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**Stocktaking report on the Commission working methods for monitoring the
application of EU law**

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1 CONTEXT AND SCOPE OF THE STOCKTAKING

The Commission's enforcement work involves a wide range of tools at the disposal of the Commission services to monitor and support the implementation and application of EU law by Member States. The coherent and effective use of these tools is key to the exercise by the Commission of its role as 'Guardian of the Treaties'.

The Commission is regularly monitoring the progress of infringement cases and other enforcement activities to ensure that these are handled in an effective and consistent manner. The performance of Commission services has been tracked and reviewed over time, taking into account the procedural requirements, the dialogue with the Member States and the challenges that hinder the swift rectification of breaches of EU law. Since 2017, the focus has been on monitoring the implementation of two Commission Communications: the 2007 Communication 'A Europe of results – applying Community law'⁽¹⁾ (hereafter 'the 2007 Communication') and the 2016 Communication 'EU law: Better results through better application'⁽²⁾ (hereafter 'the 2016 Communication').

In 2018, a report from the Court of Auditors recommended that the Commission should evaluate its enforcement policy and relevant administrative practices⁽³⁾. At the time, the Commission acknowledged that an assessment could be beneficial, but that this should come once there was sufficient experience with the (then recently adopted) enforcement strategy.

In 2021, the Commission announced its intention, in its Communication on Better Regulation, to carry out '*a stocktaking of its oversight and enforcement activities, to ensure that they remain fit for making EU law work in practice*'⁽⁴⁾.

In October 2022, the Commission Communication 'Enforcing EU Law for a Europe that delivers'⁽⁵⁾ (hereafter 'the 2022 Communication') acknowledged that the Commission should take stock of its experience and examine ways to further improve the implementation and application of EU law and keep its working methods fit for the purpose.

Through the regular reviews undertaken over the years, the Commission services have been able to gather sufficient evidence to assess whether and to what extent the Commission has met the objectives that it set itself in the 2007 and 2016 Communications and in the related internal guidelines.

This evidence suggests that, overall, the prioritisation outlined in the 2016 Communication was implemented successfully and that this has enhanced the impact of the Commission's enforcement action. However, the internal assessments conducted over

(1) [Communication from the Commission – 'A Europe of Results – Applying Community Law', COM/2007/0502 final.](#)

(2) [Communication from the Commission — 'EU law: Better results through better application', C/2016/8600, OJ C 18, 19.1.2017, p. 10–20.](#)

(3) Landscape review: '[Putting EU law into practice: The European Commission's oversight responsibilities under Article 17\(1\) of the Treaty on European Union](#)'.

(4) [Better regulation: Joining forces to make better laws](#), published on 14 April 2021.

(5) [Communication from the Commission – 'Enforcing EU law for a Europe that delivers'](#), of 11 October 2022.

the past years ('coherence reviews') also point to a number of potential areas for improvement as regards certain aspects of the Commission's enforcement work.

Commission services have consistently voiced concern that human and financial resources currently allocated are not sufficient to pursue the required enforcement action and respond to the political priority that enforcement represents. The combination of the extra demands of crisis and an ambitious policy agenda and resource constraints have created an increasing pressure on enforcement work.

More generally, the exercise builds on recent developments and on the fact that:

- The Commission continues to work on the basis of the infringement policy and priorities set out in the 2016 Communication (including the essential principles of the Commission's relations with complainants) and re-affirmed in the 2022 Communication. However, the conclusions of the stocktaking may point to a need to review certain policy aspects or procedural rules.
- Some elements of the 2016 policy, notably those reflected in the EU Pilot guidelines ⁽⁶⁾ and the Better Regulation Communication and toolbox ⁽⁷⁾, have already been adjusted in the light of experience. Therefore, the EU Pilot Guidelines and the Better Regulation toolbox are outside the scope of the present exercise, though the use of these tools in practice is part of the assessment.

As a result, the current stocktaking exercise has looked into:

- Identifying aspects that the Commission can improve within the current policy and procedural framework (such as internal workflows or organisation, (pre) infringement and complaints manuals and guidelines, use of IT tools).
- Identifying actions that could go beyond the current framework in order to have a better overview on how EU law is transposed, interpreted and applied on a daily basis.
- Developing awareness-raising actions to better communicate with and manage the expectations of stakeholders, notably complainants and petitioners.
- Envisaging possible changes to the current methods, including on performance indicators and indicative deadlines for complaints handling that could contribute to a more efficient treatment of cases in line with the strategic approach of the Commission on enforcement.

⁽⁶⁾ Where the Commission, despite its preventive efforts and support to Member States, identifies a possible breach of EU law, it may decide to use a pre-infringement process, known as EU Pilot.

⁽⁷⁾ Better regulation toolbox, last update November 2021. [Chapter 4 Compliance, implementation and preparing proposals.](#)

2 METHODOLOGY

2.1 Consultations within the Commission

As a first step in the process of this stocktaking exercise, Commission services were invited to provide input on organisational aspects, practices, difficulties and suggestions. This focused on the way services implement the corporate prioritisation policy in agreement with the respective Cabinets of Commissioners, the connection of their actions with EU financial support and reviews concerning governance and reforms at national level, alongside internal processes and challenges they find in dealing with priority topics.

In order to better analyse the practice, issues treated ranged from the organisation of enforcement activities within services to their approach in the different phases of the legislative cycle (preventive effort before the transposition of directives, assistance to Member States in the implementation of regulations and subsequent monitoring of their application, preparation of a strategy to deal with transposition delays or conformity problems, etc).

As regards complaints handling, the issues treated included the role of complaints in monitoring the application of EU law, challenges related to their registration and attribution to services, their assessment, and the timely decision-taking upon complaints. Special attention was given to the current practices of communicating with complainants.

The input provided has been screened to identify good practices, patterns explaining good and less satisfactory results, common concerns, potential gaps in the methods applied or in the available technical tools that can facilitate the performance of tasks. Replies from all Commission services, included those with a less intense monitoring activity, and a variety of discussions, allowed practice to be compared in relation to policy areas, internal organisation, the use of the various Better Regulation tools, and depending on the form of secondary legislation to monitor and the investigative powers conferred by the latter.

Whereas there is no “one size fits all” solution to challenges, the objective was to draft suggestions aiming to rationalise the monitoring work, ensure consistency across the Commission and step up the end results of the Commission enforcement. These suggestions had to be formulated in a way that can be implemented in the short (up to 1 year) or medium term (few years), taking into account organisational constraints and the need to discuss potential alternative options.

2.2 Consultations of Member States

In the process of this stocktaking exercise, Commission services have consulted the EU Law Network ⁽⁸⁾, an expert group involving national representatives from all Member States. Its members are national officials who are experts in the areas of the transposition of directives, implementation and application of EU law, and handling EU Pilot dialogues and infringement procedures. Member States have shared their views on national processes, working methods, and the cooperation with their own national authorities as well as with Commission services. While there are certain limits to the

⁽⁸⁾ [Register of Commission expert groups and other similar entities \(europa.eu\)](#).

suggestions made, both of a legal (role of the Commission in upholding EU law) and practical (resource constraints) nature, the Member States' ideas for improvement have not only been included in the Commission's stocktaking but also triggered direct action in terms of sharing information and good practices among Member States, in particular on ongoing projects improving anticipation and impact assessment of the transposition process or creating task forces on implementation and enforcement issues.

The discussion was structured in two parts, one focusing on national working methods and a second one inviting Member States to share their views on transposition and enforcement issues, exchanges of best practices, implementation of regulations, transparency and complaints handling.

The first part was intended to learn more about the structure and processes that Member States had put in place to handle transposition, implementation and enforcement of EU law in their national framework. Member States provided references to relevant legislation and guidance documents and presented their internal working methods, reporting requirements and political scrutiny.

In the second part, Member States were asked to present the challenges encountered in the different processes (transposition of directives, implementation of regulations, handling of infringements) and to express their views on the Commission's support during these stages.

Following these exchanges, services organised two working sessions with Member States in spring 2022, a first one on the transposition of directives and implementation of EU law, and a second one on enforcement and infringements. Member States' representatives participated on a voluntary basis and each group involved around 70 participants for informal discussion.

The first working group focused on transposition challenges and accompanying measures by the Commission. The working group also touched upon the implementation of regulations, in particular on the heterogeneous approach of their monitoring.

The second working group focused on the informal phase (EU Pilot dialogue and other informal exchanges between the Commission and the Member States) and on the handling of infringements. The benefits and challenges of (package) meetings and other support measures were also discussed.

Following the exchange within these two working groups, Commission services identified some preliminary findings and proposals for improvements that were discussed during the meeting of the EU Law Network held in June 2022.

3 OPERATIONAL RECOMMENDATIONS FOR THE COMMISSION'S ENFORCEMENT WORK

The stocktaking exercise is based on an assessment of the results and of the challenges of the current practice in various fields of the Commission's enforcement policy, drawing on experience gathered in-house and by the Member States. It focuses on aspects in the current working arrangements where there may be room for improvement. Whereas these arrangements have led to positive results, as set out in the 2022 Communication 'Enforcing EU law for a Europe that delivers' ⁽⁹⁾, the working methods must remain fit for purpose. There is room for simplifying processes, generalising best practices, improving cooperation, enhancing synergies, and modernising handling practices.

It is proposed to further explore six sets of recommendations to enhance the impact of the Commission's enforcement work in the medium term.

3.1 Delivering the strategic approach

The 2016 Communication established a clear strategic approach and outlined the Commission's enforcement priorities, including criteria for handling infringement cases and complaints. In addition, Commission services, in agreement with the respective Commissioners, may focus on some sectoral issues linked to the enforcement objectives of the policies within their remit.

The strategic approach is by now well integrated in the enforcement activities of Commission services. Political scrutiny is important to steer priority actions, determine the scope and the proper timing for initiatives and make sure that infringement procedures accompany the achievement of objectives set for each policy area. Political scrutiny also ensures that the discretionary power of the Commission is exercised under proper political accountability.

3.1.1 Sectoral enforcement strategies

While the overall strategy remains fit for the institutional role of the Commission as guardian of the Treaties, there is also room to emphasise the role of sectoral enforcement strategies, their relevance to deliver benefits of policy choices and their visibility in the process: enforcement priorities and initiatives agreed between services and their Cabinets can find a place in the narrative of Annual Management Plans and Annual Activity Reports.

Information collected from services shows that enforcement actions contributing to ensure proper implementation of EU law are sometimes organised as a procedural exercise disconnected from the context of the legislative or policy cycle. Enforcement strategy should start before the national legislation is adopted and, ideally, even before EU law is adopted.

While services follow a strategic approach to infringements, with at least an annual review of pending infringement cases, what seems to be somewhat lacking is an overarching approach to enforcement activities and structural discussions about enforcement challenges, involving the senior management and the Cabinets responsible. Regular exchanges would help anticipate difficulties of political nature, determine which

⁽⁹⁾ COM(2022) 518 final of 13 October 2022.

policy areas require closer attention, organise the work accordingly and ensure adequate prioritisation of the different sectoral activities in the various stages of the legislative cycle. In addition, internal working arrangements developed to achieve enforcement objectives within each policy sector should be reviewed over time to ensure consistency and allow for monitoring.

3.1.2 Designing legislation and preparing its implementation

Commission services should anticipate and address implementation and enforcement issues when analysing the impacts of proposed legislation, designing and drafting proposals, as set out in the Better Regulation guidelines and its toolbox⁽¹⁰⁾. In the preparatory phase, services should give careful consideration to enforcement challenges, e.g. by mapping them before scoping the future proposal and looking at the existing national legal framework, constitutional specificities, administrative capacity for future enforcement etc. The impact assessment could have a more prominent section on this aspect.

It is important that services also continue to promote attention for implementation and enforcement aspects during the negotiations in Parliament and Council. Finally, they should spot challenges stemming from the adopted text as early as possible and try to address them in the ensuing implementation strategies. For this purpose, Services should make sure that, when appropriate, policy and enforcement services work in close cooperation and that knowledge about the debates during the negotiation process passes to staff preparing and monitoring the implementation of EU law. The stocktaking exercise revealed that where these principles are already put into practice, the relevant services benefit greatly from a sort of ‘economies of scale’ approach and the early and close collaboration between policy and implementation-responsible staff can greatly facilitate interactions and support back to the Member States on difficult implementation questions.

Other policy tools can be of support in improving better implementation of EU law. The experience gained with the Recovery and Resilience Facility (RRF) shows that the impact of these instruments goes beyond reforms to legal and institutional frameworks, and includes carrying such reforms through to a track record of effective change. In particular, these instruments also promote the implementation agenda more broadly in the Member States concerned.

3.1.3 Internal organisation and allocation of resources

For Commission services, one of the main challenges is to effectively fulfil their enforcement tasks while applying the prioritisation policy. Although enforcement of EU law is a priority of the Commission, there are in practice various constraints that hinder a smooth handling of cases.

The stocktaking exercise revealed that for the Commission to be able to effectively perform its duties as guardian of the Treaties and to enforce EU law in an efficient and effective manner, human resources need to match the volume and complexity of enforcement tasks.

⁽¹⁰⁾ https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox_en

In these circumstances, proper attention should be given to ensuring that enforcement does not become the victim of conflicting pressures on resources and that adequate staffing remains available for an efficient management of enforcement activities.

Commission services differ in the way they organise themselves to carry out their enforcement tasks and the working methods they use to ensure effective action, business continuity and consistency. The stocktaking has examined whether the internal organisation and allocation of tasks can be used to support enforcement work in line with Commission priorities. The way services blend the legal expertise of enforcement units with the negotiation background and the technical expertise of line units is essential to ensure a comprehensive, professionally sound evaluation. This varies from service to service, along two main management model systems: centralised or decentralised.

Those choosing the centralised management model (either with a single unit dealing with all cases or with few units concentrated in a single directorate handling the enforcement portfolio) tend to benefit from more consistency, quicker treatment of routine cases and equal treatment of Member States. This also seems to facilitate the pooling of legal expertise on specific enforcement issues. This model, however, requires additional layers of assessment as legal units do not possess all the necessary technical expertise. In these situations, the analysis in more complex cases is more time consuming and can generate potential conflicts on prioritisation of work between the services concerned. In some services, this challenge is addressed by creation of task forces with members from enforcement and policy units.

The decentralised management model (under the lead of a coordinating unit, while the day-to-day handling of cases remains within line units that have both legal and policy expertise and responsibility in a given EU law area), seems to match better the continuity of policy, legislative and enforcement activities as described in the 'Better Regulation' principles. Policy officers have the possibility to follow the legislative cycle from conception to enforcement, strengthen their collective skills and put their solid expertise at the service of enforcement. However, in some situations the increased policy challenges and the overlap between the different responsibilities linked to the overall legislative cycle puts enforcement in competition with policy tasks and requires a constant trade-off in the allocation of tasks.

There is therefore no particular model that is manifestly better adapted to support monitoring and enforcement tasks. However, the decentralised model can only work well if there is a strong coordination entity which has a good overview over the whole portfolio of the service and can steer enforcement work.

What is important is that, whatever option is chosen, it is subject to regular review by the senior management to ensure that it remains fit for purpose and adequate to take swift enforcement action according to the strategic approach set by the Commission.

➤ **Recommendations for Commission services**

In order to strengthen the Commission's strategic approach on enforcement, it is proposed to:

- Combine the corporate enforcement policy with a **solid sectoral strategic approach** setting the major policy goals in the short and medium term and (whenever appropriate) taking into account the wider picture on implementation challenges across all Member States. While the general enforcement priorities

remain the building blocks for monitoring the application of EU law, services could review their sectoral strategies to anchor specific goals to the overarching priorities. They will keep these fit for purpose over time, adapting them regularly to take account of evolving legislation and management priorities.

- Enhance the **involvement of senior management and the Cabinets** on enforcement issues with the objective to ensure more visibility and priority for enforcement goals in the planned activities. Commission services could promote the inclusion of enforcement points in regular management meetings and/or jour fixe meetings with the Commissioners. In addition to regular discussion, services could take advantage of yearly management processes to plan future enforcement action and take stock of past initiatives with the senior management. This includes a summary of the enforcement strategy in the Annual Management Plan and reporting of main achievements in the Annual Activity Report, in the way that better suits to the organisation of each service.
- Implement the Better Regulation guidelines and its toolbox as updated at the end of 2021 to address enforcement and implementation (including the exchange of information with the Commission and between Member States) in the evaluation of existing legislation, in the impact assessment, **during the preparation and design** of new legislation and its revisions.
- Define appropriate **implementation strategies** whenever useful to accompany and monitor national transposition or implementation processes, in particular when the legislative intervention determines key changes in the existing body of law at EU or national level. The scope of the sectoral strategy should follow the evolution of the body of law to monitor and consider policy priorities and specific challenges in the implementation phase. A sectoral strategy could cover a package, a sector or single instruments. It should map potential risks and challenges and provide a roadmap of potential actions to address them as early as possible.
- Ensure that within Commission services enforcement tasks, including the implementation of these recommendations, are adequately prioritised and have **adequate resources** to reflect and continuously deliver on the Commission's strategic priorities.
- Review how the **internal organisation** of Commission services influences the delivery on enforcement tasks. Services using decentralised management model systems should consider whether the enforcement coordination unit is adequately staffed and whether it has an appropriate position within their organisation to effectively contribute to the enforcement work. Services with a centralised enforcement organisation should optimise their partnership with policy units to benefit from legal and policy background in the enforcement actions

3.2 Handling infringements efficiently and revamping performance management

While it is important to allocate sufficient resources to enforcement work of the Commission, the work itself should be made as efficient as possible at the same time.

In this context, efficiency gains should be sought in the organisation of certain tasks, to allow more time to be dedicated to legal analysis, the dialogue with Member States and

the preparation of new steps in the investigation where appropriate. Improving the efficiency of the preparation of infringement decisions, including of the legal and political validation process and of the corporate IT tools could contribute to predictability and rationalisation of the whole process.

There is room for improvement as regards the time needed to handle infringements. Handling infringements swiftly increases the efficiency of enforcement and contributes to the compliance culture. When the initial breach is undisputed, like for late transposition of directives or the implementation of regulations requiring national implementation measures, the handling of infringements should become more efficient on both sides: while Member States should respect deadlines and engagements and accelerate the solution of cases, Commission services need to provide timely feedback. Keeping non-communication cases open several months after the finalisation of transposition without informing about progress reduces adherence of Member States' authorities to accelerate the compliance process. Dialogue with Member States' authorities during this period can accelerate the compliance process and facilitate fast resolution of such cases.

3.2.1 Decision-making on infringements

Decisions on infringement cases are planned ahead by services and Cabinets, to be proposed at regular interval to the College. Delays in infringement cycles lead to inefficiencies, for example when proposed actions for an infringement cycle need to be updated to reflect the factual developments in the cases. Stable and predictable infringement cycles help services plan their infringement work better and achieve progress at a regular pace. It also allows the progress of cases to be more clearly communicated to Member States and sends a broader public message on the centrality of enforcement to the Commission's work.

3.2.2 EU Pilot dialogue

In more complex cases where breaches of EU law are not obvious, Member States and Commission services remain favourable to a broad recourse to the EU Pilot dialogue whenever useful. To ensure the necessary efficiency, the 2020 EU Pilot guidelines introduced a new indicative benchmark to the process. According to this benchmark, other means of redress should be considered by a Commission service if a file is still open nine months after the submission of the case to the Member State. Member States and Commission services should engage in a closer monitoring and enforcement of this benchmark with the objective to keep the dialogue efficient and constructive.

The assessment has shown that the Commission's use of EU Pilot could be even more impactful, notably by a more consistent use of this process across the Commission and further development of the IT tool. The EU Pilot dialogue should swiftly be integrated in the THEMIS application, allowing for a comprehensive and consistent handling, monitoring, and reporting of enforcement issues at all stages. Improving the EU Pilot dialogue and facilitating its concrete handling through performant and adequate IT solutions also prevents the emergence of alternative ways of communication that could alter the effectiveness of such cooperation (such as exchanges via email or administrative letters). Political letters addressing sensitive issues at political level in the Member States have proven to be an efficient alternative or complementary means to the EU Pilot dialogue.

3.2.3 IT tools

For several years, the Commission has been developing THEMIS, the corporate IT application for management of complaints, EU Pilot dialogues and infringement cases.

THEMIS is not only the corporate tool for managing the adoption of the infringement decisions and notifying Member States of those decisions, but is also used by Member States to communicate their transposition measures, send their replies to infringements decisions and request extension of deadlines. Beyond these core functionalities, THEMIS is also designed to help services and Member States to monitor progress based on real-time data. It is important to further develop these features and improve THEMIS, so that it effectively supports and simplifies the working processes and methods for services, Cabinets and Member States. Guidelines on internal procedure

Most internal procedures are still based on the Internal Guidelines of 18 July 2017 ‘Monitoring the application of EU law’ ⁽¹¹⁾. Some of the detailed procedures set out in the Guidelines are by now outdated. In order to offer effective assistance to Commission services, the format of these guidelines needs to be adapted to allow for rapid updates and take advantage of online corporate tools, while core corporate principles remain to be set at the level of the College.

3.2.4 Performance benchmarks and indicators

The 2007 Communication had indicated that some types of breaches needed priority attention ⁽¹²⁾ and introduced indicative deadlines, defined as special benchmarks, applied to monitor the progress of infringement cases. It set the following targets ‘*For cases concerning the non-communication of transposition measures, the target should be that no more than 12 months elapses from the sending of the letter of formal notice to the resolution of the case or seizure of the Court of Justice. • Subject to the specific circumstances of exceptional cases, the equivalent period in proceedings to ensure respect for an earlier judgment of the Court should be on average between 12 and 24 months.*’ It did not set benchmarks for other priority cases, as the Commission considered that they vary considerably in content and context ⁽¹³⁾.

The 2016 Communication went a step further and defined the current policy approach on enforcement: the Commission identified clear priorities linked to the nature of the breach of EU law and announced its intention to be more effective in preventing and where necessary redressing structural violations.

Commission services have reflected on the current benchmarking system and on the possibility to define other indicators that would better represent the process. There is a general agreement on the need to set targets, to keep the work on track. Measuring the

⁽¹¹⁾ C(2017)4973 final.

⁽¹²⁾ ‘Priority should be attached to those infringements which present the greatest risks, widespread impact for citizens and businesses and the most persistent infringements confirmed by the Court. These categories cover: • non-communication of national measures transposing directives or other notification obligations; • breaches of Community law, including non-conformity cases, raising issues of principle or having particularly far-reaching negative impact for citizens, such as those concerning the application of Treaty principles and main elements of framework regulations and directives; • respect for Court judgments declaring the existence of infringements (Article 228 EC Treaty).’

⁽¹³⁾ ‘It is difficult to set a meaningful general benchmark for other priority cases as they vary considerably in content and context. These cases will be subject to specific management to ensure rapid progress.’

time necessary to solve cases or to adopt the next step in the process constitutes an objective criterion that is appropriate to measure performance in light of the Commission's overall objective to achieve compliance as soon as possible, including after the launch of formal procedures.

The performance management process should, however, also take into account the breach at stake and the type of cases pursued, as well as other more qualitative criteria (such as the willingness of the Member State to comply or the time it takes for adoption of irreversible measures leading to compliance, or the existence of ongoing cases in national or EU courts).

In cases where services have investigative powers, the time taken by monitoring/evidence-gathering activities (such as audits and verifications) should be taken into account, as they are necessary to verify if the Member State has indeed put an end to the bad administrative practice.

3.2.5 Internal performance review

Coherence in the treatment of files must be ensured throughout the various policy areas. That is why, since 2008 ⁽¹⁴⁾, a coordinated internal performance review is carried out to provide an overview on the state of play of all ongoing infringement cases. These coherence exercises are meant to provide a broad overview of the development of cases and ensure the coherence in the treatment of all cases, in particular with the various benchmarks which have been set by the Commission since 2007. The review was set to be run twice a year, with the College kept informed of the resulting overview ⁽¹⁵⁾.

As the 2022 Communication highlighted, statistics are an important but not the only element that reflect the results achieved by the Commission with its enforcement policy. While it is important to continue to measure progress in handling infringement cases and complaints management against the various benchmarks set in the different Communications, the form and frequency of this review should evolve to provide more added value to Commission services.

THEMIS offers data on complaints, EU Pilot dialogues and infringement cases in real time. This helps services to monitor their own progress and adjust where needed their planning, allocation of resources and their priorities in agreement with the respective Cabinets, on the basis of the figures available at any time. Thanks to the availability of real-time data, the extraction and analysis of statistical data by the Secretariat-General twice a year is no longer needed. Instead, an annual exercise looking back at the previous year's performance would then be enough to ensure the necessary coherence in the Commission's enforcement action.

It is therefore suggested to revamp the coherence reviews to focus on more qualitative aspects to assess the overall consistency of Commission actions across policy areas, in both legal and policy terms, on the way Commission priorities as set out in the 2016 Communication are reflected in infringement cases, on results stemming from best practices and on common difficulties. Discussions should aim at finding a common agreement on the way forward and an indicative timing for next steps in complex infringement cases. Those annual reviews could also be used for exchange of good

⁽¹⁴⁾ [SEC \(2007\) 1405/4](#)

⁽¹⁵⁾ [Internal Guidelines of 18 July 2017 on 'Monitoring the application of EU law'](#), pages 48-50.

practices between the Commission services and serve as an occasion to provide advice on recurrent legal/procedural issues from central services and to recommend improvements in this respect.

➤ **Recommendations**

In order to revamp the Commission's performance management of its enforcement work, it is proposed to:

- Make sure that non-communication cases and cases related to the implementation of regulations requiring national implementation measures are concluded as soon as possible following the declaration of complete transposition by the Member State.
- Ensure a consistent, efficient, and appropriate use of the **EU Pilot dialogue** across the Commission, in particular by improving internal working processes, including the validation and monitoring process, and its IT application.
- Further improve THEMIS to allow Commission services to easily measure their own performance against the corporate benchmarks by using the **monitoring tools** that offer real-time data.
- Replace the old Internal Guidelines ⁽¹⁶⁾ by an **online procedural toolbox** on how to monitor the application of EU law, with core corporate principles continuing to be decided by the College. The online procedural toolbox should be regularly updated to reflect the improvements brought to the working methods in the course of the implementation of the present recommendations or the evolution of IT tools.
- Reflect on possible changes to the current **benchmarking system**; for a more efficient handling of complaints, EU Pilot files and infringement cases, in light of the strategic approach of the Commission on enforcement.
- Replace the twice-yearly coherence exercises by a **new form of annual review** presenting, at the beginning of every year, the results of the prioritisation policy, overall consistency, legal aspects of common interest, best practices and benefits of enforcement actions in the previous year. In addition, this review should aim at identifying and solving the underlying reasons for the unsatisfactory progress of individual infringement files.

3.3 Facilitating the treatment of complaints

The information provided by complainants can contribute significantly to the Commission's enforcement activities. In particular, complaints are a source of information in broader cases related to systemic or structural breaches of EU law in Member States. They are also useful for monitoring the application of EU rules on the ground. Certain types of complaints, however, will not in principle be pursued by the

⁽¹⁶⁾ (C(2017)4973 final)

Commission ⁽¹⁷⁾, as people and businesses will be better served by other resolution mechanisms, in most cases at national level.

3.3.1 Strategic approach

The prioritisation approach under the 2016 Communication requires the Commission to pay particular attention to structural problems or systemic bad application practices in Member States. In most situations, the information included in a complaint must be complemented by other sources such as: other complaints, studies, expert groups, preliminary references, internal research, audit reports, SOLVIT cases or Your Europe Advice, petitions and parliamentary questions.

Managing complaints is resource-intensive and often with limited added value for monitoring the implementation of EU law. Over the course of 2022, only around 4.7% of incoming complaints were further pursued, either by further exchange in form of EU Pilot or in the context of an infringement procedure.

At the same time, complainants are entitled to a swift answer from the Commission, particularly when it is clear early on that no follow-up will be given to the complaint. Certain gains could be achieved by better screening and early treatment of correspondence that do not qualify as complaints, as they point to matters that clearly fall outside the scope of EU law or are not attributable to a Member State and complaints which in principle will not be pursued following the 2016 prioritisation.

Addressing these complaints up-front in a standard manner would allow for a swift reply to the complainant, while having efficiency gains as it would focus the Commission's resources on handling the admissible and more complex complaints. This would foster compliance with the procedural deadlines for complaints handling, in particular the general rule of one year to reach a final decision upon a complaint.

Finally, the list of categories of complaints considered as negative priorities for enforcement should be evaluated and, if required, clarified, to ensure their proper application across the Commission and to manage the expectations of potential complainants.

3.3.2 Indicative deadlines

The main deadline for handling complaints is a general rule of one year from the registration of a complaint within which the Commission should reach a decision either to close a complaint or to issue a letter of formal notice against the Member State concerned.

⁽¹⁷⁾ These are (i) complaints on individual cases of incorrect application of EU law where there are insufficient indications of a general practice, or of a systemic failure to comply with EU law, and there are appropriate means for the complainant to seek redress; (ii) complaints on issues on which preliminary ruling proceedings are pending and the Commission action would not significantly accelerate the resolution of the case; (iii) complaints of which the pursuit would be in contradiction with the line taken in a legislative proposal and (iv) generic complaints which raise Member States' shortcomings in the transposition of a directive in a general way without raising particular aspects affecting the complainant, if the national legislation is subject to a compliance assessment, since the subject of the complaint would be covered by the compliance assessment.

In addition to the general one-year deadline for the assessment of complaints, the 2020 Long-term Action Plan for better implementation and enforcement of single market rules⁽¹⁸⁾ introduced the obligation of carrying out a preliminary assessment of complaints and relevant correspondence to the complainants within two months from the registration of the file. The goal was to filter out and respond quickly to complaints which would obviously not be pursued. However, any communication on status of more complex files just two months after their registration often amounts to a ‘holding reply’, without any assessment in substance and thus without added value for the complainants. While easy cases are quickly addressed within the two-month deadline, complex and sensitive cases, often involving senior management and political validation, cannot progress as fast in such a short period of time.

In this context, there is room to refine the obligation of preliminary assessment of complaints within 2 months from registration and the relevant communication to the complainants, especially for more complex and politically sensitive complaints that require more information before taking a decision on them.

In addition, there is scope for improvement of how services monitor the different stages of assessing complaints, including the obligation to send a holding reply. This could be done by keeping track in the corporate IT application of which complaints are due for a form of contact with the complainant and by considering sending automatic replies.

The list of categories of complaints considered as negative priorities for enforcement should be evaluated and, if required, clarified, to ensure their proper application across the Commission and to manage the expectations of potential complainants.

3.3.3 Submission of complaints

Changing the indicative deadlines set for complaints handling, would require a policy change and therefore a political decision. Even within the current setting, solutions can be sought on several levels, starting by finding ways to improve the overall clarity of focus of complaints submitted by people and businesses. The bulk of incoming complaints – some 95 % – are closed for one of three reasons: (i) they do not fall under EU law or they do not concern Member States’ authorities, (ii) the breach of EU law could not be established, or (iii) they do not fall under one of the categories of the Commission’s priorities for enforcement. This requires better expectation management, and an adjustment of the way in which incoming complaints are filtered.

The 2016 Communication introduced the obligation to submit complaints in a standard form, available on the Europa web page. The form guides complainants in presenting their case to the Commission and helps the Commission services assess the submission.

After five years of use of the standard complaint form, there is enough experience to refine the form. The objective for the Commission should be to use complaints as an investigative tool, providing the relevant information, and not to be a purely passive recipient. The Commission’s web pages relating to complaints should improve the way they manage the expectations of complainants and explain what the Commission can and cannot do, and in what timeframe. Providing reliable services allowing EU citizens and businesses to obtain comprehensive information on EU legislation, like the Single Digital Gateway (SDG) via the Your Europe portal, could also help in this respect.

⁽¹⁸⁾ [COM\(2020\)94](#).

3.3.4 Registration and attribution of complaints

Solutions to improve complaints handling can also be found by improving working methods for the registration and attribution of complaints. A proper use of complaints that reach the Commission through various channels requires the proper registration of files that may not be pursued further but could contribute to own initiative cases later on.

Registration and attribution of complaints is nowadays done to a large extent, by the Secretariat-General. Every year the percentage of complaints registered centrally is growing but changes in working methods have not kept pace.

The Commission keeps receiving substantial correspondence in form of a complaint from members of the public raising issues that do not fall within the scope of EU law or that point to a possible wrongdoing that cannot be attributed to a Member State authority. Services consider that complaints on issues that are manifestly unfounded or do clearly fall outside the scope of EU law should be better filtered out, very early in the process, before and without registering them in the complaints-handling register.

This suggests a new approach between the central service receiving the complaints, and the expert services who can form a judgement. A virtual network of correspondents from services could help identify inadmissible complaints as soon as they arrive, and to provide a rapid standard reply.

The Commission's internal rules could also be further refined, especially on recurring issues of a general nature. Services should in principle engage bilaterally to set rules on recurring difficulties with the attribution of complaints to avoid lengthy attribution disputes.

3.3.5 IT tools and use of templates

Effective handling of complaints should be facilitated by modern IT tools for registration, attribution, and assessment of complaints. The recent integration of the complaints handling tool into THEMIS, the corporate tool for the Commission's enforcement procedures, is expected to result in a seamless processing of complaint files by a better integration of complaints handling into the overall enforcement process. It should also make the communication with complainants easier, by providing for more built-in standardised replies and sending more automatic reminders to services to facilitate the timely handling of files. Sufficient resources should be ensured for further development of these functionalities as well as for an improved search and statistics functions - to make monitoring even easier for the Commission services.

The use of artificial intelligence or other automation solutions could be explored to facilitate the attribution of complaints but also to ensure consistency and efficiency of case handling, including smart drafting solutions.

Communication with complainants continues with every step of the procedure. It should be explored how to make wider use of the additional templates for replies to complainants developed by some services, adapted to their portfolio and with different standard paragraphs to be selected to help draft more personalised replies. Templates for closure of complaints pointing to individual instances of misapplication of EU law should be accompanied by information on what the Commission has done and achieved in the broader sense, in the sector concerned.

➤ Recommendations

In order to facilitate the Commission's treatment of complaints, it is proposed to:

- Evaluate and, if required, clarify the list of **categories of complaints** qualifying as negative priorities for enforcement, to ensure a uniform application across the Commission.
- Refine the **preliminary assessment of complaints** and relevant communication for more complex and politically sensitive complaints. Focus the preliminary assessment of complaints on those that will not be followed-up and give quick feedback on closure of the file to the complainant, to help free up resources for giving feedback to complainants that lodge more complex complaints or complaints accompanied by prima facie evidence of a structural breach of EU law.
- Better guide complainants to the best suited resolution mechanism through a revised and more interactive **complaint form**, including new preliminary questions to check whether the matter falls under EU law and whether it is attributable to a Member State. For example, it could be made more interactive, to better guide complainants to the right resolution mechanism, to the available Commission's webpages on enforcement and to provide the information necessary for the Commission's assessment of the alleged breach of EU law.
- Ensure the continuity and reinforcement of digital services like the **Single Digital Gateway** and **Your Europe portal** to make sure that EU citizens and businesses are correctly informed about EU legislation.
- Review the Commission's working methods for **registration and attribution of complaints** both at central and sectoral level, in order to better filter out correspondence that does not fulfil the requirements to allow for a quick and correct assignment of complaints file to the competent service(s).
- Set up a dedicated channel of communication between the Secretariat-General and expertise in services, for example by using a **virtual network of services' correspondents** to help identify at an early stage complaints that are manifestly unfounded or clearly fall outside the scope of EU law and allow swift and accurate registration and response.
- Make wider use of **tailor-made templates** (depending on the complainant and the issue raised) to facilitate treatment of complaints that will not be further pursued.
- Reinforce the **THEMIS application** to further facilitate correspondence with complainants and gather data related to complaints that have reached the Commission through other channels (such as petitions, parliamentary questions or SOLVIT), with the objective to track complaints of a similar nature, but also to have access to complaints data to feed into both enforcement and policy-making work.
- Analyse the scope for using **artificial intelligence** for a first assessment of incoming complaints and their attribution to the Commission services as well as for drafting replies, including smart search and smart drafting solutions.

3.4 Making the monitoring of EU regulations more systematic

3.4.1 *Specific challenges posed by regulations*

The stocktaking confirms that though Commission services recognise that the Commission's responsibilities for **monitoring implementation of EU law include EU regulations**, no consistent approach has yet been agreed to apply across policy areas. Work on the implementation and application of regulations is more complex and less systematic than for directives, even if after the adoption of new regulations there are regular exchanges with national authorities to discuss their application and interpretation problems as early as possible. Some regulations are also implemented under the principle of shared management between Member States and the Commission and have their own built-in mechanisms to ensure compliance with their rules. Given the extreme diversity of regulations and the obligations that they impose on national authorities, it has so far been difficult to develop a common methodological framework for monitoring their application on a daily basis. The challenge is to monitor the application of regulations in a consistent and effective manner, taking into account the advantages, but also the limits of legislation that applies directly.

As regulations are directly applicable, the Commission relies on national monitoring and remedies to enforce rules. The design of certain regulation-embedded monitoring tools and review clauses help collect information on how rules are implemented and applied. In many cases, regulations set notification or reporting obligations for Member States to designate national competent authorities for the enforcement of the regulation, lay down the rules on penalties applicable to breaches of the regulation in question, adopt action plans and to notify or inform the Commission thereof.

However, the information is not always sent timely, regularly, or completely by the Member States. In the absence of a common pattern that Member States can follow to communicate on how they apply regulations, each Commission service has established a method to remind Member States of their obligations and record input on the application of regulations.

In most services, monitoring the application of regulations focuses on checking that Member States send reports and plans, communicate the appointment of competent authorities and any other information as specified by the regulation itself. These obligations are subject to a regular follow-up, with infringement procedures opened where necessary.

3.4.2 *Collecting information on regulations*

More challenging is the assessment of the actual implementation and application (practices, rules actually applied, efficiency of national enforcement) in Member States, partly because of the limited available information, and partly because there is no structured follow-up on a daily basis, be it in cooperation with national authorities or not, except when audits or inspections are possible. Most Commission services rely on the exchanges with national experts, stakeholders or practitioners to gather information on potential issues of general interest. Some services have investigative powers and can perform audits and verification missions. Even if these usually monitor much more closely regulations, these services often face challenges in meeting the standard of proof required to demonstrate that Member States fail to apply and enforce the regulations in practice. In the absence of a more structured monitoring of the application of regulations,

some services report that they rely almost exclusively on complaints to identify potential problems with the application of regulations.

To improve the efficiency of information management regarding regulations, and partly address some of the issues set out above, the idea of setting up a **common IT tool for regulations** has been suggested, where possible based on existing IT solutions. Such tool could serve as a repository of reporting obligations, allowing to track delays and issues, and as a common platform for Member States to report on the implementation of regulations and to exchange on potential difficulties.

In the absence of a common IT tool for regulations, various approaches are followed within the Commission. Some services have started using the specific module of the KOEL database (Knowledge Online on European Legislation), which is a platform developed as a common repository, where services upload national measures implementing regulations and which also functions as a management tool. Another example is the e-Platform under Article 28 of the Governance Regulation⁽¹⁹⁾ developed by the Commission to facilitate Member States reporting on the 2020 renewable energy and energy efficiency targets, and to prepare for the first ever integrated climate & energy progress reporting in 2023. This development reduces administrative burden both on the Member States' side (reporting) and the Commission's side (subsequent assessment), while at the same time facilitating better reuse and public access to information.

3.4.3 A strategic approach to apply regulations

Beyond IT tools, a complement could be explored in the form of a commonly agreed **implementation roadmap** (as part of the overall implementation strategy), to be prepared for each new regulation, listing the provisions and milestones where specific actions from Member States are required.

Enforcement strategies could include a **structured approach to regulations**, adapted to the specific content of such legislation, the obligations for Member States and private parties, the existence of a competent body at national level, funding linked to the application of relevant rules and the possibility to have regular reporting on the practice. New regulations should be drafted keeping in mind the future monitoring to be done by the Commission.

As regulations include articles that require further implementation from the Member States' side to deliver their full effect, it should be further explored how to design legislation according to the Better Regulation principles to facilitate the monitoring of implementation (with clear reporting or notification obligations, ways of gathering data also using either national competent bodies or EU agencies, increase transparency for the public on national and EU web portals and plan regular updates both in Member States and in the Commission). To ensure legal clarity and legal certainty, the obligation to take a specific action in order to implement the regulation should be clearly spelled out in the relevant substantive provision of the regulation.

⁽¹⁹⁾ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action

➤ Recommendations

In order to help make the Commission's monitoring of regulations more systematic, it is proposed to:

- **Adapt monitoring activities and practices to the increasing use of regulations**, which require a different approach compared to directives. This could be done by supporting, in a more systematic way, national authorities in charge of enforcement of regulations through various forms: trainings, networks of authorities for best practice sharing, guidance, etc. National authorities should also be used to identify and report at EU level recurrent enforcement issues related to a specific regulation at national level.
- Encourage the use of, where appropriate⁽²⁰⁾, **implementation strategies for regulations**, which can take the form of roadmaps on the implementation and application of regulations.
- Analyse existing (sectoral) **IT tools** (for instance KOEL and THEMIS) and, if needed, develop or encourage the use of these IT tools to centralise notifications and reporting relating to regulations.
- Consider **designing the legislation** in a way that facilitates the monitoring of implementation (e.g. by developing a standard clause(s) in the final provisions of a regulation, specifying the articles that require further implementation by the Member States).

3.5 Increasing support to Member States

In order to facilitate the implementation of new legislation by the Member States, the Commission services put into practice tools from the Better Regulation toolbox, adapting their methodology to the content and nature of each piece of legislation. On the Member States' side, beyond the problem of limited resources available, delays are due to external factors having a direct impact on the process (national transposition with administrative and political constraints is unanimously mentioned as the most important one). Moreover, the type and quality of information and technical data reported by the Member States (on how well the legislation is working, and its economic, social and environmental impacts) varies for several reasons. As a result, the implementation reports, evaluations and impact assessments prepared by the Commission may often be limited by the lack of Member State data.

Cooperation, transparency, anticipation and clear political engagement are crucial to managing a successful transposition and implementation process. Responsibilities mainly lie with the national authorities, in particular in anticipating the transposition process and its challenges. Sharing of best practices, including through the EU Law Network, could be beneficial in this respect.

⁽²⁰⁾ See page 37 of the Better regulation Guidelines which list the cases where an Implementation Strategy is not needed https://commission.europa.eu/system/files/2021-11/swd2021_305_en.pdf.

3.5.1 Anticipating implementation challenges

Member States are encouraged to share relevant information available at national level to facilitate the preparation of impact assessments carried out by the Commission or, where such information is not available, Member States are invited to set up or enhance their internal impact assessment systems with a specific focus on implementation and enforcement.

Several Member States have already put monitoring instruments in place or are currently developing such assessment mechanisms. This process should be encouraged further, and exchanges of best practices should happen whenever possible and be facilitated by the Commission. Practitioners could form a ‘knowledge community’ and exchange information on a platform provided by the Commission, such as the EU Academy ⁽²¹⁾. Anticipation is closely linked to the timely preparation of a transposition plan once the directive is adopted. While this is the responsibility of Member States, the Commission services could also provide in the early stages of transposition a clear schedule of planned accompanying measures. The preparation of transposition checklists is a good practice that has proved its value in recent years and could be generalised for longer or more complex directives.

3.5.2 Improved transposition planning and guidance

Transposition brings together many different actors. In particular at national level, these actors might not always be very familiar with those processes. It could be useful to draw up a general transposition guide, including procedural, legal and practical information on transposition. Such a guide could be drafted in cooperation with Member States and Commission services and should be complemented by specific national guidance organised by the Member States. Transparency on the process is also desirable. Member States could share information more proactively with the Commission, including on their transposition process, and Commission services should clearly communicate the timing (and potential delays) of the implementing or delegated acts, as well as on the timing of any possible guidelines. A better exchange of information will improve the planning of the transposition process.

Delays in the adoption of implementing or delegated acts can cause challenges to complete the transposition process by the deadline set in the main directive. Delegated directives imply a scrutiny period following their adoption which, in some cases, reduces the period between their publication and the transposition deadline. While Member States are encouraged to start the transposition process by the date of the adoption of such directive, Commission services should also pay attention to set the transposition period in relation to the publication date rather than the adoption date of the delegated directive.

While many directives are complex and it is highly challenging for the Commission to analyse the body of legislation notified by Member States, there are certain aspects that can be reviewed in the organisation of this work. Services could reflect on how to better organise completeness and conformity assessment in a way that makes them more agile to act quickly upon open infringement procedures.

⁽²¹⁾ <https://academy.europa.eu/>

3.5.3 *Making the most of explanatory documents*

The obligation of Member States to provide clear and precise information on transposition ('explanatory documents'), as clarified by the Court of Justice ⁽²²⁾, should help the Commission services in their subsequent verification process. If external contractors are involved in the completeness checks, they should be systematically invited to use these explanatory documents. If no such documents have been provided by the Member States or if they are of poor quality, the completeness check should not even start.

The systematic provision of complete explanatory documents of good quality and clearer and more detailed correlation tables in line with existing jurisprudence will also lighten the administrative burden of the completeness checks. It is therefore incumbent upon Member States to assist in and facilitate the implementation process following the completion of their national procedures by provide higher quality documents.

3.5.4 *Optimising the dialogue on enforcement issues*

Thematic bilateral meetings between the Commission services and the respective Member State on infringement cases or enforcement activities, referred to as package meetings, are a popular tool, as they are flexible, can be partially organised online and are more productive at technical level.

Senior representation at such meetings can help to underline the importance of the issue, with a level of formality acting as a useful complement to more informal exchanges. Raising more systematically awareness about enforcement issues in the preparation of Commissioners meeting their Ministerial counterparts could also become a way of triggering more political engagement about enforcement in the respective Member State.

As package meetings can, however, be both time and resource-consuming, it would be helpful to fine-tune their use and develop methods that allow the Commission services to use them in a more uniform way when necessary and get the most consistent outcome. Particular attention could be given to the promotion of best practices and to a commonly agreed follow-up of those meetings by Commission services and Member States.

In some policy areas, such as in the financial services area, the strategic approach to enforcement involves a regular presentation of the state of play of transposition of directives in specific formats of the Council. This approach could be encouraged, as it triggers political engagement and peer pressure among Member States.

3.5.5 *Taking advantage of available cooperation mechanisms*

The SOLVIT network is gaining ground in the single market ⁽²³⁾. It was designed as a tool that should provide quick and concrete help to people and businesses for their single market problems. The network has grown considerably over the years, not only in the number of cases, but also in remit. Member States should ensure sufficient staffing to continue ensuring its smooth functioning. Alleged systemic issues identified by the network could be assessed in a more structured way.

⁽²²⁾ [C-543/17, Commission v Belgium](#)

⁽²³⁾ Commission Staff Working Document, 'SOLVIT's Helping Hand in the Single Market: celebrating 20 years', SWD(2022) 325 final

The Single Market Enforcement Taskforce (SMET) serves as an example of close and successful cooperation between the Member States and the Commission to apply single market rules and facilitate the proper functioning of the single market in practice.

Commission services should make use of the reusability and adaptability of the Internal Market Information System (IMI), which facilitates the information exchange between Member States' public authorities in the Single Market.

Services have also put in place successful partnerships with agencies and specialised bodies (like the financial European supervisory authorities) with whom they work on guidelines and technical interpretative issues. Agencies, in cooperation with Commission services, could regularly organise mutual learning programs, peer reviews and exchange programs.

Technical support, including through EU programmes, can also be used to reinforce Member States' administrative capacities or to support specific needs in the major infrastructure works sometimes required to achieve compliance with EU law (in particular in the environmental sector). Member States could be reminded that technical support actions for the implementation of EU law can be requested under the Technical Support Instrument⁽²⁴⁾. In that respect, and as a concrete example, the Public Administration Cooperation Exchange (PACE) initiative⁽²⁵⁾ aims to promote cooperation and cross-border exchanges among Member States, in particular to build administrative capacity.

➤ Recommendations

In order to increase the Commission's support to Member States, it is proposed to:

- Encourage Member States to consider potential future transposition and implementation issues in their **internal impact assessment systems**.
- Ensure timely preparation of **delegated and implementing acts** in order to allow for the completion of the transposition process by the transposition deadline of a directive.
- Generalise and intensify the assistance given to Member States in the transposition process, in particular by agreeing on a **common transposition planning/roadmap** as from (at the latest) the adoption of the directive by the co-legislators. This could include the use of templates for explanatory documents, checklists, transposition workshops or exchanges between the Commission and the Member States on best practices and implementation challenges.
- Ensure and take full advantage of complete and good quality **explanatory documents** and more precise correlation tables to improve the overall transposition process and the subsequent checks, with the objective to make the process as transparent and agile as possible and allow for efficient handling of subsequent infringement procedures.

⁽²⁴⁾ [Technical Support Instrument \(TSI\) \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic-technical-support-instrument-tsi-2021-01-14-01.pdf)

⁽²⁵⁾ [PACE – Public Administration Cooperation Exchange \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic-pace-2021-01-14-01.pdf)

- Draw up, in close cooperation between Member States and Commission services, a general **transposition guide** that should include general principles, practical guidance and specific case law. This guide would complement national guidance to ensure consistent and uniform processes across Member States.
- Make more systematic use of **package/bilateral meetings**, followed by clear operational conclusions.
- Make the **involvement of the senior management in meetings with Member States** on enforcement more systematic, and include, whenever possible, enforcement issues in other general meetings between Commissioners and their Ministerial counterparts in Member States, as to trigger political ownership of enforcement on national level.
- Present, where appropriate, the state of transposition and implementation of EU law **to the Council**, with the objective of fostering timely compliance by Member States.
- Encourage Member States to enhance administrative capacity, and allocate sufficient resources and political attention to enforcement of EU law, including through the **SOLVIT network** so that, in addition to handling individual cases in a timely and efficient manner, national SOLVIT centres can report systemic issues to their responsible national authorities. Take advantage of the assessment of the SOLVIT network in identifying such systemic issues.

3.6 Stepping up transparency

3.6.1 Existing proactive publications

Over the years, the Commission has gradually increased the information made public regarding its enforcement activities, whether through its corporate Annual Report⁽²⁶⁾ or its sectoral publications (in particular the Single Market Scoreboard⁽²⁷⁾, the European Semester's country-specific reports⁽²⁸⁾, the Environmental Implementation Review⁽²⁹⁾ and its accompanying environmental infringements interactive map, or the publication of Commission reactions to Member State notifications under the Single Market Transparency Directive⁽³⁰⁾). These publications are complemented, throughout the year, by real-time publication of the Commission's infringement decisions and the related press releases on the Europa website.

Enhancing **transparency of enforcement activities** is not only necessary to show the concrete achievements of the Commission and the Member States as public actors. It also helps the wider public to engage in the shared responsibility of enforcement and promotes faster compliance by Member States, by highlighting positive achievements and attributing credit to best practices, creating at the same time peer pressure concerning breaches of EU law that remain unresolved.

While the Commission proactively publishes a lot of information on its enforcement activities, these publications take place in several different reports and websites, refer to different time periods and generally lack a uniform approach. Information on the Commission's competences, its role and strategy for enforcement of EU law must be easily accessible and clearly presented to people and businesses. This is why the 2022 Communication sets out in a clear and accessible manner the Commission's approach to enforcement, the methods used for achieving compliance and why it matters for people and businesses.

3.6.2 Additional publications for a more meaningful information of the public

More could be done to make the published information on enforcement actions more user-friendly, visually appealing and even more relevant. Cases that are closed with positive results bringing concrete benefits to people and businesses could also be given more visibility. This could, in turn, help to make the Annual Report more accessible, making it more about how the Commission applies its approach to strategic and smart enforcement, in line with its communications, accompanied only by selected key figures. Transparency could also play a bigger role during the process of transposing directives and as regards the EU Pilot dialogue.

Since 1997, the Single Market Scoreboard has presented, among many other indicators, the percentage of single market directives not yet completely notified to the Commission in relation to the total number of directives that should have been notified by the transposition deadline. The publication of this transposition deficit is an excellent tool to trigger peer pressure and to attract political attention. It could be useful to broaden its

⁽²⁶⁾ https://commission.europa.eu/law/application-eu-law/implementing-eu-law/infringement-procedure/2021-annual-report-monitoring-application-eu-law_en

⁽²⁷⁾ https://single-market-scoreboard.ec.europa.eu/enforcement-tools_en

⁽²⁸⁾ https://commission.europa.eu/publications/2022-european-semester-country-reports_en

⁽²⁹⁾ https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review_en

⁽³⁰⁾ <https://technical-regulation-information-system.ec.europa.eu/en/home>

scope beyond single market directives. Furthermore, an earlier publication of statistical data could maximise the positive effects of these tools.

The EU Pilot dialogue is an effective tool, offering the possibility to collect factual or legal information and to achieve, in many cases, swifter compliance than through a formal infringement procedure. However, because the success of this dialogue relies on its informal character, the Commission publishes only very little information on EU Pilot cases (mainly in its annual publications). This can give a negative image of secrecy and has led to misunderstandings. Given its publicly advertised importance within the enforcement toolbox, a certain level of transparency on EU Pilot cases is warranted.

While it is important to keep the content of the dialogue between the Commission service and the Member State concerned strictly confidential, at least as long as it is ongoing, it should be possible to report data on future closed cases. Options include regular reporting of statistical metadata, detail by policy area and topics concerned, or short titles. In addition, the possibility to communicate data on the existence of ongoing EU Pilot processes could be explored further, while preserving the informal character of the dialogue and without undermining its efficiency. Pedagogical communication should accompany publications on EU Pilot processes, for example a disclaimer underlining that the existence of an EU Pilot case does not mean that there is a breach of EU law. The internal EU Pilot guidelines could also be published, to foster a better understanding of the mostly technical nature of these cases.

Public interest in the application of EU law and the enforcement of EU rights appears not only from the high number of complaints addressed to the Commission, but also from the petitions that the European Parliament receives every year. Many of these issues are connected or are identical to investigations carried out by the Commission, including via infringements. It would be helpful to combine the various sources of information and enhance upfront availability of information for people and businesses on matters of general interest, such as those that were at the heart of people's interests during the COVID-19 pandemic.

Such information will allow people who consider filing a complaint or petition to verify if their issue is already addressed in an ongoing infringement procedure. Communicating clearly on the Commission's enforcement strategy and wider initiatives will help manage complainants' expectations on different levels. First of all, the dedicated web page on Europa should be reviewed to better present the Commission's work on enforcement, clearly present the strategy on complaints handling and better guide complainants to the right redress mechanism.

The Commission values complaints as a source of information on potential breaches of EU law by Member States and reports transparently on the number of complaints received, dismissed, and pursued further. However, reporting on complaints that were successful in leading to further investigations by the Commission through EU Pilot processes or infringement procedures would be more effective. It would illustrate the continued usefulness of complaints and have a pedagogical effect of showing the types and areas of complaints that are more likely to be followed up.

The Commission often receives requests for public access to infringement-related documents, under Regulation (EC) No 1049/2001. While for ongoing infringement procedures or EU Pilot investigations, the disclosure of these documents is usually prevented by the exceptions to public access, as confirmed by the Court of Justice of the EU on several occasions, the Commission in principle replies favourably to requests

concerning closed procedures, often disclosing extensive information on a specific case. The Commission also frequently receives requests to disclose the amounts of financial sanctions that it proposed the Court to impose on Member States, or the amounts effectively paid by Member States. More proactive information on financial sanctions could increase the pressure on Member States to comply with EU law swiftly. To facilitate access to already public information and inform people and businesses about the sanctions that their Member State incurred as a consequence of infringing EU law, the Commission should provide the amounts of sanctions decided by the Court in a proactive and accessible manner. Furthermore, the Annual Report could regularly inform the public of the financial sanctions paid by Member States in a given reporting period.

➤ **Recommendations**

In order to further strengthen transparency on the Commission's enforcement work, it is proposed to:

- Revamp the existing **Europa web page on infringement decisions**, by:
 - making it more user-friendly, facilitating searches per topic and making it possible for users to visualise the infringements data through different customisable maps and graphs;
 - publishing additional relevant information on infringement procedures, for instance, if there are related petitions and parliamentary questions or whether the Court of Justice of the EU has imposed financial sanctions in an infringement proceedings;
 - publishing regular information about closed EU Pilot dialogues (while further exploring the possibility of also publishing some data on the existence of ongoing files) and transposition efforts of Member States (including the transposition deficit or similar indicator on all EU directives).
- Make it easier for prospective complainants or petitioners to check if their issue is already being dealt with in an ongoing infringement procedure, for example by making information on infringement decisions more accessible on Europa and via the **European Parliament's Petitions Portal**.
- Review the **Europa web page on how to submit a complaint** on EU level to better explain to people and businesses the role of the Commission in enforcing EU law and the Commission's policy on complaints handling. The standard complaint form should also be revamped in this context.
- Establish a **more interactive portal** for all matters related to the Commission's monitoring of the application of EU law. Such a portal could include the real-time information about the Commission's enforcement of EU law (see first recommendation), but also be an access point for complainants, with information about Commission investigations related to alleged breaches signalled in parliamentary questions, petitions and other Commission investigations or Commission's initiatives of special interest to the public.
- Revamp and streamline the **Annual Report on monitoring the application of EU law**, once the publication of real-time data on the Europa web pages has been fully accomplished, by:

- reducing the amount of statistical data published annually and illustrating further how the Commission applies its approach to strategic and smart enforcement, in line with its Communications on enforcement;
- reporting more prominently on complaints that led to further investigations by the Commission through EU Pilot processes or infringement procedures, including cases that ultimately had to be referred to the Court;
- reporting on the amounts of financial sanctions decided by the Court of Justice of the EU and the amounts of financial sanctions paid by the Member States in the reference year;
- setting out more prominently those cases that were closed successfully and the positive results achieved for people and businesses.