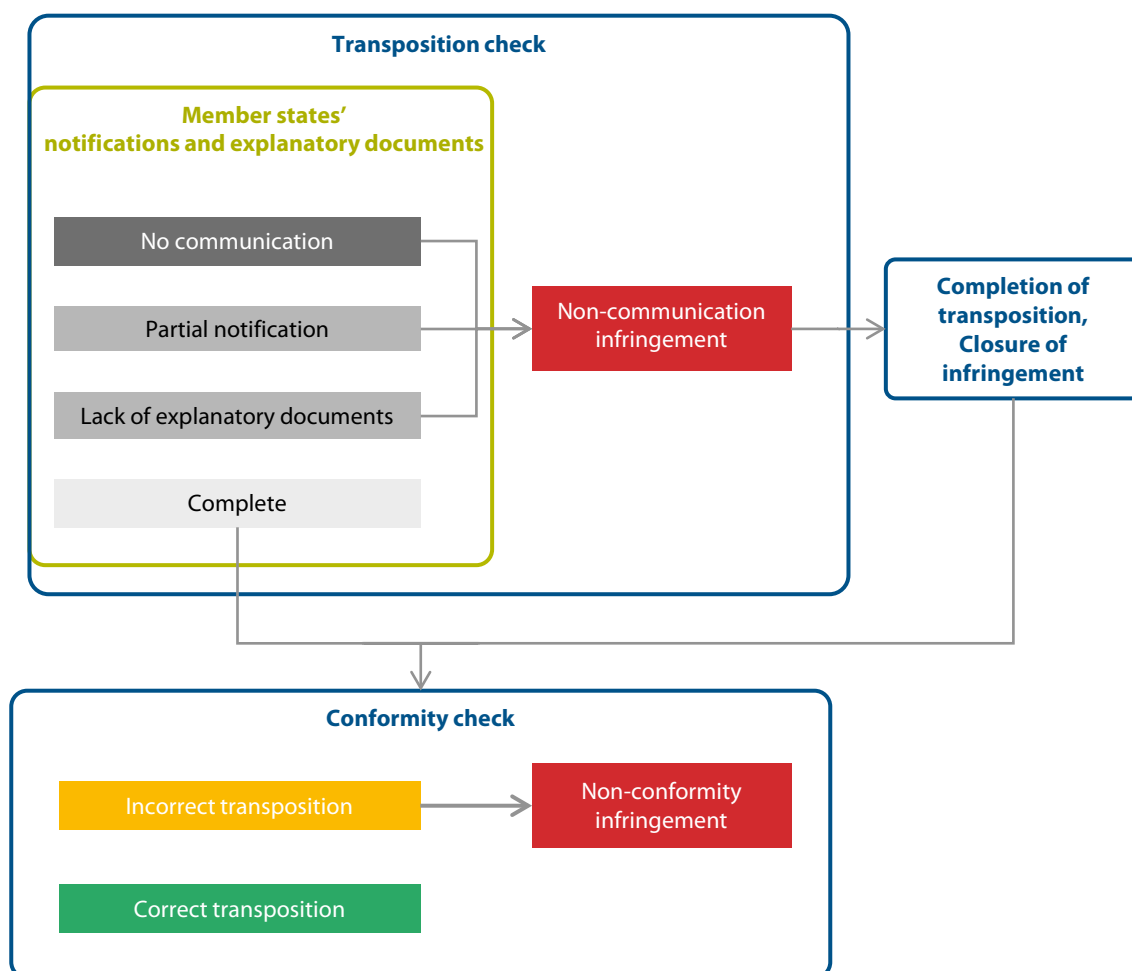
<sup>4</sup> [Better Regulation Toolbox, Tool #39](#).

<sup>5</sup> [Ibid.](#)

<sup>6</sup> [Case C-543/17, Commission vs Belgium \(8 July 2019\)](#).



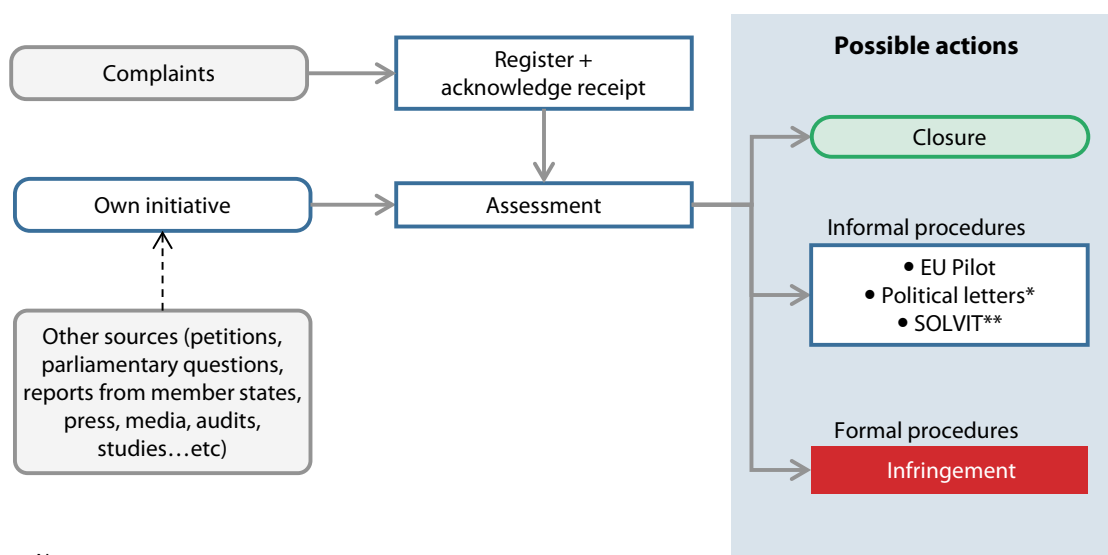
Figure 2 – Commission transposition and conformity checks



Source: ECA, based on Commission documents.

**07** The Commission also detects potential bad application of directives by member states (known as “BAD” cases), and of EU treaties, regulations, and decisions (known as “REG” cases) either from complaints, or investigations on its own initiative. These result mostly from internal assessment and implementation reports, or from other sources, for example, petitions, questions raised in the European Parliament, or press and media, see [Figure 3](#). Bad application means, for example, a situation when a national law, in compliance with an EU directive, requires the issue of a permit to start an activity but a member state authority allows a citizen or business to proceed without it.

**Figure 3 – Commission’s workflow for detecting potential non-compliance**



Notes:

\* Correspondence at political level signed by a Commissioner.

\*\* Network of national bodies, which helps businesses and citizens in cases of perceived infringements of EU law in the area of single market.

Source: ECA, based on Commission documents.

**08** In 2008, the Commission set up dialogue procedures named “EU Pilot” with the aim to discuss potential breaches of EU law with member states, before launching infringement procedures<sup>7</sup>. This was to resolve potential breaches quickly and at an early stage<sup>8</sup>. The procedure begins when the Commission suspects a member state might be infringing EU law. What was initially a pilot project involving only some member states came to be used systematically until 2017. Since then, EU Pilot dialogues should only take place when considered useful by the Commission<sup>9</sup>.

**09** The Commission has the discretionary power to launch formal infringement procedures. Once a DG has established there is sufficient evidence of a potential infringement, it prepares a decision for the Commission to launch the procedure. Under [Article 258 TFEU](#), the Commission may refer a member state to the Court for the first time regarding a potential infringement. Under [Article 260 TFEU](#), the Commission may propose financial sanctions for non-communication of transposition measures or when it refers a member state to the Court of Justice for the second time because of non-compliance with a first Court judgment on the case. Cases can be

<sup>7</sup> Commission, [A Europe of results – applying Community law \(COM\(2007\) 502\)](#).

<sup>8</sup> Commission, [EU law: Better results through better application \(2017/C 18/02\)](#).

<sup>9</sup> Ibid.

closed at any point, and the Commission may also decide to close a case even if the member state does not resolve the infringement, or only if it partly does so.

**10** In its [2017 Communication, EU law: Better results through better application](#), the Commission announced a more strategic approach to enforcement and set certain priorities. The aim was to strengthen assessments of the transposition and conformity of national measures implementing EU law, and to focus enforcement on the most serious breaches of EU law affecting citizens and businesses. The Commission also decided to strengthen its approach to sanctions if member states failed to notify transposition measures (non-communication cases). In these cases the Commission would systematically ask the Court of Justice to impose lump sum penalties in addition to periodic penalty payments.

**11** In 2021, the Commission updated its Better regulation [guidelines](#) and [toolbox](#). These provide the main tools that DGs can use to promote compliance with EU law and cooperation with member states; the essential steps of the process to check completeness and conformity of transposition; and guidance to national authorities and stakeholders.

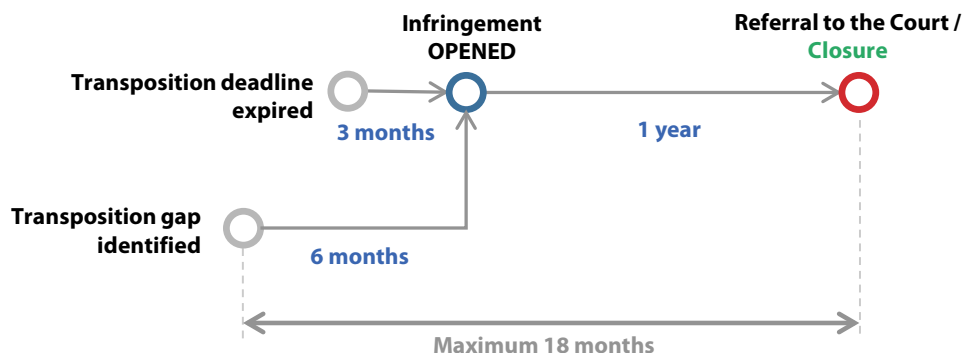
## **The Commission's handling of infringement cases and its monitoring and reporting**

**12** The Commission laid down several monitoring indicators (benchmarks) in [A Europe of results – applying Community law](#) from 2007, and in the guidelines accompanying its [2017 Communication](#). These provide indicative, not legally binding targets for monitoring progress in its management of complaints and infringement cases. Benchmarks were also set for transposition checks, conformity checks and EU Pilot dialogues. [Annex II](#) provides an overview.

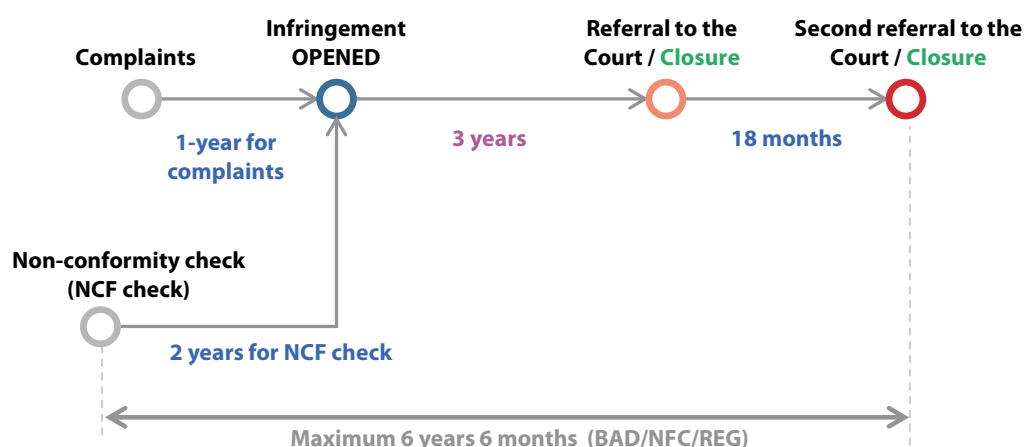
**13** Based on Commission's own benchmarks, the indicative timing for infringement cases are shown in [Figure 4](#). Adding up all possible benchmarks, the Commission's decisions on infringements would take a maximum of 18 months for non-communication and 6 ½ years for other infringement cases.

Figure 4 – Indicative timing for infringement cases, based on Commission benchmarks

### NCM cases



### BAD/REG/NCF cases (Own initiative cases/Complaints)



#### Deadlines

Set in public Commission communications

Set in internal Commission guidelines

#### Cases

**NCM:** Non-communication

**BAD:** Bad application of directives

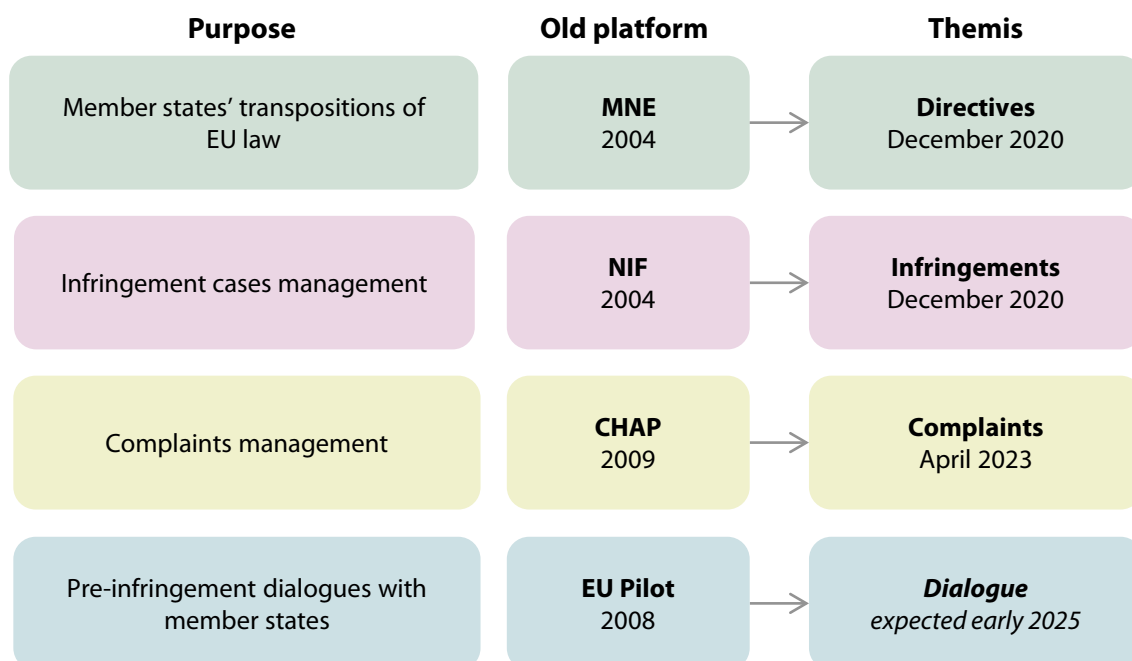
**REG:** Bad application of EU treaties, regulations, and decisions

**NCF:** Non-conformity

Source: ECA, based on Commission documents.

**14** Before 2020, four separate IT platforms were used for case management: CHAP for complaints, EU Pilot for the EU Pilot dialogue, MNE for directive transposition, and NIF for infringements. As a follow-up to our [2018 Landscape Review](#), in December 2020, the Commission started to roll out “Themis”, its new case management system to manage, record and store the data related to the EU law enforcement process, see [Figure 5](#).

**Figure 5 – Transition from old IT platforms for EU law enforcement to Themis**



Source: ECA, based on information received from the Commission.

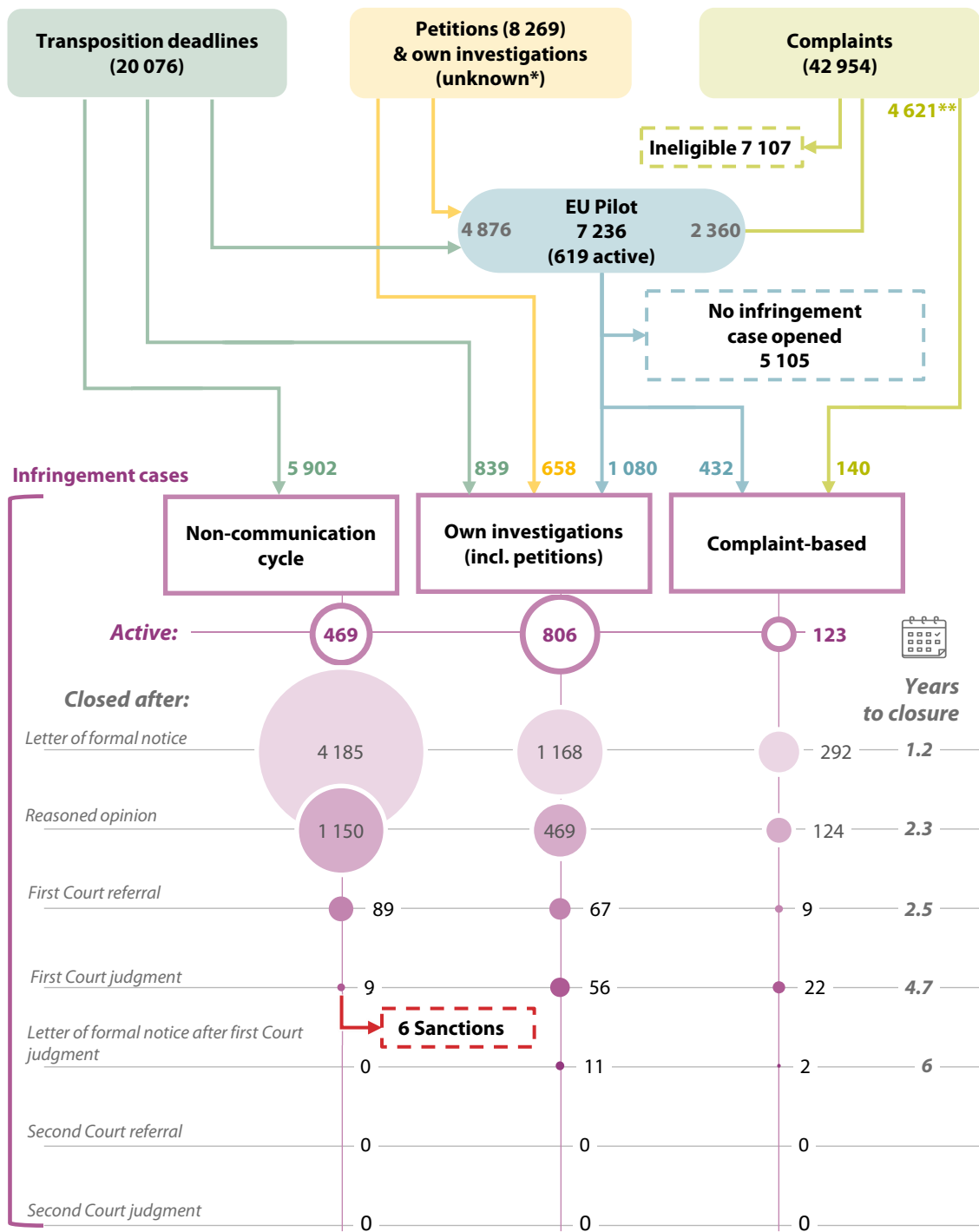
**15** Between 2012 and 2023, member states were required to notify transposition measures for 20 076 transposition deadlines, 5 902 of which member states did not comply with. In addition, 839 of the deadlines where measures were notified were incomplete or did not comply with EU law. As a result, the Commission opened 5 902 infringement cases directly after expiry of the transposition deadline (in a process via which the Commission opens cases regularly and by default when member states do not comply with transposition deadlines, called the “non-communication cycle”) and 839 cases upon the initiative of a DG.

**16** During the same period, the European Parliament submitted 8 269 petitions to the Commission. According to the Commission, only a fraction of these concerned alleged breaches of EU law. The Commission also registered 42 954 complaints from citizens, businesses and interest groups; it deemed 7 107 ineligible and pursued 4 621, some in the context of already existing EU Pilot or infringement cases. The remaining complaints were either closed without being pursued or were still under investigation at the time of our audit.

**17** Between 2012 and 2023, the Commission also opened 4 876 EU Pilot dialogues relating to transposition issues and own investigations including petitions, and 2 360 EU Pilot dialogues relating to complaints. Without using EU Pilot, it opened 658 infringement cases based on own investigations and 140 cases based on

complaints. Of the 9 051 infringement cases opened between 2012 and 2023, 7 653 had been closed by the end of 2023. Three-quarters of all 7 653 infringement cases were resolved at the first stage (the letter of formal notice – LFN), and 3.5 % reached the stage of first Court referral, see [Figure 6](#).

Figure 6 – Commission’s EU law enforcement case flow, 2012-2023



**Notes:**

\* No data available on the total number of own investigations the Commission performed.

\*\* 10.5 % of the 4 621 complaints pursued between 2012-2023 were registered between 2008-2011.

Source: ECA, own analysis based on data from the Commission and European Parliament, for details see [Annex III](#).

## Audit scope and approach

**18** The objective of our audit was to assess the management of infringement cases against member states. This encompasses the detection of potential cases, the handling of actual cases as well as their monitoring and reporting following the changes introduced in the [2017 Communication, EU law: Better results through better application](#). Our audit aimed to enhance the Commission's framework to enforce EU law.

**19** We assessed whether the Commission:

- o detected potential infringements of EU law in a timely manner, applying sound procedures;
- o handled infringement cases in line with the Commission's benchmarks; and
- o monitored and reported appropriately on its management of infringement cases and their outcome.

**20** We examined the Commission's approach to enforcement of EU law (detection, correction, monitoring and reporting) from 2012 to 2023. Our audit involved:

- o desk reviews of relevant information (from Parliament, Ombudsman, Court of Justice) and key Commission documents;
- o analysis of Themis and EU Pilot data;
- o in-depth assessment of 31 infringement case studies, selected using judgmental sampling, to obtain an overview of the different infringement stages;
- o analysis of the responses to our standardised questionnaire to obtain specific information, such as on workload and use of resources sent to 15 DGs involved in handling complaints and infringements and to which all responded;
- o analysis of the Commission's compliance with its benchmarks for transposition and conformity checks, using a random sample of 291 directive deadlines for which member states notified full transposition (139 directives 4 years before the [2017 Communication](#), and 152 directives 4 years afterwards); and
- o interviews with staff from the Commission, and two European Parliament committees (petitions; legal affairs), the European Ombudsman, one civil society



organisation that acts as a complainant, and the Netherlands Court of Audit which had published a report entitled [EU law in practice](#).

**21** This audit did not cover the Commission's prevention tools, the informal [SOLVIT](#) network of national bodies, investigations or enforcements by other EU institutions for reasons other than infringements of EU law, or legal action by one member state against another before the Court of Justice ([Article 259 TFEU](#)).

## Observations

### The Commission has improved its management to detect potential infringements, but timeliness is still a challenge

**22** So that all EU citizens benefit equally and as soon as possible from EU legislation, the Commission needs a set of tools, procedures and organisational arrangements to undertake transposition and conformity checks, complaints handling and own investigations in reasonable time. In this regard, the Commission set indicative benchmarks in its [2017 Communication](#).

### Better prioritisation since 2017 helped to decrease the duration of transposition and conformity checks, but half still take longer than the benchmarks

**23** As member states must transpose directives fully, every article of the directive should be covered by a transposition check, see paragraph [05](#). The Commission's [2017 Communication](#) prioritised these checks, attaching high importance to timely transposition. Once member states have notified full transposition, a check starts and should be completed within 6 months. If member states fail to notify transposition measures or notify partial transposition, there is no check, and the Commission will launch an infringement case for failure to transpose the directive as soon as possible<sup>10</sup>. Since the rollout of Themis in December 2020, DGs have had to record the dates and results of the transposition checks.

**24** A conformity check usually starts once the relevant transposition check has been completed. However, it may begin alongside an ongoing transposition check for well-defined parts of a directive which were found to be already fully transposed<sup>11</sup>. The Commission aims to complete conformity checks within 24 months of receiving notifications of national transposition measures<sup>12</sup>.

**25** We tested a sample of 291 directive transposition deadlines for which member states notified measures by December 2020. We found that the Commission did not

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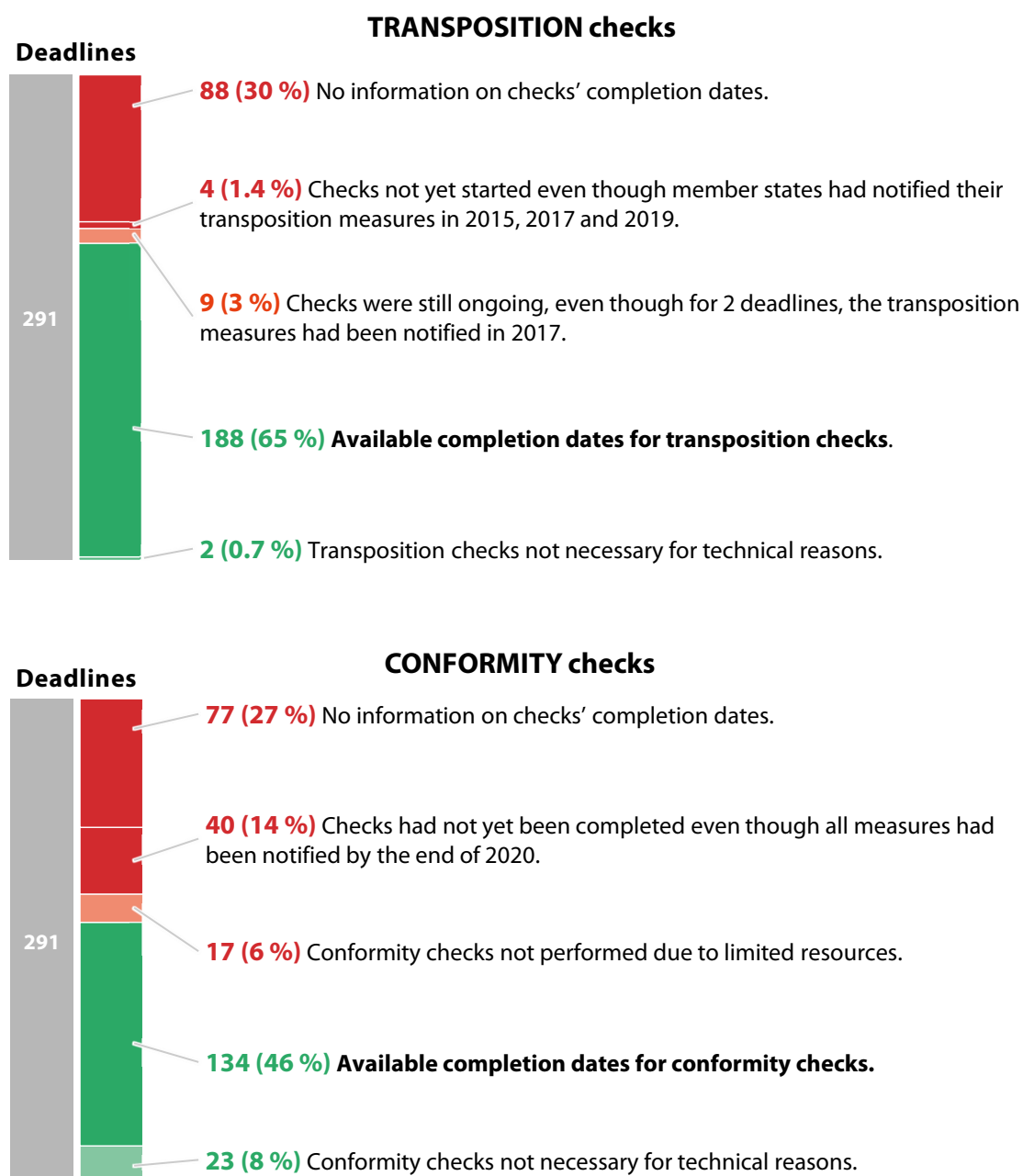
<sup>10</sup> [Better regulation toolbox, Tool #39](#), p. 339, and [Case C-543/17](#).

<sup>11</sup> [Better Regulation toolbox, Tool #39](#), p. 341.

<sup>12</sup> *Ibid.*

have information on the completion dates for about a third of the deadlines. In addition, the Commission had not yet started or completed some checks even though the member state in question had notified their measures years before. *Figure 7* shows the results of our tests.

**Figure 7 – Availability of data on sampled directives**



Source: ECA, own analysis based on our sample of transposition deadlines, for details see *Annex III*.

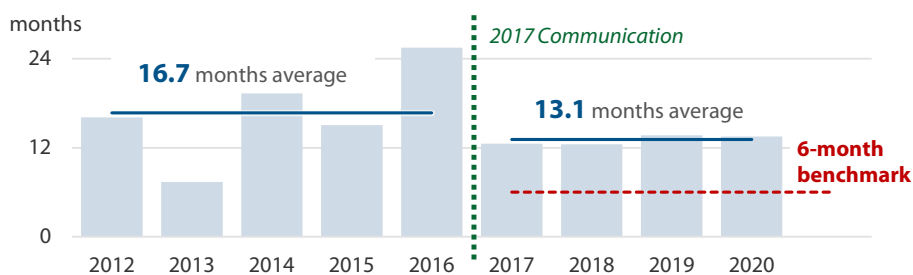
**26** For the 188 deadlines with available completion dates for transposition checks and 134 deadlines with available completion dates for conformity checks, we found that the average check completion time had fallen since the *2017 Communication*.

However, around half of the checks still exceeded their benchmarks, see [Figure 8](#) for more details.

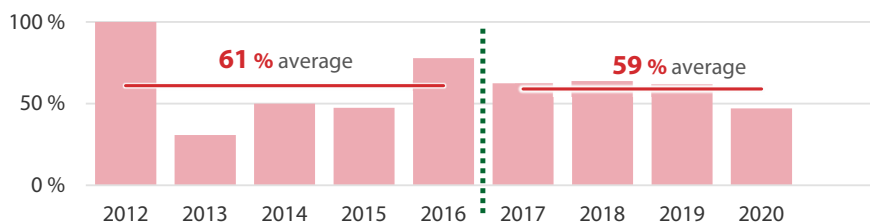
**Figure 8 – Average time for transposition and conformity checks by year of notification, and % beyond the benchmarks**

### TRANSPPOSITION checks

The average time to complete transposition checks decreased since the 2017 Communication\* from **16.7 months** (2012-2016) to **13.1 months** (2017-2020).

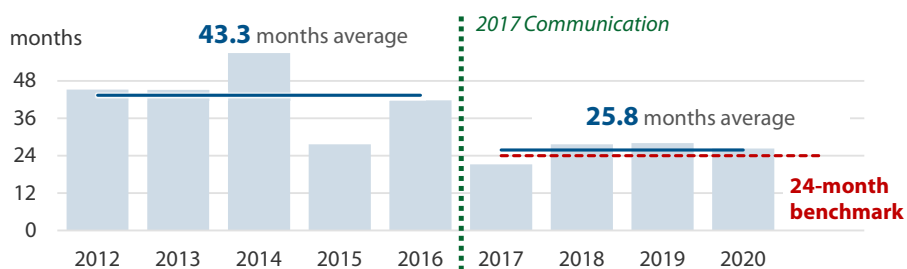


Despite the noticeable improvement, in **59 %** of the cases the **transposition checks still took longer than the 6-month benchmark** in 2017-2020.

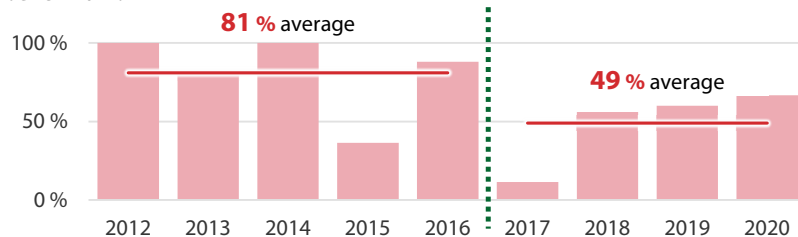


### CONFORMITY checks

The average time to complete conformity checks decreased since the 2017 Communication\* from **43.3 months** (2012-2016) to **25.8 months** (2017-2020).



Despite the positive evolution, in **49 %** of the cases the **conformity checks took longer than the 24-month benchmark**.



\* 2017 Communication.

Source: ECA, own analysis based on our sample of transposition deadlines, for details see [Annex III](#).

**27** For 99 of the 291 deadlines in our sample, DGs did not provide information on whether the conformity checks had been outsourced. Conformity checks were outsourced for 105 of the remaining 192 deadlines. The Commission informed us that the two main reasons for outsourcing were insufficient in-house knowledge, including language skills, and shortage of resources. Outsourced checks took considerably longer on average (36.6 months) compared to those done in-house (23.8 months).

**28** DGs workload for transposition and conformity checks depends on the number of directives with a transposition deadline each year, the complexity of the directives, and the federal/regionalised constitutional structures of the member states which must transpose them. This information should make it possible for the Commission to plan the upcoming workload in advance and anticipate the need for internal resources and outsourcing. Furthermore, only 6 of the 15 DGs covered by our questionnaire said that they systematically prepared monitoring tables to check on the number and progress of checks at DG level.

### **Despite efforts of the Commission, assessing complaints takes more than a year and complainants are not always informed of progress made**

**29** Citizens, businesses, and interest groups can submit a complaint to the Commission about any EU measure (law, regulation, or administrative action), the absence of a measure, or practice by a member state that they believe to be against EU law<sup>13</sup>. In general, the Commission should decide, within 1 year of the complaint registration, whether to launch a formal infringement procedure by sending a letter of formal notice or to close complaint, see [Figure 4](#).

**30** The Commission screens the complaints received. To be eligible, and thus investigated, a complaint must meet certain minimum criteria set out in the [2017 Communication](#), such as providing the sender's contact details and setting out a grievance which is within the scope of EU law. A significant number of submissions are ineligible.

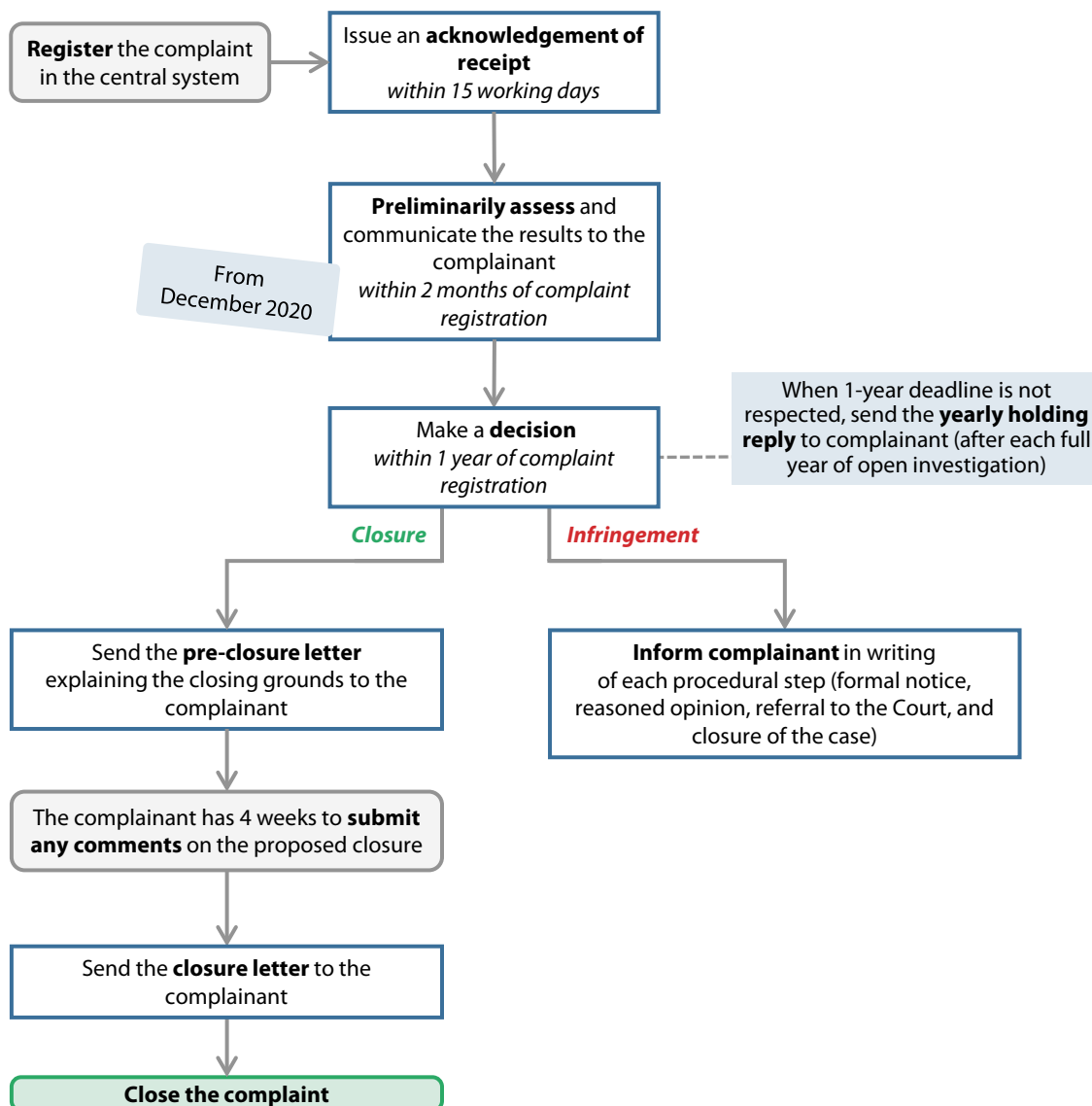
**31** Between 2012 and 2023, 16.5 % of complaints were ineligible. The Commission introduced a standard [complaint form](#) in 2017 to obtain efficiency gains through better substantiated submissions. It also established a standard approach with procedural steps and benchmarks for complaints handling<sup>14</sup>, see [Figure 9](#). In 2023, DGs received

<sup>13</sup> Commission, [How to make a complaint at EU level](#).

<sup>14</sup> Communication, EU law: Better results through better application ([2017/C 18/02](#)), Annex.

most complaints (95.8 %) on standard complaint forms; the rest came in emails or letters.

**Figure 9 – The Commission’s standard approach for complaints handling**



Source: ECA, based on Commission documents.

**32** The Commission’s 2017 Communication set criteria for prioritising complaints and infringement cases so DGs could focus their resources on the most important potential breaches of EU law. The prioritisation approach required particular attention to be paid to structural problems or systemic bad application practices in member states, see [Figure 10](#). Internal Commission guidelines further clarified the category of complaints not considered as a priority, and on what complaints were to be prioritised. However, there were no guidelines on how to interpret some criteria, such as “serious damage caused to EU financial interests”, “issues of wider principle”, or a “systemic failure to comply with EU law”. The European Parliament has called upon the

Commission in various reports to provide legal clarification on an “issue of wider principle” and “systemic failure to enforce EU law”<sup>15</sup>.

**Figure 10 – Examples of Commission prioritisation criteria for complaints**



#### The Commission usually pursues the following complaints

- failure to communicate transposition measures
- incorrectly transposed directives
- failure to comply with a judgment of the Court
- serious damage caused to EU financial interests
- violation of EU exclusive powers
- systemic bad application cases (standard handling)

#### The Commission does not usually pursue the following complaints

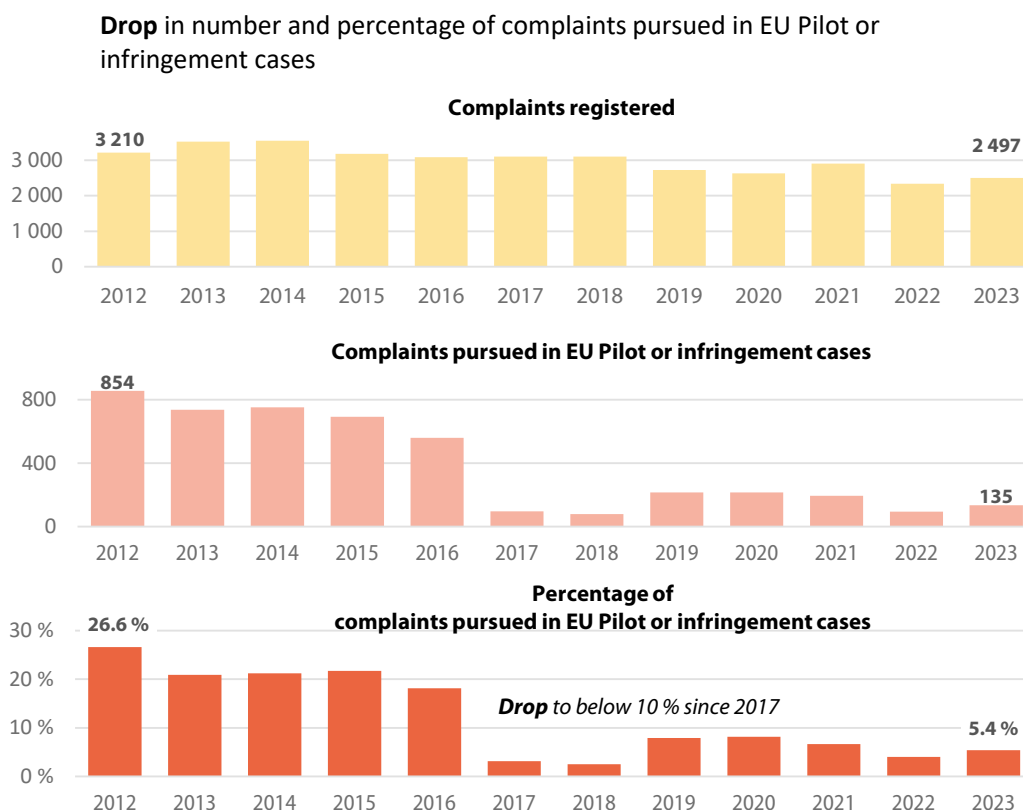
- complaint form not used
- complaints made on individual cases of incorrect application of EU law but with insufficient indications of a general practice or a systemic failure to comply with EU law
- preliminary ruling proceedings are pending on the same issue
- complaints raising member states' shortcomings in transposing a directive in a general way without raising particular aspects affecting the complainant

Source: ECA, based on Commission documents.

**33** The majority of registered complaints are closed because a breach of EU law cannot be established, or the information provided is not sufficient to launch an EU Pilot dialogue or send a letter of formal notice. The number of complaints that are pursued shows a downward trend, falling from 854 in 2012 to 120 in 2023, see [Figure 11](#).

<sup>15</sup> Committee on Petitions, Report 2023/2047(INI), and Committee on Legal Affairs, Report on monitoring the application of European Union Law in 2020, 2021 and 2022.

**Figure 11 – Eligible complaints registered and pursued**



*Note:* Complaints received in previous years can be pursued in the following years.

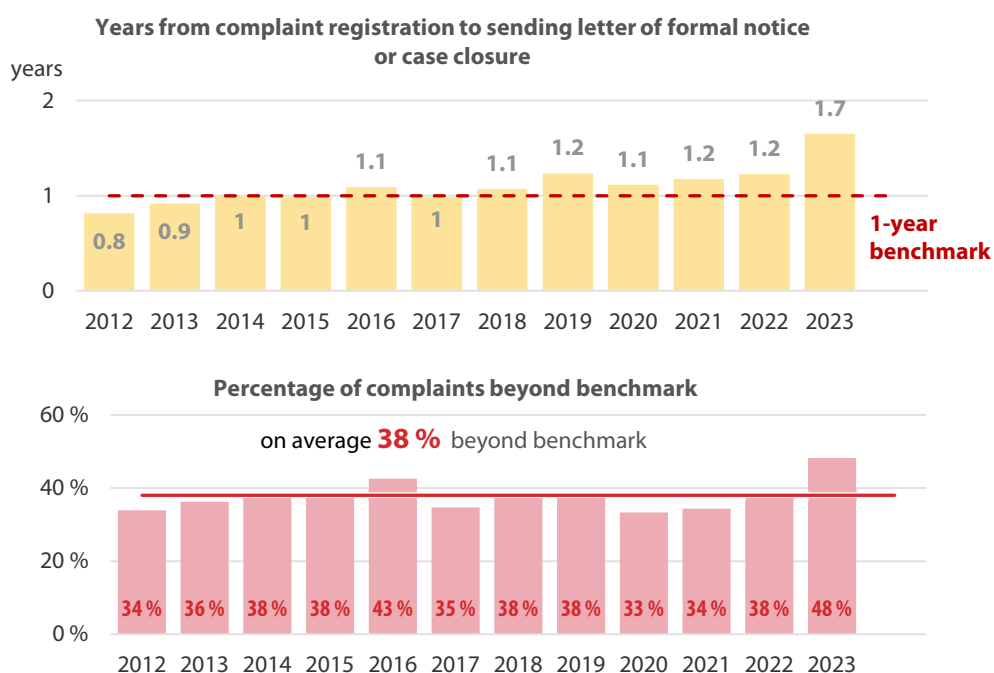
*Source:* ECA, own analysis based on Themis data, for details see [Annex III](#).

**34** In 2012, the Commission introduced a 1-year benchmark from complaint registration to sending a letter of formal notice or closing the complaint<sup>16</sup>. From 2012 until 2023, the Commission did not meet the benchmark for 38 % of complaints it registered, on average. Although the number of complaints in 2022 and 2023 did not go back to 2021 levels, handling times have been increasing since that year, and in 2023, almost half of the complaints were not dealt within the 1-year timeframe, see [Figure 12](#). The increase of 2023 was the result of a clean-up exercise where old complaint cases were closed, which caused the average for 2023 to rise by 0.5 years.

<sup>16</sup> Communication from the Commission, Updating the handling of relations with the complainant in respect of the application of Union law, [COM\(2012\) 154](#), p. 6.



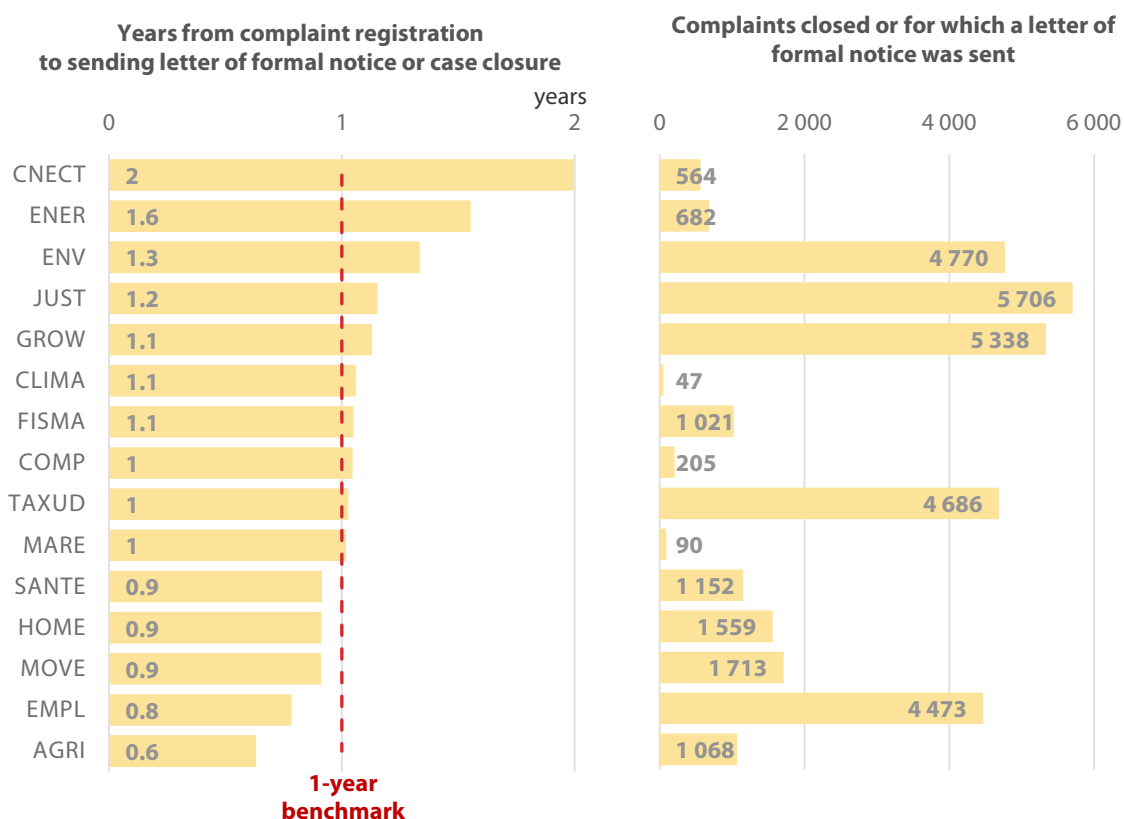
**Figure 12 – Commission’s performance against the 1-year benchmark for complaints handling**



Source: ECA, own analysis based on Themis data, for details see [Annex III](#).

**35** We found considerable differences in the average handling times across DGs from complaint registration to sending a letter of formal notice or case closure. Between 2012 and 2023, despite having relatively few cases, DGs CNECT (564 cases) and DG ENER (682 cases) took longest, at above 1.5 years, on average. DG JUST handled by far the highest total number of complaints (5 706) in 1.2 years, on average, see [Figure 13](#).

**Figure 13 – DGs’ performance against the 1-year benchmark for complaints handling, 2012-2023**



Source: ECA, own analysis based on Themis data, for details see [Annex III](#).

**36** According to the 2021 coherence report, all DGs carried out an internal review and found several reasons why it was difficult to meet the 1-year benchmark. They concluded that the quality of complaints had not improved despite mandatory use of the new [complaint form](#) (see paragraph [30](#)). In their view, work on manifestly unfounded complaints was time-consuming, hindering the proper management of other complaints and infringements. They considered the 1-year benchmark unrealistic. Some complaints (6 %) required a more in-depth investigation through EU Pilot, which had its own benchmark of 9 months.

**37** We analysed Themis data and found that 84 % of complaints which went through EU Pilot did not meet the 1-year benchmark. For those not going through EU Pilot, far fewer (30 %) did not meet that benchmark. The introduction of the complaint form has not fully achieved the objective of filtering out complaints on issues that are unfounded or fall outside the scope of EU law early on. As a result, this type of complaints may require further assessment using EU Pilot dialogues with member states, which increases complaint handling time. See [Box 1](#) for examples of slow or fast complaints handling.

**Box 1****One complaint takes 10 years to be resolved**

In December 2012, DG JUST received a complaint concerning a breach, by France, of Directive [2004/38/EC](#) on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states.

The Commission opened an EU Pilot dialogue 5 months after complaint registration. This was closed in January 2015 after 1.6 years, without France rectifying the situation. Following the unsuccessful EU Pilot, the Commission launched an infringement procedure in July 2019, 6.5 years after registration of the complaint.

The case was eventually resolved as the relevant national provisions were changed in May 2021. The complaint was closed 10 years after it was registered.

**Another is resolved in 2 years**

In March 2013, complaints were registered that it was not possible in Cyprus to register limousine-type (lengthened) vehicles for public use. The complaints were assessed in May 2013 the Commission decided to open an EU Pilot dialogue with Cyprus to obtain more information. The EU Pilot dialogue was closed after 5 months. In February 2014, the Commission decided to open a formal infringement by sending a letter of formal notice (less than a year after registering the complaint).

The case was resolved in March 2015, as the Cypriot authorities informed the Commission that they had adopted a law in February 2015. The complaint was closed 2 years after it was registered.

*Source:* ECA case studies.

**38** Between registering a complaint and either launching an infringement or closing the complaint, the Commission must send a holding reply every year. After launching an infringement, it is supposed to inform complainants about each procedural step (reasoned opinion, referral to the Court of Justice, etc.). The aim is to ensure that case handling is transparent for complainants. We noted that:

- in only two out of our 13 case studies was the complainant informed about each procedural step;
- in one case, the DG could not provide any documents on communication with the complainant other than acknowledgement of complaint receipt;

- o in the other 10 cases, complainants received only partial information (at least one procedural step was missing); and
- o there was evidence of annual holding replies only in two cases. See [Annex IV](#).

**39** Since the entry into force of the [Treaty of Maastricht](#)<sup>17</sup>, every EU citizen and all natural or legal residents of the member states have had the right to submit a petition to the European Parliament, on an issue that falls within the European Union's fields of activity and which affects them directly. They are examined by Parliament's Committee on Petitions, which takes a decision on their admissibility and is responsible for dealing with them.

**40** According to figures from the European Parliament's Committee on Petitions, it submitted 700 petitions per year to the Commission, on average, between 2012 and 2023, some of them referring to breaches of EU law. When the Commission pursues petitions which, in its view, point to breaches of EU law, it does so as own-initiative cases. However, there is currently no link between the Commission's internal petitions database and the Themis platform (including the information on other complaints). Therefore, the Commission does not have statistics on the number of petitions followed up as own-initiative cases under EU Pilot or through infringement procedures, or whether it has received complaints on the same matter.

### **EU Pilot procedures became more focused, but criteria for prolonging cases are not defined**

**41** Commission guidelines indicate that the EU Pilot dialogue is for gathering additional information on factual aspects of a case to assess the scope of a potential breach of EU law. It can also be used to resolve an issue informally without recourse to a formal infringement procedure. In January 2017, the Commission decided to stop using EU Pilot dialogues systematically before launching an infringement procedure, and instead only do so when dialogues were considered useful. It can also decide to launch a formal infringement procedure if an EU Pilot becomes too long or has multiple exchanges without clear progress, or there is a lack of cooperation from the member state involved.

**42** As of August 2020, new EU Pilot guidelines introduced a benchmark of nine months' handling time (counted from sending the case to the member state), after which the Commission should reassess the EU Pilot dialogue and decide on the

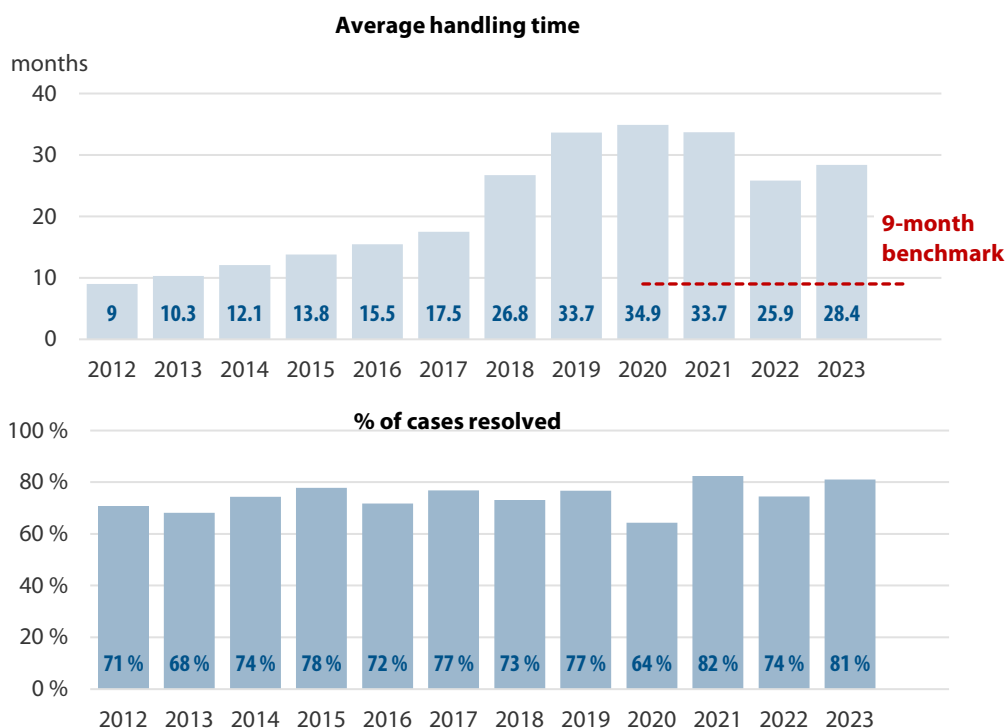
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<sup>17</sup> [Article 138d](#)) TEU.

appropriate course of action (launching an infringement, closing the case without further action, or prolonging the EU Pilot dialogue for a “limited period of time”). We found that the guidelines had no criteria on how to decide whether EU Pilot should be prolonged beyond nine months nor how long the prolongation should be.

**43** Our analysis of the 896 EU Pilot cases sent after the introduction of this benchmark shows that 585 (65 %) were prolonged beyond it. The average prolongation was 10.9 months. On average, 74 % of EU Pilot cases were resolved successfully between 2012 and 2023. The average handling time peaked in 2020 at almost 35 months (according to the Commission this could be attributed to COVID-19 lockdowns). This figure has improved since 2020, but was still 28.4 months in 2023, see [Figure 14](#). One reason for this is the closure of many longstanding cases in the course of 2023.

**Figure 14 – Average handling time (months) for EU Pilot cases**



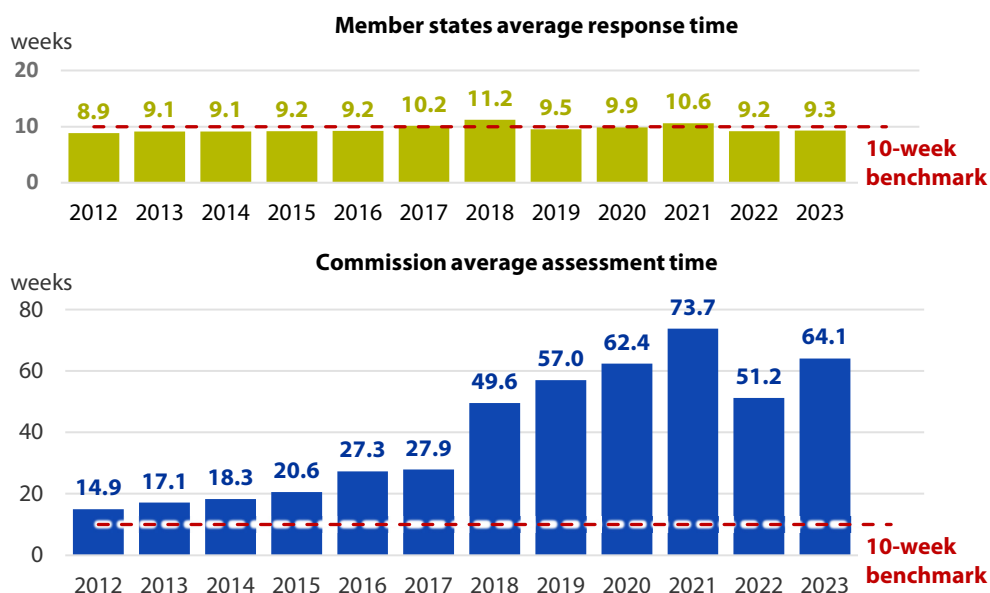
Source: ECA, own analysis based on Themis data, for details see [Annex III](#).

**44** When an EU Pilot is launched, member states have 10 weeks to respond to the Commission’s request for dialogue. The DGs have the same amount of time to assess responses from member state authorities.

**45** We found that while member states generally met the 10-week response deadline, the Commission’s average time to assess replies has increased substantially since 2018, to around six times that deadline, see [Figure 15](#). We also noted a slight

increase in the number of exchanges between the Commission and member states between 2012 and 2023 (1.9 exchanges on average before 2017 and 2.5 afterwards).

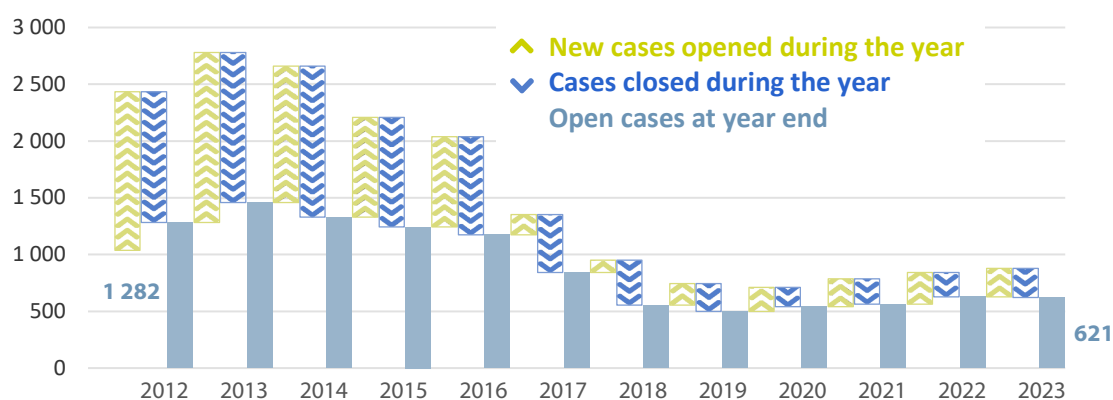
**Figure 15 – Average time for member state responses and Commission assessments in EU Pilot**



Source: ECA, own analysis based on Commission's EU Pilot dialogue data, for details see [Annex III](#).

**46** The Commission's EU Pilot handling and assessment times increased despite the significant drop in the number of EU Pilot dialogues once they were no longer used systematically<sup>18</sup>. While fewer new dialogues initially helped to reduce the backlog, we noted an increasing number of dialogues open at year end since 2020, see [Figure 16](#).

**Figure 16 – EU Pilot dialogues: new, closed or open at year end**

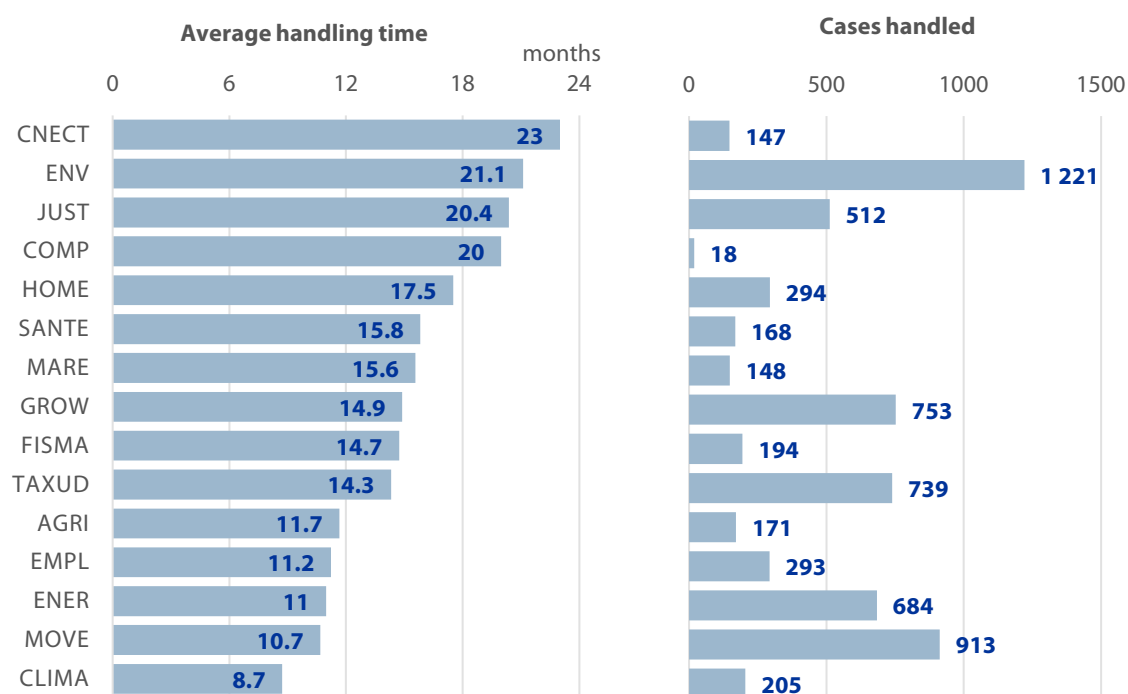


Source: ECA, own analysis based on Commission's data, for more details see [Annex III](#).

<sup>18</sup> Commission, [EU law: Better results through better application](#).

**47** We also found that between 2012 and 2023 EU Pilot handling times varied considerably between DGs. DG CLIMA handled cases in 8.7 months, on average, and DG MOVE in 10.7 months. DGs CNECT, ENV and JUST had the longest handling times of more than 20 months. We found no correlation between workload (number of EU Pilot cases) and handling times, see [Figure 17](#). According to the Commission, handling times varied between DGs for several reasons, such as investigations on issues that required considerable investments or reforms by member states, internal validation processes, or translation and assessment of extensive annexes.

**Figure 17 – Total handled EU Pilot cases and average handling times per DG, 2012-2023**



Source: ECA, own analysis based on Commission's EU Pilot dialogue data, for details see [Annex III](#).

## Most infringement cases are resolved before sanctions are proposed, but they last too long

### The percentages of infringement cases that take longer than benchmark deadlines are rising

**48** After an unsuccessful EU Pilot, or without an EU Pilot if this is not deemed necessary, the Commission can open an infringement procedure on its own initiative, based on a complaint, or by default for all non-communication cases (where a member state fails to inform the Commission of its national transposition measures for a new

directive). The Commission enjoys near absolute substantive and procedural discretion when deciding whether to initiate an infringement procedure, as confirmed by the Court of Justice<sup>19</sup>.

**49** The Commission strives to ensure that member states reach compliance with EU law as soon as possible and that it meets its monitoring benchmarks for enforcement (see paragraph **12**). The 2007 Commission Communication on applying Community law<sup>20</sup> and a 2010 internal note from the Secretariat-General on infringements' management introduced benchmarks for infringement cases, see *Annex II*.

### **Compliance with 1-year benchmark for non-communication cases has fallen since 2018**

**50** Infringement cases where member states have failed to communicate national transposition measures (NCM cases) are a priority for the Commission and should be either closed or referred to Court of Justice within a year<sup>21</sup>. We found that the Commission was able to meet this benchmark during 2012-2017. However, since 2018, handling time has been around 1.5 years, on average, and an increasing percentage of cases have taken longer than the 1-year benchmark (72 % in 2023), see *Figure 18*.

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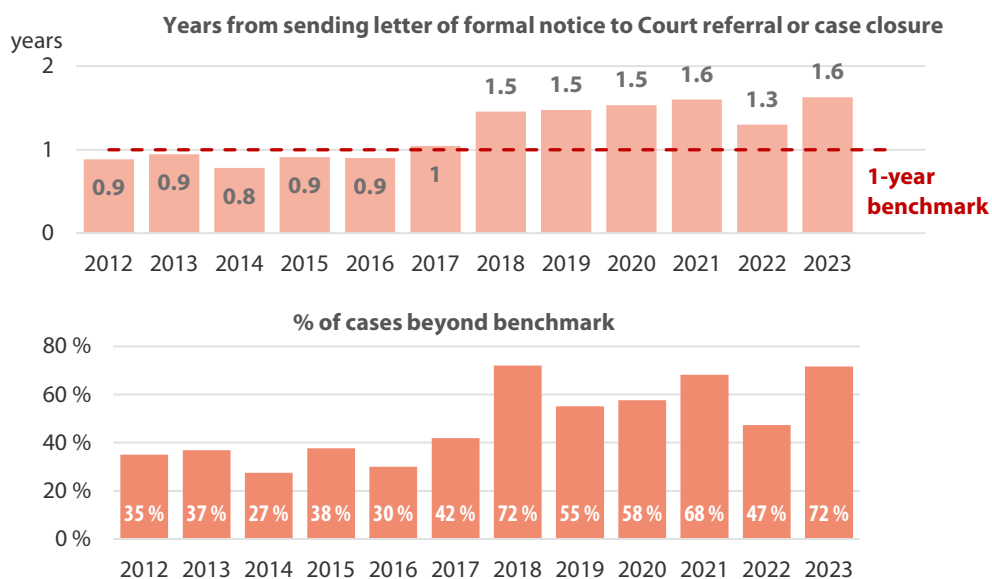
<sup>19</sup> Várnay, 'Discretion in the Articles 258 and 260 (2) TFEU Procedures', CJEU Case C-530/11 paragraphs 33-35, CJEU Case 247/87, paragraphs 11-12.

<sup>20</sup> Commission, *A Europe of results – applying Community law (COM(2007) 502)*, p. 9.

<sup>21</sup> Commission, *A Europe of results – applying Community law (COM(2007) 502)*.



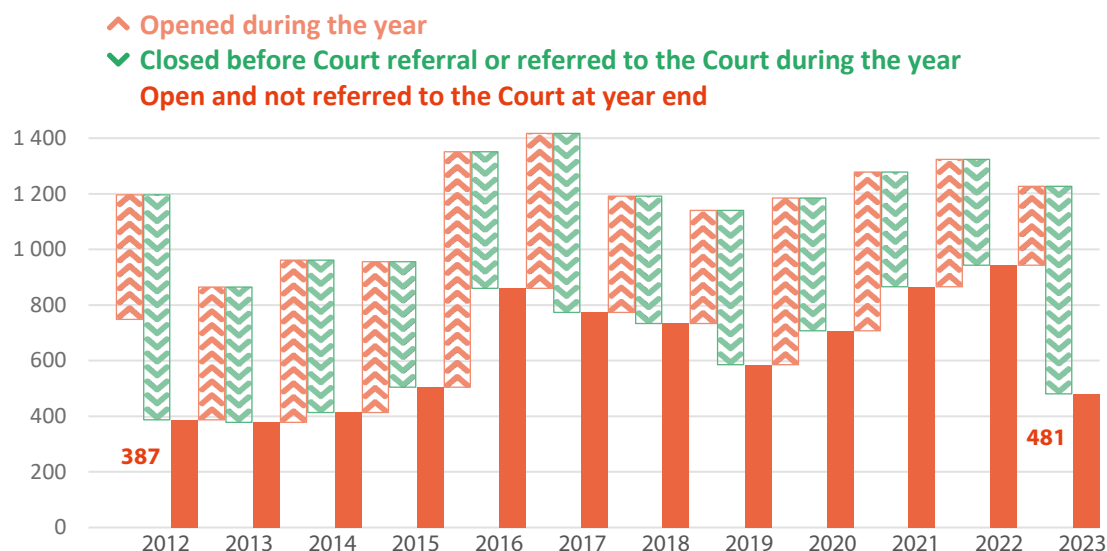
**Figure 18 – Average time to refer NCM infringements to the Court of Justice or close them**



Source: ECA, own analysis based on Themis data, for details see [Annex III](#).

**51** In 2016, there was a peak of new NCMs, which also affected figures in subsequent years. The Commission managed gradually to reduce the number of open cases not referred to the Court of Justice at year end from 2016 to 2019, but a backlog started to accumulate again in 2020 which, according to the Commission, was partly attributable to COVID-19 lockdowns. In 2023, the Commission’s Secretariat-General encouraged DGs to analyse their case portfolios and take decisions on all types of cases where there had been no progress for a long time or propose them for closure. This resulted in a significant reduction of the backlog, see [Figure 19](#).

**Figure 19 – NCM cases opened, referred or closed, or still open per year**



Source: ECA, own analysis based on Themis data, for details see [Annex III](#).

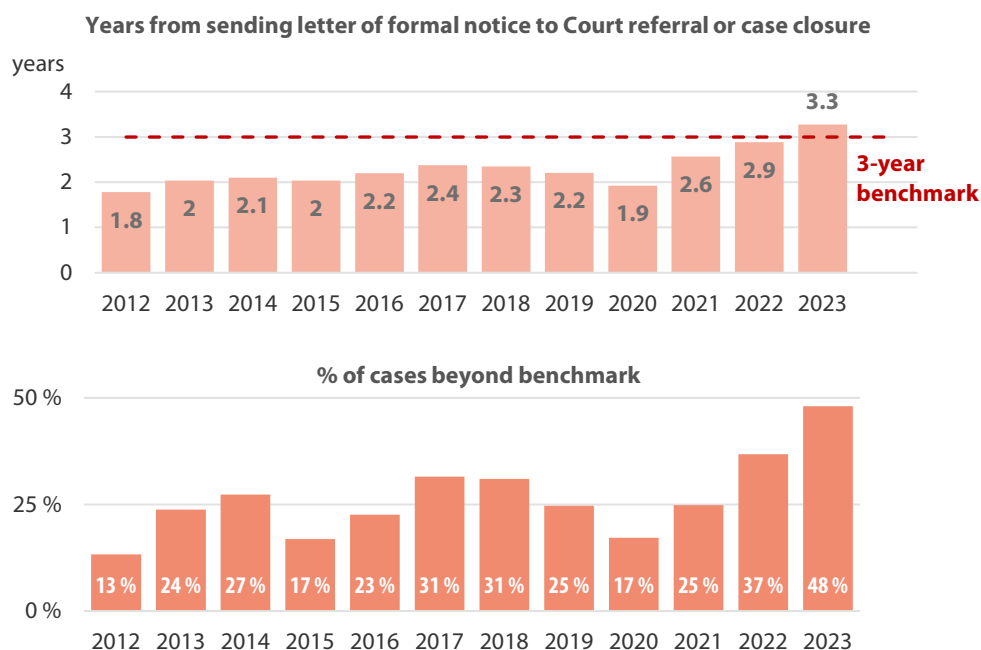
**52** The Commission’s 2021 coherence report found that one of the main factors extending the duration of the NCM infringement cases was that some of them remained at the letter of formal notice stage for too long. Analysing NCM cases in Themis, we found that between 2012 and 2023, the Commission moved to the next step of the infringement 9.8 months after sending the letter of formal notice, on average. While the majority (72.7 %) of NCM cases stayed at the letter of formal notice stage for less time than the average, 27.3 % took longer.

### **The 3-year benchmark for bad application and non-conformity cases is met, on average**

**53** When the member states do not rectify a suspected breach of EU law in cases of bad application of directives (BAD cases), and of EU treaties, regulations and decisions (REG cases) or non-conformity of national laws with directives (NCF cases), and formal infringement procedures are launched, the Commission’s benchmark is either to refer cases to the Court of Justice or close them within 3 years of sending the letter of formal notice.

**54** The Commission managed to meet this benchmark on average between 2012 and 2022. However, after gradually falling from 2018, the share of infringement procedures not meeting this benchmark started to rise again from 2021. In 2023, the average time taken peaked at 3.3 years, with 48 % of cases taking longer than the 3-year benchmark to be referred to the Court of Justice or closed, see [Figure 20](#).

**Figure 20 – Average time to refer BAD/REG/NCF infringements to the Court of Justice or close them**



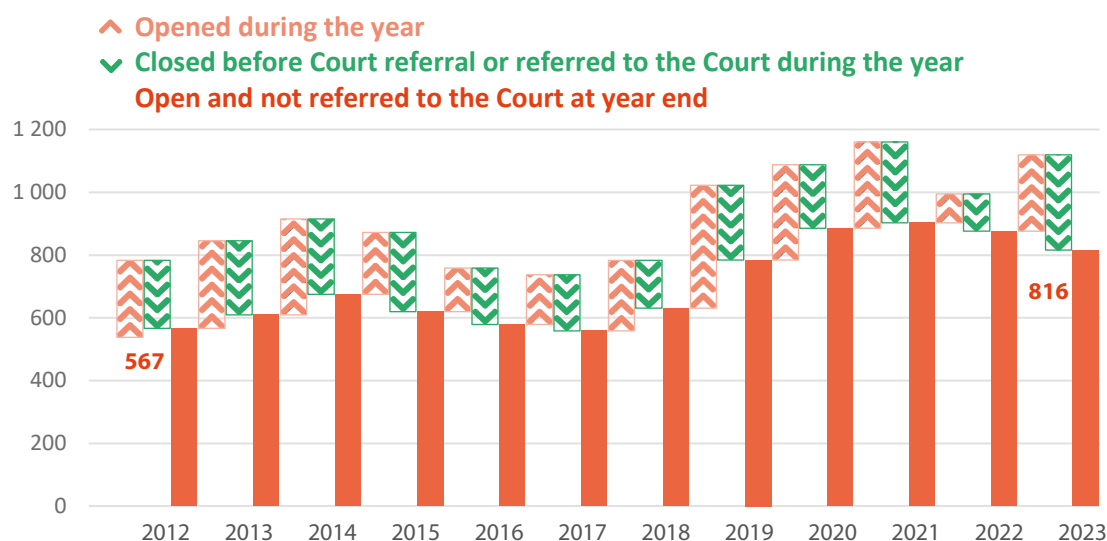
Note:

Types of infringement: non-conformity (NCF); bad application (BAD); breach of EU treaties, regulations, and decisions (REG).

Source: ECA, own analysis based on Themis data, for details see [Annex III](#).

**55** We saw an increase in the number of BAD/REG/NCF cases that remained open but were not referred to the Court of Justice at year end from 2018. The Commission used EU Pilot less after 2017, contributing to the increase in both the average case-handling time and the share of cases that did not meet the 3-year benchmark, see [Figure 21](#).

**Figure 21 – BAD/REG/NCF cases opened, referred or closed, or still open per year**



Source: ECA, own analysis based on Themis data, for details see [Annex III](#).

**56** In our 31 case studies, we examined a total of 23 BAD/REG/NCF infringement cases. In five cases, the 3-year benchmark was not met. We noted this was often due to a higher number of exchanges (between one and five in our sample) at the different stages of the case between the Commission and the member states. For two cases there was a second round of exchanges and in one of these cases there were five rounds of exchanges with the member state; according to the DG this was because of case complexity. See [Box 2](#) and [Annex V](#) for additional details.

## Box 2

### Cases at letter of formal notice stage for more than 1.5 years

In one case, the Commission sent the reasoned opinion to Austria 1.8 years after the letter of formal notice, although in its four replies to the letter of formal notice, Austria did not make any proposal to rectify the issue.

In another case based on a complaint, Italy sent five replies in five rounds of exchanges from 2015 to 2019, following the letter of formal notice. The Commission never issued a reasoned opinion. DG MOVE explained that this was due to case complexity and because the complainant had raised two issues. Only one was covered by the letter of formal notice, while the Commission opened an EU Pilot dialogue for the second.

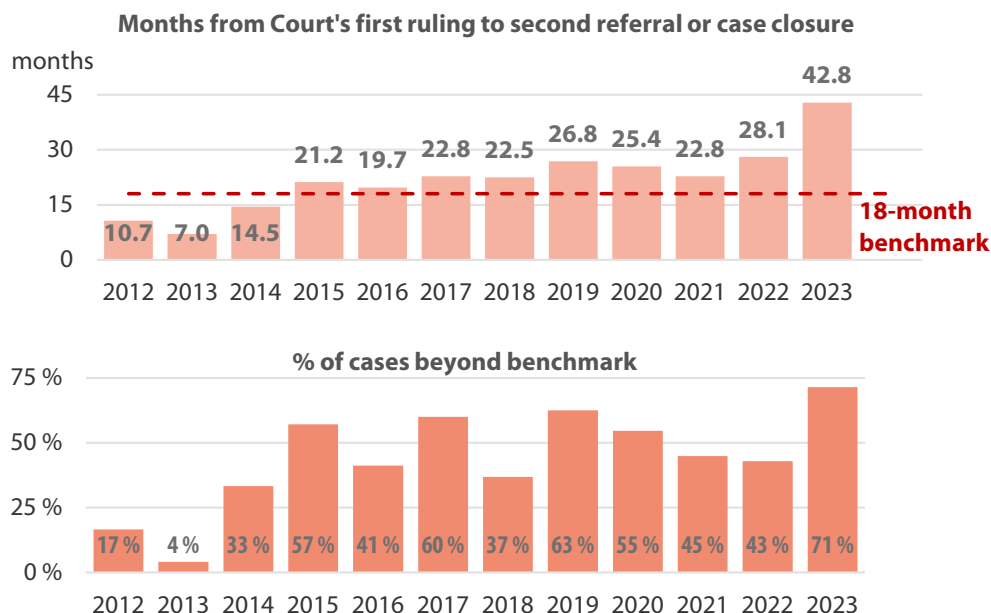
Source: ECA case studies.

### The share of cases not meeting the 18-month benchmark for second referrals to the Court of Justice is increasing

**57** The Commission has up to 18 months<sup>22</sup> either to close the case or, if despite a Court judgment the infringement persists, to refer the member state back to the Court (second referral). Nevertheless, in accordance with the Court of Justice case-law<sup>23</sup>, the Commission must ensure that sufficient time is given to the member state to comply taking into account the individual circumstances of the case.

**58** In 2023, 71 % of second referrals to the Court of Justice or case closure in BAD/REG/NCF cases exceeded the 18-month benchmark, the highest percentage since 2012. The Commission took 42.8 months to deal with these cases in 2023, longer than in any year since 2012, see [Figure 22](#). However, this reflected the 2023 clean-up exercise when the Secretariat-General encouraged DGs to take decisions on all types of cases where there had been no progress for a long time or to propose them for closure (see paragraph 34).

**Figure 22 – Share of closed BAD/REG/NCF cases not meeting 18-month benchmark for second referrals or closure**



Source: ECA, own analysis based on Themis data, for details see [Annex III](#).

<sup>22</sup> Commission, [Implementation of Article 260\(3\) of the Treaty \(2011/C 12/01\)](#), point 3.

<sup>23</sup> [C-278/01](#), paragraph 30.

## In some cases, member states have not rectified breaches of EU law despite being sanctioned for years

**59** Since the Maastricht Treaty of 1992<sup>24</sup>, the Commission may propose financial sanctions when referring a member state to the Court of Justice for second time, if that state has failed to implement a judgment which established an infringement. A subsequent change by the [Treaty of Lisbon](#) introduced financial sanctions if a member state fails to fulfil its obligation to notify measures transposing a directive. Most infringement cases (96.6 %, on average, between 2012 and 2023) are resolved before sanctions are proposed. According to the Commission, the imminent risk of being referred to the Court of Justice with financial sanctions speeds up compliance at national level.

**60** Referring a member state to the Court of Justice is the last resort to enforce compliance with EU law. This is why it is vital to set sanctions which represent a sufficient deterrent. Purely symbolic amounts risk undermining the sanctioning mechanism of [Article 260 TFEU](#) and detracting from its ultimate objective of ensuring full compliance with EU law<sup>25</sup>. The sanctions proposed by the Commission to the Court must be consistent but also predictable for member states and be determined using a method that respects the principles both of proportionality and of equal treatment of member states<sup>26</sup>.

**61** The Commission applies a method to calculate the amount of sanctions it proposes to the Court of Justice. The two types of financial sanctions – daily penalty payments and lump sum payments – aim to coerce and deter respectively. They thus have distinct functions but the identical purpose of encouraging compliance with a Court judgment<sup>27</sup>.

**62** In our sample of infringement case studies, we had six cases where sanctions were imposed. We assessed the Commission's calculation of the sanctions and found that they were accurate and in line with the relevant Commission communication<sup>28</sup>, see [Annex VI](#).

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<sup>24</sup> Commission, Application of Article 228 of the EC Treaty, [SEC/2005/1658](#).

<sup>25</sup> Commission, Application of Article 228 of the EC Treaty, [SEC/2005/1658](#).

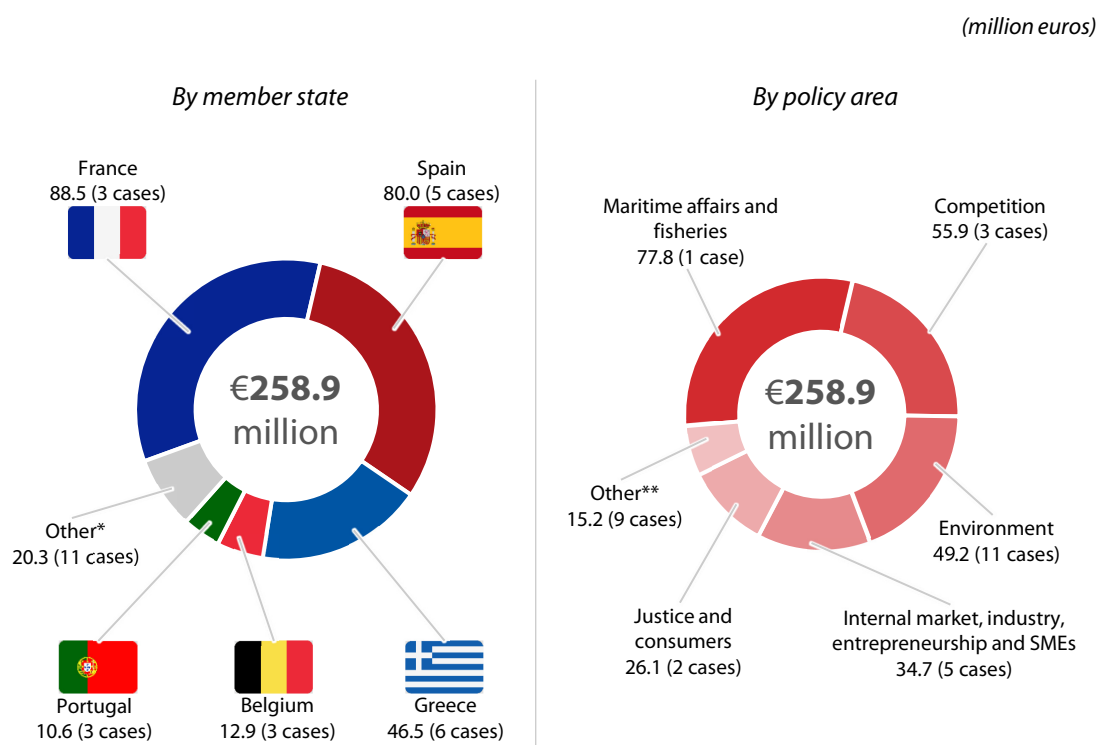
<sup>26</sup> Wahl and Prete, [Between Certainty, Severity and Proportionality](#) (2014).

<sup>27</sup> Case [C-304/02](#), paragraphs 80 and 84.

<sup>28</sup> Commission, Application of Article 228 of the EC Treaty, [SEC/2005/1658](#).

**63** The Commission closely tracks member states' payment of sanctions and is also responsible for periodically assessing compliance dates compared to what was laid down in the Court's judgments. Since the 1992 [Maastricht Treaty](#) until 31 December 2023, the Court of Justice has imposed sanctions on member states in 47 cases. In 31 of these, member states amended national law to comply with EU law, on average, 1.3 years after the Court of Justice had imposed sanctions. The infringement cases were then closed. For all closed cases, member states have paid financial sanctions amounting to €258.9 million, see [Figure 23](#).

**Figure 23 – Sanctions paid by member states in closed infringement cases, 1992-2023**



Notes:

\* Luxembourg, Ireland, Romania, Sweden, Slovakia, Czechia, Slovenia.

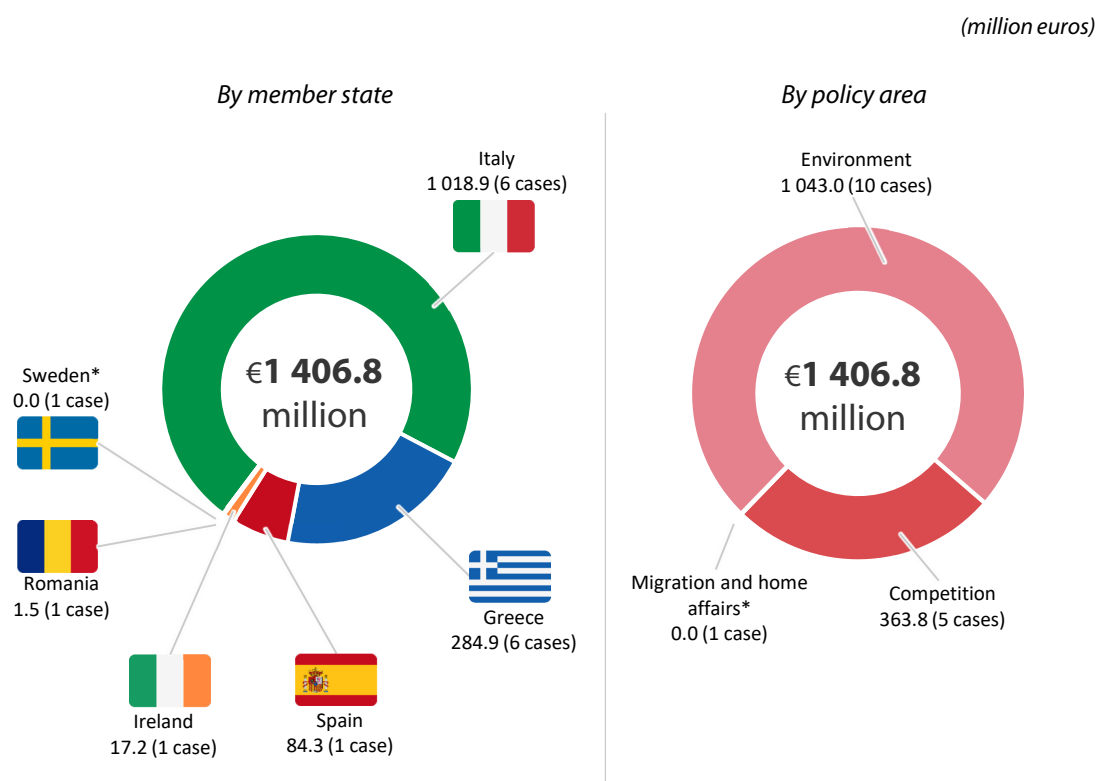
\*\* Financial stability, financial services and capital markets union, Communications networks, content and technology, Mobility and transport, Taxation and customs union, Migration and home affairs.

Source: ECA, own analysis based on Commission data, for details see [Annex III](#).

**64** As of December 2023, there were 16 active cases (out of the 47 mentioned above) where member states were still infringing EU law and for which they were subject to financial sanctions totalling €1 406.8 million, see [Figure 24](#). In 13 of the 16 active cases (in the areas of environment and competition), the member states involved have paid financial sanctions for more than 3 years, and in 6 of those 13 cases, for more than 8 years, see [Annex VI](#). According to the Commission, this is because each Court ruling covers a large range of breaches which may take many years

to resolve, particularly in cases requiring new infrastructure or substantial investments. Academic articles point to the fact that financial sanctions, which are supposed to exert economic pressure on the state to comply, are not always able to bring infringements to an end<sup>29</sup>.

**Figure 24 – Sanctions paid by member states in active infringement cases, at end 2023**



Notes:

\* The Court of Justice issued its judgment recently, therefore there are no sanctions paid yet.

Source: ECA, own analysis based on Commission data, for details see [Annex III](#).

## The Commission regularly monitors and reports on EU law enforcement but adherence to benchmarks is not covered by the reporting

**65** Citizens and other stakeholders expect high levels of transparency about how the Commission is enforcing member states' compliance with EU law and its own oversight

<sup>29</sup> Falkner, 2015 "Fines against member states: An effective new tool in EU infringement proceedings?"; Hofmann, 2018 "How long to compliance?", Burelli, 2023 The Deterrent Effect of Financial Sanctions Pursuant to Article 260(2) TFEU in the Context of Violations of Environmental Obligations, and Wennerås, 2016 Making Effective Use of Article 260 TFEU.



activities<sup>30</sup>. Appropriate monitoring and reporting of its work should be based on accurate data and include performance assessments and identifying why benchmarks are not always being met.

### **The Commission undertakes regular reviews of its enforcement actions, but its recommendations are not focused on improving adherence to benchmarks**

**66** The Commission has produced coherence reports for internal use since 2008 to show how enforcement actions have developed and help assess whether benchmarks were met. These reviews highlight best practice and the main policy developments since the previous report. They also formulate possible actions for improvement during the next period. We found that benchmarks for transposition and conformity checks (see paragraphs **23** and **24**) were not monitored in all coherence reports between 2017 and 2022. Report conclusions pointed to persistent problems of benchmarks not being met.

**67** The Commission announced a stocktaking of its oversight and enforcement activities in 2021<sup>31</sup>. This was done as a follow-up to our **2018 Landscape Review** and was finalised in July 2023. It identified aspects in the current procedural framework that could provide a better overview of how EU law is transposed, interpreted and applied. Commission enforcement tasks were to be adequately prioritised, and appropriate implementation strategies defined to accompany and monitor national transposition or implementation processes. The stocktaking report also identified certain challenges in handling complaints, EU Pilots and infringements, and set out recommendations for improvement (such as handling infringements efficiently, revamping performance management, and making complaints handling easier). However, we noted that there was no definition of structural or systematic problems, no record of the time DGs spent on enforcement subtasks, and no discussions of the merits of outsourcing or the deterrent effect of sanctions.

### **Themis has improved case management, but lacks some functionalities**

**68** The introduction of Themis in December 2020 helped to streamline the management and documentation of EU law enforcement. Instead of three different platforms, Themis includes all the information on transposition, complaints, and

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<sup>30</sup> ECA Landscape Review “Putting EU law into practice”, 2018.

<sup>31</sup> Commission, **Better regulation: Joining forces to make better laws**, 2021.

infringements in one integrated platform. The Commission can more easily follow each case from origin to closure. It also allows a more seamless transition from identifying a potential breach to opening an infringement procedure. Themis has an interface for searching and data extraction with many filters, such as date, case type, and decision, which can be used for customised data reports. In April 2023, the module Themis/Complaints was added. However, Themis is still under development; the Commission plans to add the last major element, the EU Pilot dialogue, in 2025.

**69** We also found that some functionalities, such as being able to extract information on transposition and conformity checks or see when a DG actually created some infringement cases in the system, did not yet exist. The creation dates in the Themis/Infringements module of infringement cases originating from complaints or EU Pilot cases in fact referred to when the complaint or EU Pilot case was input in the system and not the actual infringement case. The concept of “creation date” is thus not clearly defined. Furthermore, information on whether conformity checks had been outsourced was not available. For the moment, Themis does not have a module for forward planning of checks and (internal and external) resources. All this hinders the Commission’s monitoring of its enforcement activities.

### **The Commission publishes pertinent but not complete information on the enforcement of EU law**

**70** Since 1984, the Commission has presented [annual reports on monitoring the application of EU law](#). These report on issues of compliance with EU law in the member states and Commission oversight activities. The reports set out key trends, cooperation with member states and number of cases handled. They also provide the Commission’s handling time for complaints and until 2022, for EU Pilot dialogues and infringement cases.

**71** The Commission currently reports the number of cases and financial sanctions paid by member states concerned by referrals to the Court of Justice and Court judgments but does not disclose amounts of financial sanctions that it proposed. The Commission provides information on the petitions followed up, but does not systematically provide information on the number of petitions it receives from the European Parliament. The Parliament has raised this issue, asking for precise information on the specific number of petitions that led to an EU Pilot dialogue<sup>32</sup>.

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<sup>32</sup> European Parliament, Committee on Legal Affairs, Reports on monitoring the application of Union law [2020](#), [2021](#) and [2022](#).

**72** We compared a selection of statistics on infringement, EU Pilot and complaint cases from the 2022 annual report to check the reliability and accuracy of the data in these reports. We compared the number of new infringement cases opened from 2020 to 2022 and the breakdown by type of infringement. We also looked at the number of cases closed in 2022 and the breakdown by procedural stage. Our work confirmed the Commission's statistics, except for the length of time for handling infringement cases. We could not confirm that because the creation dates of some infringement cases in the Themis database were not available for extraction, see paragraph [69](#).

**73** The Commission does not publish information on how well it adheres to any of its benchmarks. Although the benchmarks are not legally binding, we consider it important that the Commission report on them, as this would contribute to enhancing public scrutiny of its performance.

**74** The Commission has been using the [Single Market Scoreboard](#) (since 1997), the [EU Justice Scoreboard](#) (since 2015) and the [Environmental Implementation Review](#) (since 2017) to complement its reporting in specific policy areas, highlighting those where legal infringements persist. We checked the EU Pilot statistics published in the 2022 Single Market Scoreboard to check the reliability and accuracy of this information. Our work confirmed the Commission's statistics.

**75** We compared the data in the [Commission's public register](#) on infringement cases with the Themis database to check whether the information published was complete and up to date. Our work confirmed that the Commission published the most recent infringement decisions without delay. However, we found that the public register did not detail whether the infringement case was complaint-based; an EU Pilot case had been opened before a formal infringement procedure; or sanctions had been proposed during referral to the Court of Justice. This information is, however, mostly available in Themis.

## Conclusions and recommendations

**76** We conclude that, while the Commission has improved its management of infringement cases, it still takes too long to close the cases. The Commission regularly monitors and reports on EU law enforcement but adherence to benchmarks is neither improving nor reported.

**77** The Commission made transposition and conformity checks a priority in its [2017 Communication](#). We noted that the time taken by the Commission to complete these checks has decreased since 2017. However, half of both transposition and conformity checks still took longer than the benchmarks. The number of directives with a transposition deadline each year is a known figure, but we noted that directorates-general did not have sufficiently well-developed tools to plan for this workload in advance. Outsourced checks led to much longer average completion times compared to in-house checks. We also found that directorates-general lacked information on the completion dates for about a third of the transposition and conformity checks in our sample, which indicates a gap in the documentation and monitoring of these priority activities. See paragraphs [23-28](#).

### Recommendation 1 – Improve planning and documentation of transposition and conformity checks

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The Commission should improve the planning and documentation of transposition and conformity checks by:

- (a) planning the work required for enforcing directives as early as possible, in particular the need for staffing and possible external expertise; and
- (b) ensuring that DGs record all the checks' start and end dates.

**Target implementation date: December 2025**

**78** As regards the 1-year benchmark deadline for handling complaints, we found that in 38 % of cases from 2012-2023, the Commission did not meet this benchmark. We also observed that handling times had been on an upward trend since 2021 although the number of complaints had not risen. Most registered complaints are closed because the information provided is not sufficient to establish a breach of EU law. The Commission introduced a standard complaint form in 2017 to obtain efficiency gains through better substantiated submissions. Furthermore, it set criteria for prioritising

complaints, however there were no guidelines on how to interpret some of them (like “serious damage to EU financial interests” and “systemic failure to enforce EU law”). We also noted that the information provided to complainants was not always complete. See paragraphs [29-38](#).

**79** In addition to complaints, the Commission also receives around 700 petitions from the European Parliament each year some of them referring to breaches of EU law. The Commission does not have statistics on the number of petitions followed up as own-initiative cases under EU Pilot or through infringement procedures in the absence of link between the internal petitions database and the Themis platform. See paragraph [39](#).

**80** In complex cases, or where breaches of EU law are not apparent, the Commission uses the EU Pilot dialogue to assess them, before deciding whether to open formal infringement cases. We found that the time to close EU Pilot cases fell from 34.9 months in 2020 to 28.4 months in 2023. During the period of our audit, 74 % of closed EU Pilot cases resulted in member states complying with EU law without recourse to a formal infringement procedure. In 2020, new EU Pilot guidelines introduced a 9-month handling time after which the Commission should reassess the EU Pilot dialogue and decide on the appropriate course of action (launching an infringement, closing the case, or prolonging it for a “limited period of time”). Although the guidelines do not indicate how decisions should be taken on prolonging EU Pilots beyond 9 months nor how much more time they may take, in practice, 65 % of EU Pilot dialogues were prolonged after the initial 9-month benchmark. See paragraphs [41-47](#).

## Recommendation 2 – Improve handling of complaints, petitions and EU Pilot dialogue

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The Commission should improve the handling of complaints, petitions and EU Pilot dialogue by:

- (a) systematically recording information that has reached the Commission through other channels (such as petitions) in the relevant complaint file, and grouping grievances of a similar nature;
- (b) developing guidelines for interpreting complaint prioritisation criteria such as “serious damage to EU financial interests” and “systematic failure to comply with EU law” to improve consistent application across directorates-general;
- (c) systematically updating complainants on the changes in the status of their complaints to enhance transparency; and
- (d) defining criteria for prolonging EU Pilot cases beyond the 9-month deadline to ensure consistency and appropriate monitoring.

**Target implementation date: December 2025**

**81** As regards infringement cases, we found an increasing share of cases taking longer to close than the benchmarks. In 2023, 72 % of non-communication cases took longer than the 1-year benchmark. While, on average, the 3-year benchmark for bad application and non-conformity cases was met during 2012-2022, an increasing share of these cases has taken longer than the benchmark since 2021. We noted that infringement cases closed after the benchmark involved a higher number of exchanges between the Commission and the member states. See paragraphs [48-58](#).

**82** We found that most infringement cases between 2012 and 2023 were resolved before the Commission proposed sanctions. The Commission's calculation of such sanctions was in line with the methodology. Furthermore, the Commission tracked member states' payment of sanctions and periodically assessed compliance dates compared to what was laid down in judgments from the Court of Justice. Up to December 2023, the Court of Justice had imposed sanctions on member states in 47 cases. In most cases, member states amended national law to comply with EU law (and the relevant infringement case was closed), on average, 1.3 years after the sanctions were imposed. However, in 13 cases, we noted that the member states concerned had been paying financial sanctions for several years rather than rectifying breaches of EU law. This raises concerns about the deterrent effect of these financial penalties. See paragraphs [59-64](#).

### **Recommendation 3 – Reinforce infringement case management and update, where necessary, the methodology for proposing sanctions**

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The Commission should reinforce its infringement case management and sanctions by:

- (a) monitoring progress in case-handling to identify potential bottlenecks and take proactive steps to address them by adjusting the necessary resources and priorities in a more timely manner if necessary; and
- (b) reviewing the methodology for proposing sanctions to ensure they represent a sufficient deterrent.

**Target implementation date: December 2027 (a), December 2026 (b)**

**83** The Themis case management system has considerably improved case monitoring. The Commission undertakes regular internal coherence reviews of its enforcement actions across the departments involved, but we found that these reviews did not sufficiently contribute to improving adherence to benchmarks. The Commission published information on the application and enforcement of EU law that is accurate overall, but data on its adherence to benchmarks is not complete. See paragraphs [66-75](#).

### **Recommendation 4 – Strengthen monitoring and reporting on enforcement activities**

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The Commission should enhance its monitoring and reporting on enforcement activities by:

- (a) monitoring handling times, including against all relevant indicative benchmarks, supported by the continuous improvement of the Commission's IT system for case management; and
- (b) reporting annually on the Commission's performance against all public indicative benchmarks.

**Target implementation date: December 2026**

This report was adopted by Chamber V, headed by Mr Jan Gregor, Member of the Court of Auditors, in Luxembourg at its meeting of 13 November 2024.

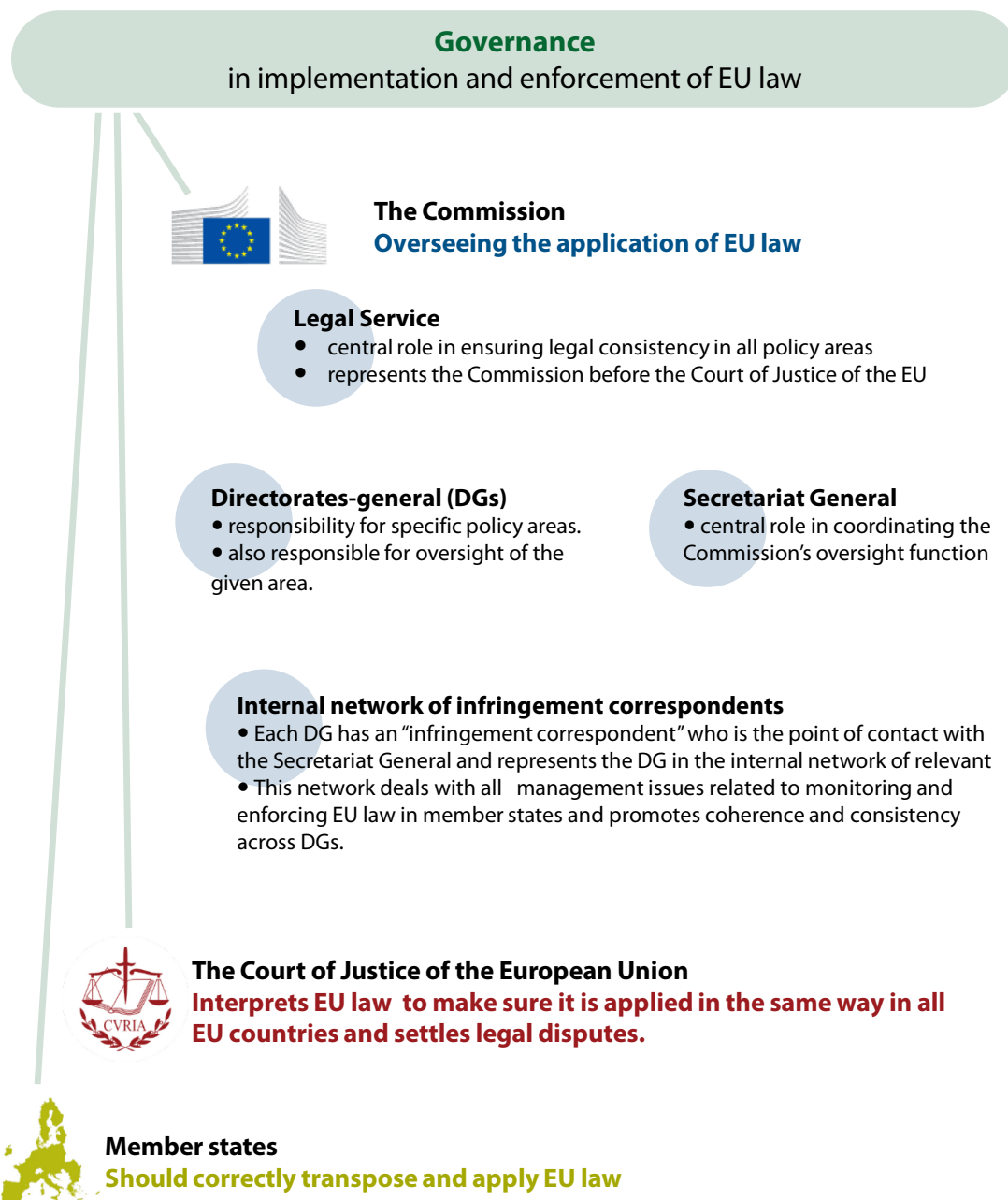
*For the Court of Auditors*

Tony Murphy  
*President*



# Annexes

## Annex I – Governance in implementation and enforcement of EU law



Source: ECA, based on Commission documents.

## Annex II – Commission’s monitoring benchmarks

Type of procedure	Monitoring benchmarks	Before the 2017 Communication	Public/Internal
<b>Compliance assessment</b>	6 months for transposition checks	No (January 2017)	Public <sup>33</sup>
	24 months for conformity checks	No (January 2017)	
<b>Complaints handling</b>	15 days to send an acknowledgement	No (January 2017)	Public <sup>34</sup>
	2 months to provide feedback to the complainant after preliminary assessment of the complaint (within the 1-year benchmark)	No (December 2020)	Public <sup>35</sup>
	As a general rule, the Commission will investigate complaints with a view to arriving at a decision to issue a formal notice or to close the case within not more than one year from the date of registration of the complaint. Procedural guarantees for complainants: where the 1-year benchmark is exceeded, the DG must inform the complainant in writing by sending a holding reply. Information on decisions taken in the infringement case must be sent to complainants after each decision (letter of formal notice, reasoned opinion, referral to the Court, closure)	Yes (April 2012)	Public <sup>36</sup>
<b>EU Pilot dialogue</b>	9 months to complete the EU Pilot	No (July 2020)	Internal
<b>Management of infringements</b>	3 years for handling BAD, NCF and REG infringements	Yes (2010)	Internal
	1 year to close or bring to the Court NCM infringements (failure to communicate national transposition measures)	Yes (2007)	Public <sup>37</sup>
	18 months for second referrals to the Court or closure	Yes (2011)	Public <sup>38</sup>

*Note:* Types of infringement: non-communication (NCM), non-conformity (NCF), bad application (BAD), and infringement of regulations, treaties, and decisions (REG).

*Source:* ECA, based on the Commission’s guidelines and communications.

<sup>33</sup> Better regulation toolbox, Tool #39.

<sup>34</sup> Annex to EU law: Better results through better application (2017/C 18/02), p. 1.

<sup>35</sup> Long term action plan for better implementation and enforcement of single market rules COM(2020) 94 final, action 20.

<sup>36</sup> Communication from the Commission, Updating the handling of relations with the complainant in respect of the application of Union law, COM(2012) 154, p. 6.

<sup>37</sup> Commission, A Europe of results – applying Community law (COM(2007) 502), p. 9.

<sup>38</sup> Commission, Implementation of Article 260(3) of the Treaty (2011/C 12/01).

## Annex III – Outline of data methodology

We briefly describe the methodology used for different parts of our audit.

- (a) **Case studies.** Our sample of 31 infringement cases was selected using specific parameters: DGs with highest number of infringement cases, basis for infringement cases, cases with and without EU Pilot dialogues, use of financial sanctions, case duration. For all sampled infringement cases, we created a timeline from the date when the specific problem occurred (complaint was registered or issue detected by DG) until the infringement case was closed. We used our analysis to highlight good or bad practice and checked not only adherence to the monitoring benchmarks, but also the time elapsed between the different steps (letter of formal notice, reasoned opinion, referral to the Court of Justice, closure).
- (b) **Questionnaire sent to 15 DGs.** We selected the DGs handling complaints and infringements and sent them all a standardised questionnaire. Our aim was to obtain information about workload (e.g., number of EU laws monitored) and resources (e.g., staff and use of external contractors). This information would allow us to analyse the resources used for detecting and correcting potential infringements. The DGs selected were Directorates-General AGRI, CLIMA, CNECT, COMP, EMPL, ENER, ENV, FISMA, SANTE, GROW, JUST, MARE, HOME, MOVE, and TAXUD.
- (c) **Figures and graphs.** The table below describes the data used.

Figure number	Methodology
<i>Figure 6</i>	<p>The number of transposition deadlines covers only deadlines between 1.1.2012 and 31.12.2023, and excludes deadlines with status “Not applicable to member state” in the Themis database, i.e. directives which member states are not required to transpose.</p> <p>The number of petitions is obtained from the records of the European Parliament. These might not use the same definition of potential violations of EU law as that used by the Commission.</p> <p>The number of complaints covers complaints registered between 1.1.2012 and 31.12.2023, whose closure type is not “duplicate” in the Themis database.</p> <p>The number of pursued complaints in EU Pilot or directly in infringement cases relates to complaints for which an EU Pilot or an infringement case was sent between 1.1.2012 and 31.12.2023, but some of these complaints were registered between 1.1.2008 and 31.12.2011.</p>

Figure number	Methodology
	<p>The number of EU Pilot cases covers only those sent to member states between 1.1.2012 and 31.12.2023. The status of cases (active/closed) is as of 31.12.2023.</p> <p>The number of infringement cases covers only those with an LFN sent between 1.1.2012 and 31.12.2023. The status of cases (active/closed) is as of 31.12.2023.</p>
<i>Figure 7</i>	<p>The information covers only the 15 DGs listed in point (b) of this Annex and was received in January 2024.</p>
<i>Figure 8</i>	<p>The average time to complete the transposition check is calculated from the transposition deadline, or from the date when the member state notified its full transposition measures if that was later than the deadline, up to the transposition check completion date as communicated to the ECA by the relevant DG.</p> <p>The average time to complete the conformity check is calculated from the date when the member state notified its transposition measures up to the conformity check completion date as communicated to the ECA by the relevant DG.</p> <p>The data relate only to the 15 DGs listed in point (b) of this Annex. We only show data for measures notified from 2012 to 2020.</p>
<i>Figure 11</i>	<p>The number of complaints is shown by year of complaint registration. We show all eligible complaints registered each year (for information on this criterion, see paragraph 30), whose closure type is not “duplicate” in the Themis database.</p> <p>The number of pursued complaints is based on whether the Commission has sent an EU Pilot case or an LFN to the member state concerned by the complaint. All such complaints are counted as “pursued” in the year when the EU Pilot was sent or the formal infringement was launched (through the LFN). For example, if a complaint was registered in 2015 and the Commission noted in Themis that it was pursued via an EU Pilot case sent in 2017, then this complaint is counted as pursued in 2017.</p>
<i>Figure 12</i>	<p>The data relate to all eligible complaints (irrespective of complaint status, i.e., open, closed or transferred to EU Pilot or infringement case) registered between 1.1.2008 and 31.12.2023, whose closure type is not “duplicate”, per year of closure or LFN sent, if applicable.</p> <p>The reference period for this Figure starts in 2008 and not in 2012 as in <i>Figure 6</i> to allow actual time to accumulate for complaints handled in 2012 but registered before that year. If we considered</p>

Figure number	Methodology
	<p>only cases registered from 2012, the average handling times in 2012 would be artificially short.</p>
<p><i>Figure 13</i></p>	<p>The data relate to all eligible complaints registered between 1.1.2008 and 31.12.2023, whose closure type is not “duplicate” in the Themis database, and for which either an LFN was sent or which were closed between 1.1.2012 and 31.12.2023, per lead DG for the 15 DGs listed in point (b) of this Annex.</p> <p>The reference period for this Figure starts in 2008 and not in 2012 as in <i>Figure 6</i> to allow actual time to accumulate for complaints handled in 2012 but registered before that year. If we considered only cases registered from 2012, the average handling times in 2012 would be artificially short.</p>
<p><i>Figure 14</i></p>	<p>The data relate to all EU Pilot cases sent to member states between 1.1.2008 and 31.12.2023, by year of case closure. The handling time is calculated from the date when the case was sent to the member state concerned until the date of closure.</p> <p>The reference period for this Figure starts in 2008 and not in 2012 as in <i>Figure 6</i> to allow actual time to accumulate for cases closed in 2012 but opened before that year. If we considered only cases submitted from 2012, the average handling time in 2012 would be artificially short.</p> <p>Resolved cases are all closed cases which have a closure type “normal closure”, “closure via college [of EU Commissioners]” or “follow-up” in the EU Pilot database.</p>
<p><i>Figure 15</i></p>	<p>We calculate member state response times and DG assessment times for all EU Pilot cases sent to member states between 1.1.2008 and 31.12.2023, and we show the data by year of case closure.</p> <p>The reference period for this Figure starts in 2008 and not in 2012 as in <i>Figure 6</i> to allow actual time to accumulate for cases closed in 2012 but opened before that year. If we considered only cases submitted from 2012, the average response and assessment times in 2012 would be artificially short.</p> <p>The member state response time is calculated for each case as the average duration of consecutive events in the EU Pilot database of type “case sent to member state”, “DG assessment” or “additional info requested” on the one hand, and “member state response”, “final response by member state” or “note added by member state” on the other.</p> <p>The DG assessment time is calculated for each case as the average duration of consecutive events in the EU Pilot database</p>

Figure number	Methodology
	of type “member state response”, “final response by member state” or “note added by member state” on the one hand, and “DG assessment” or “additional info requested” on the other.
<i>Figure 16</i>	<p>The analysis covers all EU Pilot cases sent to member states between 1.1.2008 and 31.12.2023. The cases open at year end for each calendar year are calculated by taking the total of open cases at the end of the previous calendar year, adding to them the number of cases opened in the current calendar year, and deducting the number of cases closed in the current calendar year. We only show years 2012-2023 in the graph.</p> <p>This Figure uses EU Pilot cases sent since 2008, because there were cases already open before 2012, which were closed after that year.</p> <p>The discrepancy in the number of reported active EU Pilot cases as of 31.12.2023 in <i>Figure 6</i> (619) versus the number of cases open at year-end 2023 in this Figure (621) results from two cases sent before 2012, which were still active at our cut-off date.</p>
<i>Figure 17</i>	The data relate to all closed EU Pilot cases sent to member states between 1.1.2012 and 31.12.2023, per lead DG, as of 31.12.2023. The handling time is calculated from the date the case was sent to the member state concerned until the date of closure.
<i>Figure 18</i>	<p>The data relate to all closed NCM infringement cases for which LFNs were sent to member states between 1.1.2008 and 31.12.2023, by year of case closure.</p> <p>The reference period for this Figure starts in 2008 and not in 2012 as in <i>Figure 6</i> to allow actual time to accumulate for cases closed or referred in 2012, but opened before that year. If we considered only cases opened from 2012, the average handling time in 2012 would be artificially short.</p>
<i>Figure 19</i>	<p>The cases open but not referred to the Court of Justice at year end for each calendar year are calculated by taking the total of active cases which have not been referred to the Court at the end of the previous calendar year, adding to them the number of new cases opened in the current calendar year, and deducting the number of cases closed before Court referral or referred to the Court in the current calendar year.</p> <p>In the analysis we include all NCM cases with an LFN sent between 1.1.2008 and 31.12.2023, but we only show the years 2012-2023 in the graph. We include cases with LFN sent since 2008, since there were cases already open before 2012, which were closed or referred after that year.</p>

Figure number	Methodology
<b>Figure 20</b>	<p>The data relate to all closed BAD/REG/NCF infringement cases for which LFNs were sent to member states between 1.1.2008 and 31.12.2023, by year of case closure.</p> <p>The reference period for this Figure starts in 2008 and not in 2012 as in <b>Figure 6</b> to allow actual time to accumulate for cases closed or referred in 2012 but opened before that year. If we considered only cases opened from 2012, the average handling time in 2012 would be artificially short.</p>
<b>Figure 21</b>	<p>The cases open and not referred to the Court of Justice at year end for each calendar year are calculated by taking the stock of active cases, which have not been referred to the Court yet at the end of the previous calendar year, adding to them the number of new cases opened in the current calendar year and deducting the number of cases closed before Court referral or referred to the Court in the current calendar year.</p> <p>In the analysis we include all BAD/REG/NCF cases with an LFN sent between 1.1.2008 and 31.12.2023, but we only show the years 2012-2023. We include cases sent since 2008, because there were cases already open before 2012, which were closed or referred after that year.</p>
<b>Figure 22</b>	<p>The data relate to all closed BAD/REG/NCF cases with LFN sent between 1.1.2008 and 31.12.2023 for which the Court of Justice had issued a first ruling, by year of case closure.</p>
<b>Figure 23</b>	<p>The data relate to all sanctions paid by member states in closed infringement cases as a result of a Court ruling after a Court referral pursuant to Article 260 TFEU, in current amounts as of 31.12.2023.</p>
<b>Figure 24</b>	<p>The data relate to all sanctions paid by member states in open (active) infringement cases as a result of a Court ruling after a Court referral pursuant to Article 260 TFEU, in current amounts as of 31.12.2023.</p>

Source: ECA.

## Annex IV – Case studies (complaints)

DG	Member state	Type of infr.	Days to open EU Pilot	Days to launch infr*.	Acknowledgement of receipt sent 15 days from receipt of complaint?	Complainant informed about each step?***	Number of yearly holding replies of total required
FISMA	AT	NCF	428	1 106	YES	Partially	2/3
CNECT	PT	NCF	171	977	YES	Partially	0/2
MOVE	IT	NCF	186	1 222	NO	Partially	0/3
GROW	BG	BAD	444	732	YES	Partially	0/2
GROW	PT	BAD	120	667	YES	NO	0/1
GROW	AT	BAD	96	488	YES	Partially	0/1
JUST	FR	BAD	169	2 416	YES	Partially	0/6
GROW	CY	REG	85	352	YES	Partially	0/1
TAXUD	BE	REG	174	955	YES	Partially	1/2
ENV	ES	BAD	92	/	NO	Partially	/
GROW	SK	REG	92	582	YES	YES	0/1
ENV	HR	BAD	135	543	YES	Partially	0/1
FISMA	EL	REG	N/A	470	YES	YES	1/1

*Note:* Types of infringement: non-communication (NCM), non-conformity (NCF), bad application (BAD), and infringement of regulations, treaties, and decisions (REG).

\* Benchmark 1 year (365 days).

\*\* EU Pilot dialogue, letter of formal notice, reasoned opinion, referral to the Court of Justice, judgments, pre-closure letter, closure of the infringement case.

*Source:* ECA, 31 case studies using information from the Commission.



## Annex V – Overview of 31 infringement case studies

✓ – benchmark deadline met

X – benchmark deadline not met

N/A – benchmark deadline not applicable

Lead DG	Type of infr.	MS	Date*	Infr. launched in good time? **	Infr. closed / 1st referral? ***	Infr. closed / 2nd referral? ****	Overall duration (years)
FISMA	NCF-CPTL	AT	30/01/2019	X	✓	N/A	3.7
CNECT	NCF-CPTL	PT	25/06/2012	X	X	✓	9.1
MOVE	NCF-CPTL	IT	18/06/2012	X	X	N/A	10.7
GROW	BAD-CPTL	BG	21/06/2010	X	✓	N/A	3.8
GROW	BAD-CPTL	PT	16/09/2015	X	✓	N/A	3.4
GROW	BAD-CPTL	AT	25/03/2015	X	✓	✓	6.5
JUST	BAD-CPTL	FR	13/12/2012	X	X	N/A	10.1
GROW	REG-CPTL	CY	06/03/2013	X	✓	N/A	2.1
TAXUD	REG-CPTL	BE	14/02/2012	X	✓	N/A	5.3
ENV	BAD-CPTL	ES	30/08/2012	X	✓	N/A	7.2
GROW	REG-CPTL	SK	15/07/2015	X	✓	N/A	3.3
ENV	BAD-CPTL	HR	30/09/2013	X	✓	X	Case still open
FISMA	REG-CPTL	EL	16/06/2021	X	✓	X	2.1
JUST	NCF-OIC	FI	27/11/2012	✓	✓	✓	2.4
ENV	NCF-OIC	BG	09/12/2010	X	X	N/A	10
ENER	BAD-OIC	EL	21/03/2013	X	✓	✓	4.2
MOVE	REG-OIC	HR	NO DATA	X	✓	✓	
MOVE	REG-OIC	PL	01/01/2013	X	✓	✓	5.1
ENER	NCF-OIC	SI	03/02/2015	X	✓	✓	4.6
ENV	BAD-OIC	MT	NO DATA	X	✓	N/A	
ENV	BAD-OIC	ES	23/03/2016	X	✓	✓	5.2
GROW	NCF-OIC	SE	24/01/2019	✓	X	N/A	4.4
MOVE	REG-OIC	IT	NO DATA	✓	✓	N/A	
HOME	NCM	LU	15/05/2015	X	X	N/A	3.5
SANTE	NCM	HU	31/08/2019	✓	✓	N/A	0.2

Lead DG	Type of infr.	MS	Date*	Infr. launched in good time? **	Infr. closed / 1st referral? ***	Infr. closed / 2nd referral? ****	Overall duration (years)
FISMA	NCM	RO	26/06/2017	✓	✓	N/A	4.0
EMPL	NCM	LT	20/08/2014	✓	X	N/A	5.6
FISMA	NCM	IE	26/06/2017	✓	✓	N/A	4.0
CNECT	NCM	BE	01/01/2016	✓	X	N/A	4.9
FISMA	NCM	SI	03/07/2017	✓	✓	N/A	3.9
JUST	NCM	ES	06/05/2018	✓	X	N/A	3.8

CPTL – complaint-based case.

OIC – own initiative case.

\*:

For NCF/BAD/REG-CPTL cases, date when complaint was registered.

For NCF/BAD/REG-OIC own-initiative cases, date when case was detected by DG.

For NCM cases, date when transposition deadline expired.

\*\*:

For CPTL, 1 year from registration of complaint.

For OIC, 1 year from detecting the case.

For NCM cases, 9 months from expiry of transposition deadline.

\*\*\*:

For NCF/BAD/REG cases, 3 years from sending letter of formal notice to decision to close the case or refer it to the Court of Justice.

For NCM cases, 1 year from sending a letter of formal notice to decision to close the case or refer it to the Court of Justice.

\*\*\*\*:

For all infringement cases, 8-18 months from date of first ruling to date of decision to refer the matter for a second time or closure date.

Source: ECA, based on information from the Commission and Themis data.

## Annex VI – Financial sanctions

Although the Commission can propose financial sanctions, it is for the Court of Justice to determine the amounts that it considers appropriate. The sanctions imposed by the Court of Justice may be composed of a **lump sum payment** (calculated from the infringement date until the delivery of the Court judgment or full compliance, if reached earlier), plus a **daily penalty payment** (to prompt the member state to bring the infringement to an end as soon as possible after the delivery of the judgment).

Flat-rate amounts for the daily penalty and the lump sum, as well as a minimum lump sum and “n” factor for each member state, are updated by the Commission annually<sup>39</sup>. The “n” factor reflects the capacity of the member state to pay, calculated using weightings of its GDP and population.

The **daily penalty payment** is calculated by multiplying the daily penalty flat-rate amount (as updated by the Commission annually), first by coefficients for severity (seriousness) and duration of the infringement, and then by the “n” factor.

For the **lump sum**, a daily (lump sum) amount is calculated by multiplying the lump sum flat-rate amount by a coefficient for severity and then by the “n” factor. The **lump sum payment** is the result of multiplying the daily (lump sum) amount by the number of days the infringement persists between the date of the first judgment and the date that the infringement comes to an end, or the date of delivery of the judgment, pursuant to [Article 260\(2\) TFEU](#).

A **lump sum payment** based on the daily (lump sum) amount is proposed by the Commission when, as the result of the above-mentioned calculation exceeds the minimum lump sum for the member state in question<sup>40</sup>.

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<sup>39</sup> Infringement procedure, [Financial penalties](#).

<sup>40</sup> Section 4, [Communication 2023/C 2/01](#).

## Calculation of financial sanctions



**Cs – Severity of the infringement**  
(factor between 1 and 20)



**Cd – Duration**  
(factor between 1 and 3)



**n – “n” factor**  
(capacity to pay of the member state)

Source: ECA, based on Commission presentation on Infringement procedure and enforcement of EU law, February 2023.

For infringement procedures opened by 19 January 2017 (the date when the Communication, [EU law: Better results through better application](#), was published), the Commission will request **only a penalty payment** when proposing referral of an infringement case to the Court of Justice. However, according to the Communication, the Commission will request both **a penalty payment** and **a lump sum** in all cases covered by [Article 260\(3\) TFEU](#) in which the decision to send the letter of formal notice was taken after 19 January 2017 (see paragraph [10](#)).

## Calculation of financial sanctions – Belgium (NCM)

The Commission decided to refer Belgium to the Court of Justice on 13 July 2017 and ask for financial penalties to be imposed based on [Article 260\(3\) TFEU](#). Belgium had at that time only notified one transposition measure of Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks.

The daily penalty flat-rate amount (F-rap) for calculating the financial sanctions in this case was €680.

Based on its analysis, the Commission proposed a **coefficient for severity (Cs)** of 9 in this case.

The **coefficient for duration (Cd)** is calculated taking the period in months starting from the day following expiry of the transposition deadline in the directive in question and the date of the decision to refer Belgium to the Court and applying a rate of 0.10 per month.

The deadline for transposition of Directive 2014/61/EU was 1 January 2016. Since the referral decision was to be taken by the Commission on 13 July 2017, 18 months were counted as the duration. By applying a rate of 0.10 per month, the **coefficient for duration** was 1.8.

The “n” factor reflects the capacity of the member state in question to pay. The “n” for Belgium was 4.96.

Daily penalty (Dp) = (F-Rap × Cs × Cd) × n = €54 639.30

The Commission referred the case to the Court of Justice, initially proposing daily penalty of €54 639.30 per day of delay in transposing Directive 2014/61/EU.

After the referral decision from the Court, further transposition measures were notified by Belgium, still however without ensuring full transposition. In the light of those measures, the Commission decided on 8 March 2018 to adapt the financial sanctions. The coefficient for severity (Cs) was lowered to 2 and with a last modification to 1.

After these modifications, the final amount of daily penalty proposed by the Commission fell to €6 071.04 per day of delay in transposing Directive 2014/61/EU to be imposed from the day of delivery of the judgment. On 8 July 2019, the Court issued its judgment and imposed a daily payment of €5 000 on Belgium, until compliance.

Belgium complied and notified the Commission on 22 October 2019, 106 days after Court’s judgment (8 July 2019). The penalty payment including late payment interests thus amounted to €643 530.24.

## Calculation of financial sanctions – Romania (NCM)

Romania still had not communicated any transposition measures for Directive (EU) 2015/849 to the Commission, and thus had failed to comply with the requirements of Article 67 of the Directive. The Commission decided on 19 July 2018 to refer the case to the Court of Justice, pursuant to [Article 258](#) and [Article 260\(3\) TFEU](#).

The daily penalty flat-rate amount (F-rap) for calculating the financial sanctions in this case was €700.

The Commission proposed a **coefficient for severity (Cs)** of 8 in this infringement case.

**The coefficient for duration (Cd)** is calculated taking the period in months starting from the day following expiry of the transposition deadline in the directive in question until the date of the decision to refer Romania to the Court and applying a rate of 0.10 per month. The result can be a minimum of 1 and a maximum of 3.

In this case, the transposition deadline for Directive (EU) 2015/849 was 26 June 2017. There were 12 months from the day following the expiry of that deadline (27 June 2017) until the Commission's decision for referral to the Court (19 July 2018).

By applying a rate of 0.10 per month, the coefficient for duration was calculated as 1.2.

The “**n**” **factor** for Romania was 3.27.

Daily penalty (Dp) = (F-Rap × Cs × Cd) × n = €21 974.40

The daily penalty proposed by the Commission was thus **€21 974.40** as from the date of delivery of the judgment in Case C-549/18 for each day of Romania's delay in notifying transposition measures.

Every time the Commission refers a case to the Court of Justice, it can also propose a lump sum payment of at least the minimum figure determined for each member state. At the time of this case, **the minimum lump sum for Romania was €1 887 000.**

The lump sum flat-rate amount (F-rap) for calculating a daily lump sum amount in this case was €230 per day.

Daily lump sum = F-rap × Cs × n = **€60 160.80**

The Commission therefore proposed that the Court impose payment of a lump sum based on a daily amount of **€60 160.80** (to be multiplied by the number of the days between the transposition deadline and the compliance date). The daily

amount was multiplied by 754, this being the number of days elapsed between transposition deadline (27 June 2017) and actual transposition date (20 July 2019). The lump sum thus amounted to €4 536 667.20.

The Court issued a judgment on 16 July 2020, ordering Romania to pay the European Commission a lump sum in the amount of €3 000 000.

Source: ECA, based on Commission and Court documents.

### **Examples of open cases where member states have been paying financial sanctions for several years without having reached full compliance with EU law**

Italy has been paying financial sanctions since 2011 by order of the Court of Justice in Case [C-496/09](#), for failure to comply with the judgment of 1 April 2004 in Case [C-99/02 \*Commission v Italy\*](#). This concerned the recovery from the recipients of aid granted by Italy to promote employment, which was found to be unlawful and incompatible with the common market. The Court ordered Italy to pay a penalty payment calculated by multiplying the lump sum of €30 million by the percentage of the unlawful aid that had not yet been recovered or shown to have been recovered. The total principal amount paid by 31 December 2023 was €86.48 million, and the case was still open after 12 years.

Following complaints, questions, and European Parliament reports on the existence of illegal and uncontrolled landfill sites in Greece, and that member state's failure to comply with Directive 75/442/EEC, the Commission had brought an action against Greece for failure to fulfil obligations of Case [C-502/03, \*Commission v Greece\*](#)). In Case [C-378/13](#), after the second referral of the infringement, the Court of Justice ordered Greece to pay a lump sum of €10 million and a half-yearly penalty payment based on an initial amount set at €14.52 million. The total principal amount paid by 31 December 2023 was €70 million, and the cases were still open after 9 years.

In Case [C-196/13](#) concerning illegal landfill sites, the Court of Justice ordered Italy to pay the Commission a penalty payment of €256 819.20 per day of delay from 2 December 2014 for not complying with the judgment in Case [C-135/05, \*Commission v Italy\*](#), and a lump sum of €40 million and a half-yearly penalty payment based on initial amount set at €42 800 000. The total principal amount paid by 31 December 2023 was €261.8 million, and the case was still open after 9 years.

# Abbreviations

**DG:** Commission directorate-general

**DG AGRI:** Directorate-General for Agriculture and Rural Development

**DG CLIMA:** Directorate-General for Climate Action

**DG CNECT:** Directorate-General for Communications Networks, Content and Technology

**DG COMP:** Directorate-General for Competition

**DG EMPL:** Directorate-General for Employment, Social Affairs, and Inclusion

**DG ENER:** Directorate-General for Energy

**DG ENV:** Directorate-General for Environment

**DG FISMA:** Directorate-General for Financial Stability, Financial Services and Capital Markets Union

**DG GROW:** Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

**DG HOME:** Directorate-General for Migration and Home Affairs

**DG JUST:** Directorate-General for Justice and Consumers

**DG MARE:** Directorate-General for Maritime Affairs and Fisheries

**DG MOVE:** Directorate-General for Mobility and Transport

**DG SANTE:** Directorate-General for Health and Food Safety

**DG TAXUD:** Directorate-General for Taxation and Customs Union

**LFN:** Letter of formal notice



# Glossary

**BAD:** Infringement procedure for bad application of a directive by a member state.

**CHAP:** The Commission's electronic case management platform for complaints, used until April 2023.

**EU Pilot:** Mechanism for informal dialogue between the Commission and a member state on issues relating to potential non-compliance with EU law.

**Infringement procedure:** Procedure whereby the Commission takes action, in various stages, against an EU member state that fails to meet its obligations under EU law.

**Letter of formal notice:** Written communication from the Commission to an EU member state as the first stage of an infringement procedure.

**MNE:** The Commission's electronic platform for managing member states' incorporation of EU directives into national law, used until December 2020.

**NCF:** Infringement procedure for non-conformity of national measures to incorporate an EU directive into national law.

**NCM:** Infringement procedure for non-communication of national measures to incorporate an EU directive into national law.

**NIF:** The Commission's electronic case management platform for infringements, used until December 2020.

**Petition:** Request or complaint to the European Parliament on a matter which comes within the EU's fields of activity and which directly affects any EU citizen, or natural or legal person residing or having their registered office in an EU member state.

**REG:** Infringement procedure for bad application by a member state of an EU treaty, regulation, or decision.

**Themis:** Case management system for EU law enforcement procedures rolled out in December 2020.

## Replies of the Commission

<https://www.eca.europa.eu/en/publications/sr-2024-28>

## Timeline

<https://www.eca.europa.eu/en/publications/sr-2024-28>

## Audit team

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber V – Financing and administering the Union, headed by ECA Member Jan Gregor. The audit was led by ECA Member Lefteris Christoforou, supported by Theodosis Tsiolas, Head of Private Office and Panagiota Liapi, Private Office Attaché; Margit Spindelegger, Principal Manager; Attila Horvay-Kovacs, Head of Task; Kristina Kosor, Elitsa Pavlova, Quirino Mealha and Marco Fians, Auditors. Jennifer Schofield provided linguistic support. Jesús Nieto Muñoz provided graphical support.



*From left to right: Panagiota Liapi, Theodosis Tsiolas, Jesús Nieto Muñoz, Attila Horvay-Kovacs, Elitsa Pavlova, Lefteris Christoforou, Marco Fians and Margit Spindelegger.*

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## HOW TO CITE

European Court of Auditors, [special report 28/2024](#): “Enforcing EU law – The Commission has improved its management of infringement cases, but closing them still takes too long”, Publications Office of the European Union, 2024.

The Commission is responsible for overseeing the application of EU law by member states and to enforce compliance. The objective of our audit was to assess whether the Commission's management ensured timely detection, follow-up, appropriate monitoring and reporting of infringement cases. We conclude that the Commission has improved its management to detect and correct infringements of EU law, but it still takes too long to close infringement cases. The Commission regularly monitors and reports on EU law enforcement but adherence to benchmarks is neither improving nor reported. We recommend that the Commission should improve planning and documentation of checks, improve handling of complaints, petitions and informal dialogues; reinforce its infringement case and sanctions; and strengthen its monitoring and reporting.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.



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