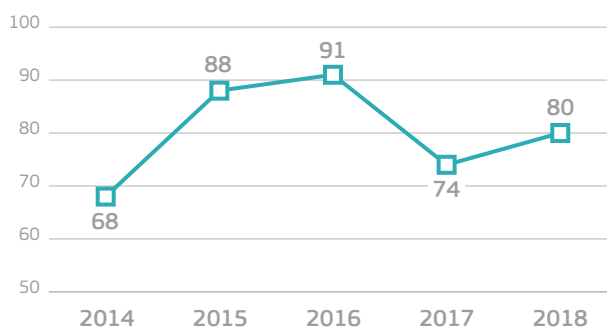


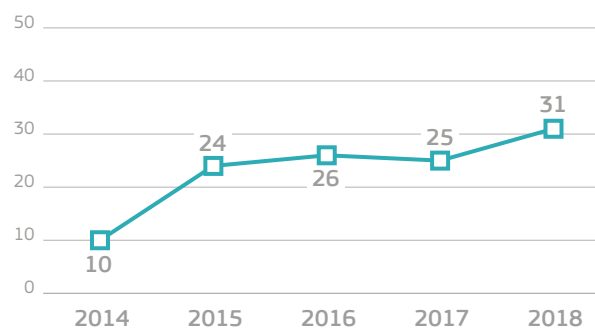
Monitoring the Application of European Union Law

Annual Report 2018

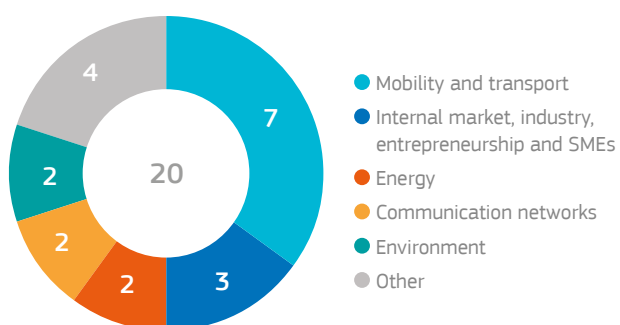
Infringement cases open as of 31 December 2018



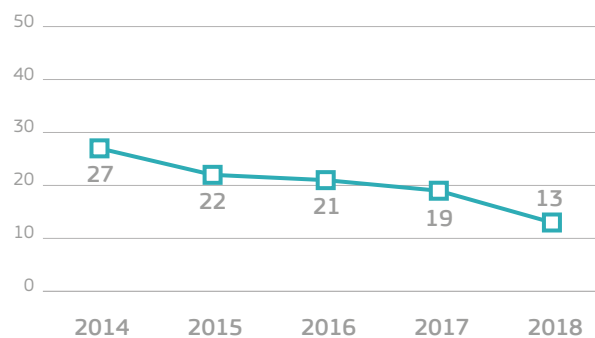
Late transposition¹ infringement cases open as of 31 December 2018



New infringement cases opened in 2018: main policy areas



New late transposition infringement cases opened in 2018



1. Number of infringement cases due to failure to implement an EU Directive into national law on time.



Relevant rulings of the European Courts:

In rulings, the Court held, amongst others, that:

- Germany has failed to comply with the Nitrates Directive by not having taken additional measures or reinforced action as soon as it became apparent that the action programme was not sufficient to achieve the objectives set by the Directive. These are to reduce water pollution caused by nitrates from agricultural sources and prevent further such pollution².
- Germany failed to take the necessary measures to re-establish conformity to their approved types of 133 713 vehicles of types 246, 176 and 117, sold by Daimler between 1 January and 26 June 2013. The vehicles were fitted not with the refrigerant R1234yf declared for those approved types but a different refrigerant with a global warming potential of over 150³.

In preliminary rulings, the Court ruled, amongst others, that:

- An arbitration clause included in a bilateral agreement between Member States which allows EU investors to bring claims against Member States before arbitral tribunals is not compatible with EU law⁴.
- An administrator of a fan page must be regarded as a controller jointly responsible, within the EU, with Facebook Ireland for the processing of that data⁵.
- An airline which operated only the first leg of a connecting flight in one Member State can be sued before the courts of the final destination in another Member State for compensation for delays⁶.
- A 'wildcat' strike by flight staff after the surprise announcement by an operating air carrier of a restructuring is not an 'extraordinary circumstance' as restructuring is part of normal business management measures. Thus, a spontaneous strike by flight staff cannot be regarded as beyond the carrier's actual control⁷.
- The common rules on compensation and assistance to passengers apply to passenger transport, from a Member State to a third State, effected under a single booking and comprising a scheduled stopover outside the EU with a change of aircraft⁸.
- In the case of a long delay, the air company which must pay the compensation owed to passengers is the one which decided to perform the flight (and not the company which leased the aircraft and its crew)⁹.
- When a flight is cancelled, the air carrier must reimburse commissions paid to intermediaries provided that the carrier had prior knowledge of those commissions¹⁰.
- Airfares for flights within the EU are to be indicated by carriers in euros or in a local currency objectively linked to the service offered¹¹.
- The German anti-abuse measures concerning dividend payments to foreign companies without genuine activity were incompatible, as of 2012, with both the Parent-Subsidiary Directive and the freedom of establishment¹².
- The EU has exclusive competence for fisheries measures taken to implement specific environmental directives (the Habitats Directive and the Environmental Liability Directive)¹³.
- Checks on passports and residence permits of passengers of transport undertakings providing a regular cross-border service within the Schengen area to Germany, before they cross the German border, constitute checks within the territory of a Member State. These are prohibited where they have an effect equivalent to border checks¹⁴.

2. Directive 91/676/EEC, Commission v Germany, C-543/16.

3. Commission v Germany, C-668/16.

4. Achmea, C-284/16.

5. Wirtschaftsakademie Schleswig-Holstein, C-210/16.

6. Regulation (EC) No 261/2004, flightright GmbH v Air Nostrum, Líneas Aéreas del Mediterráneo SA, Roland Becker v Hainan Airlines Co. Ltd and Mohamed Barkan and Others v Air Nostrum, Líneas Aéreas del Mediterráneo SA, joined cases C-274/16, C-447/16 and C-448/16, and Court press release No 28/18.

7. Regulation (EC) No 261/2004, Helga Krusemann and Others v TUIfly GmbH, joined cases C-195/17, C-197/17 to C-203/17, C-226/17, C-228/17, C-254/17, C-274/17, C-275/17, C-278/17 to C-286/17 and C-290/17 to C-292/17, and Court press release No 49/18.

8. Regulation (EC) No 261/2004, Claudia Wegener v Royal Air Maroc SA, C-537/17, and Court press release No 77/18.

9. Regulation (EC) No 261/2004, Wirth and Others, C-532/17 and Court press release No 100/18.

10. Regulation (EC) No 261/2004, Dirk Harms and Others v Vueling Airlines SA, C-601/17, and Court press release No 128/18. Regulation (EC) No 261/2004, Harms, C-601/17, and Court press release No 128/18.

11. Regulation (EC) No 1008/2008, Verbraucherzentrale Baden-Württemberg e.V. v Germanwings GmbH, C-330/17C, and Court press release No 176/18.

12. GS, C-440/17.

13. Directives 92/43/EEC and 2004/35/EC, Deutscher Naturschutzring, C-683/16.

14. Joint cases: Touring Tours und Travel, C-412/17 and Sociedad de Transportes, C-474/17.