



# European Administration

**Erzsébet CSATLÓS, PhD**

Institute of Public Law

[Csatlos.e@juris.u-szeged.hu](mailto:Csatlos.e@juris.u-szeged.hu)



# **EUROPEAN ADMINISTRATION**

## **Chapter V**

### **Supervision of European administration**



## I. Supervision of direct administration

1. Administrative supervision
2. Judicial supervision
3. Political Supervision
4. The European Ombudsman

## II. Supervision of indirect administration

1. Administrative supervision
2. Political supervision
3. Judicial supervision

# Supervision of direct administration

```
graph TD; A[Supervision of direct administration] --- B[to prevent and/or cure maladministration and the abuse of power]; A --- C[ ]; C --- D[Administrative]; C --- E[Judicial]; C --- F[Political]; C --- G[European Ombudsman];
```

to prevent and/or cure  
maladministration and  
the abuse of power

Administrative

Judicial

Political

European  
Ombudsman

# **Administrative supervision**

```
graph TD; A[Administrative supervision] --> B[General supervision by the head of execution]; A --> C[Independent supervision within the EU administration]; B --> D[Supervision within the Commission]; B --> E[Supervision of agencies]; C --> F["*European Court of Auditors, *European Anti-Fraud Agency (OLAF) *European Union Agency for Fundamental Rights (FRA) *European Data Protection Supervisor (EDPS)."]
```

**General supervision by the head of execution**

**Independent supervision within the EU administration**

**Supervision within the Commission**

**Supervision of agencies**

**\*European Court of Auditors,  
\*European Anti-Fraud Agency (OLAF)  
\*European Union Agency for Fundamental Rights (FRA)  
\*European Data Protection Supervisor (EDPS).**

# General supervision by the head of execution

```
graph TD; A[General supervision by the head of execution] --> B[Supervision within the Commission]; A --> C[Supervision of agencies]; B --> D["lack of a formal hierarchy in the Commission<br/>collegiate decision-making of the Commissioners"]; C --> E["satellite institutions<br/>→the supervisory arrangements applying to them are rather varied"]
```

## Supervision within the Commission

*lack of a formal hierarchy in the Commission*  
*collegiate decision-making of the Commissioners*

## Supervision of agencies

*satellite institutions*  
→the supervisory arrangements applying to them are rather varied



# Independent supervision within the EU administration: ECA (1993-)

## Financial audit

- Are the financial statements complete and accurate (reliable)? Do they present fairly the financial position, results and cash flow for the year, in accordance with the applicable financial reporting rules?

## Compliance audit

- Are EU income and expenditure transactions correctly calculated and do they comply with the relevant legal and regulatory framework requirements?

## Performance audit

- Do the EU funds provide value for money? Have the funds used been kept to a minimum (economy)? Have the results been achieved with the fewest possible resources (efficiency)? Have spending or policy objectives been met (effectiveness)?

**Multiannual  
and annual  
programming**

**Preliminary  
study**

**Audit  
planning  
memorandum**

**Audit field  
work**

**Clearance  
procedure  
with the  
auditee**

**Publication of  
audit report**

**Follow-up  
(2-3 ys)**

# OLAF and Guardia di Finanza unravel complex scam with EU funds: Operation Paper Castle



OLAF put an end to an intricate fraud scheme through which more than €1.4 million had been misappropriated.



Investigations took place across several EU Member States.

In Italy, OLAF relied on its close cooperation with Guardia di Finanza.

## Case Details



An Italian-led consortium, from France, Romania and the UK received EU funds for two hovercraft prototypes.



The hovercraft were meant to reach remote areas in case of environmental accidents.

The Italian grantees used accounting artifices to syphon off money, claiming false expenses.



Investigations also revealed the UK partner only existed on paper.

A mortgage on a castle facing foreclosure had been repaid with the EU funds.



Investigators analysed more than 12,000 financial transactions and payments made in the project.



Investigators also only discovered various disassembled components of one hovercraft. The other was completed after the project deadline.



The company was owned by the Italian partner.



The project leader is facing charges of embezzlement and fraud against the EU.

Close and constant cooperation between OLAF and Guardia di Finanza was central to cracking the case.



Independent supervision within the EU administration:

## European Anti-Fraud Agency (Office de la Lutte Antifraude)

### OLAF (1988-)

- Structural Funds,
- agricultural policy and rural development funds,
- direct expenditure and external aid;
- some areas of EU revenue: mainly customs duties;
- suspicions of serious misconduct by EU staff and members of the EU institution

[https://ec.europa.eu/anti-fraud/sites/antifraud/files/paper\\_castle\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/paper_castle_en.pdf)



# Independent supervision within the EU administration

## European Union Agency for Fundamental Rights (FRA) 2007-

### How we work

[ABOUT FRA →](#)



#### Research and data

Identifying trends: collecting and analysing comparable data.



#### Capacity-building

Supporting rights-compliant policy responses: providing real-time assistance and expertise.



#### Advising

Contributing to better law making and implementation: providing independent advice.



#### Convening people

Bringing together human rights actors to effectively promote rights, values and freedoms.

## Independent supervision within the EU administration: EDPS 2003-

### Consultation & general supervision

- **written or verbal advice** (on request/own initiative)
  - ✓ a *general advice* is provided on topics that are relevant for all EU institutions in guidelines;
  - ✓ *verbal advice* is offered via DPO telephone hotline (reserved for the EU institutions);
  - ✓ offer useful *resources and documents* to assist DPOs in general
- **raise awareness** about data protection in the EU institutions and provide training;
- **conduct** data protection **audits** to verify compliance **in practice**

### Enforcement

When EU institutions do not comply with the data protection rules, the EDPS can use the enforcement powers:

- **Warn or admonish** the EU institution which is unlawfully or unfairly processing your personal information;
- **Order** the European institution to comply with requests to exercise your rights
- Impose **a temporary or definitive ban** on a particular data processing operation;
- Impose an **administrative fine** on EU institutions;
- **Refer a case to the Court** of Justice of the European Union.

# Judicial supervision of direct administration

By court

action for  
annulment

action for  
failure to act

action for  
remedy of  
damages

**incidental forms  
of review**

- Plea of illegality
- Review of validity



# Action for annulment

**Who:** MS, Commission, Council, Parliament  
**Jurisdiction** – Court of Justice



the applicant seeks the annulment of a measure (in particular a regulation, directive or decision) adopted by an institution



**Who:** Individuals (natural or legal)  
Against an act addressed to them or which is of **direct & individual** concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.  
**Jurisdiction:** General Court (at first instance)

2 months from the publication

If the Court accepts the action, it declares the act to be void.

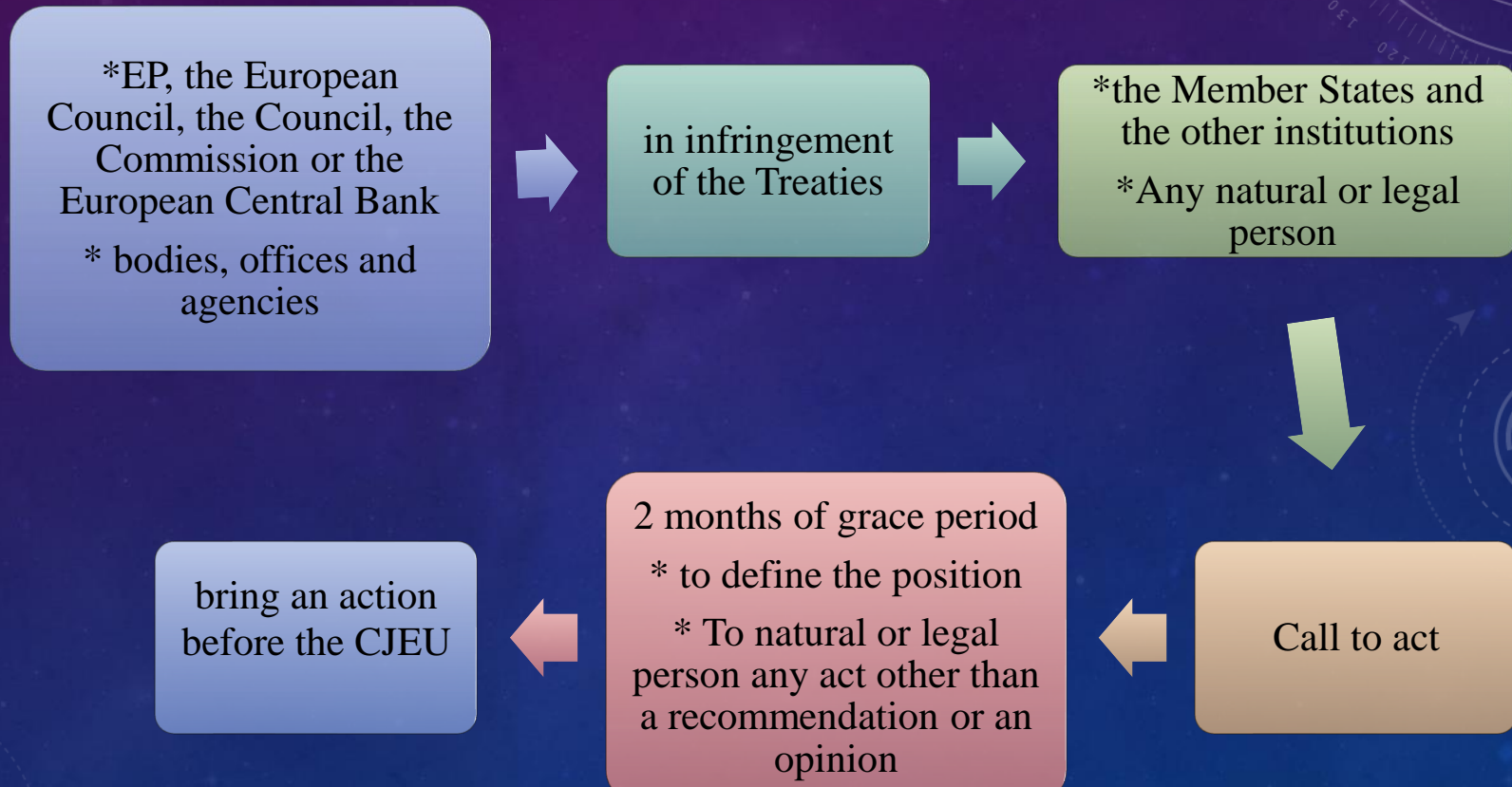
**The Court of Justice** has exclusive jurisdiction over actions brought by a Member State against the European Parliament and/or against the Council (apart from Council measures in respect of State aid, dumping and implementing powers) or brought by one European Union institution against another.

**plea of illegality**

**review of validity**



# Action for failure to act (TFEU 265)



The Court of Justice has exclusive jurisdiction over actions brought by a Member State against the EP and/or against the Council or brought by one European Union institution against another.  
The General Court at first instance, in actions brought by individuals.



# Action for damages against the EU

## Action for ANNULMENT (of a decision)

Article 263 TFEU

### LEGAL BASIS



### TIME LIMIT (for application)

2 months



Legally binding act

Directly and individually  
concerned

Benefits applicant

### CONDITIONS (simplified)



## Action for DAMAGES (non-contractual liability)

Articles 268, 340 TFEU

5 years

Unlawful conduct

Actual and certain  
damage

Direct causal link



## General Court

- **Liability for unlawful discretionary acts** - 'sufficiently flagrant violation of a superior rule of law for the protection of the individual'.  
(Schöppenstedt formula)
- **Liability for unlawful non-discretionary acts** – narrow interpretation 'sufficiently serious' damage
- **Liability for lawful acts**
  - (1) unusual character of the damage;
  - (2) special character of the damage;  
and
  - (3) the fact that the lawful act was not justified by a general economic interest.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2020:022:FULL>

Any **natural or legal person**, under public or private law, established in the EU or not

## Joint liability of the EU and Member States ?

Table 2 – Damages awarded by the General Court and Court of Justice in 2016-2017<sup>36</sup>

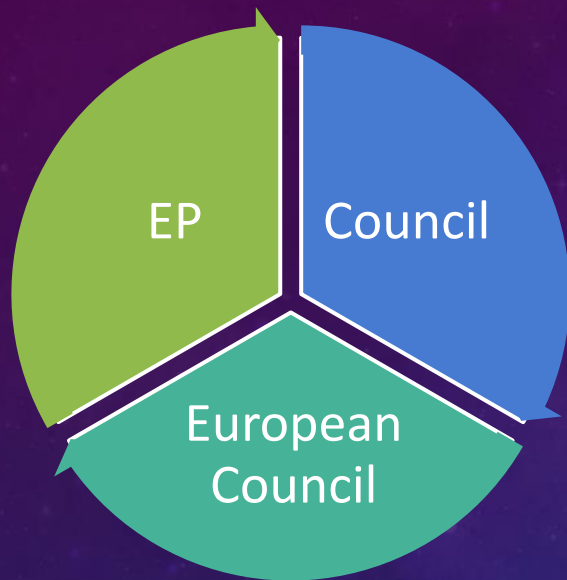
Case				Damages (in €)	
Number	Applicant	Defendant	Subject matter	Material	Non-material
<a href="#">C-337/15 P</a>	Claire Staelen	Ombudsman	Maladministration	--	7 000
<a href="#">T-673/15</a>	Guardian Europe	Commission and CJEU	Protracted proceedings	654 523.43	--
<a href="#">T-40/15</a>	Plásticos Españoles	CJEU	Protracted proceedings	44 951.24	--
	Armando Álvarez	CJEU	Protracted proceedings	111 042.48	--
<a href="#">T-577/14</a>	Gascogne Sack Deutschland and Gascogne	CJEU	Protracted proceedings	47 064.33 (Gascogne)	5 000 each
<a href="#">T-479/14</a>	Kendrion NV	CJEU	Protracted proceedings	588 769.18	6 000
Total				1 446 350.66	23 000

Table 1 – Sums earmarked for liability in damages in the [2018 EU budget](#)

Institution	Budget article and item	Appropriation (in €)
Commission – administrative issues	26 01 60 07	150 000
Commission – common agricultural policy issues	05 07 02	124 500 000
Commission – competition policy	03 01 07	5 869 123
Committee of the Regions	2 3 2 (p. 2063)	30 000
Council and European Council	2 3 3 6 (p. 296)	1 000 000
Court of Auditors	2 3*2 (p. 2109)	200 000
Court of Justice	2 3*2 (p. 2061)	130 000
European External Action Service	2 2 3 6 (p. 2355)	293 000
European Economic and Social Committee	2 3*2 (p. 2166)	150 000
European Parliament	2 3 2 (p. 213)	1 010 000
Ombudsman	2 3 2 (p. 2257)	15 000
<b>Total</b>		<b>133 347 123</b>

The sums earmarked for damages in the case of some institutions have grown significantly in comparison to the [2017 budget](#), for instance in the case of the European External Action Service from €80 000 to €293 000 or in the case of the Court of Justice from €70 000 to €130 000.

# Political Supervision



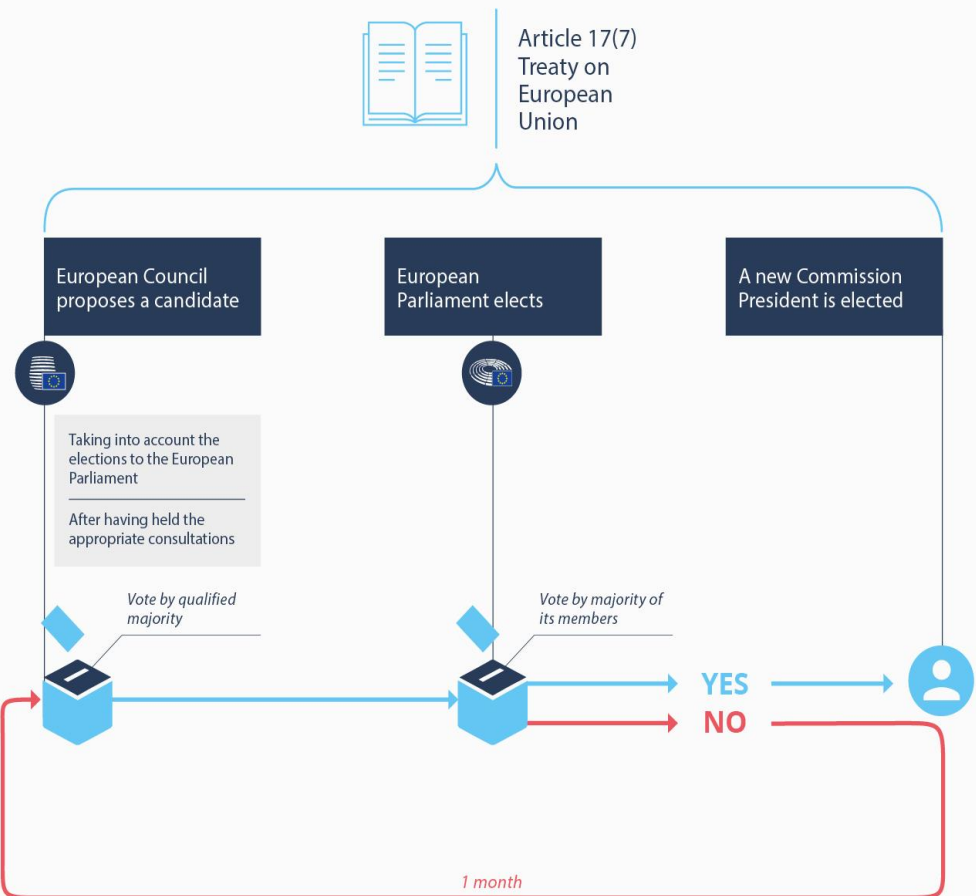
Ex ante: appointment procedures

Ex post: reporting, questioning

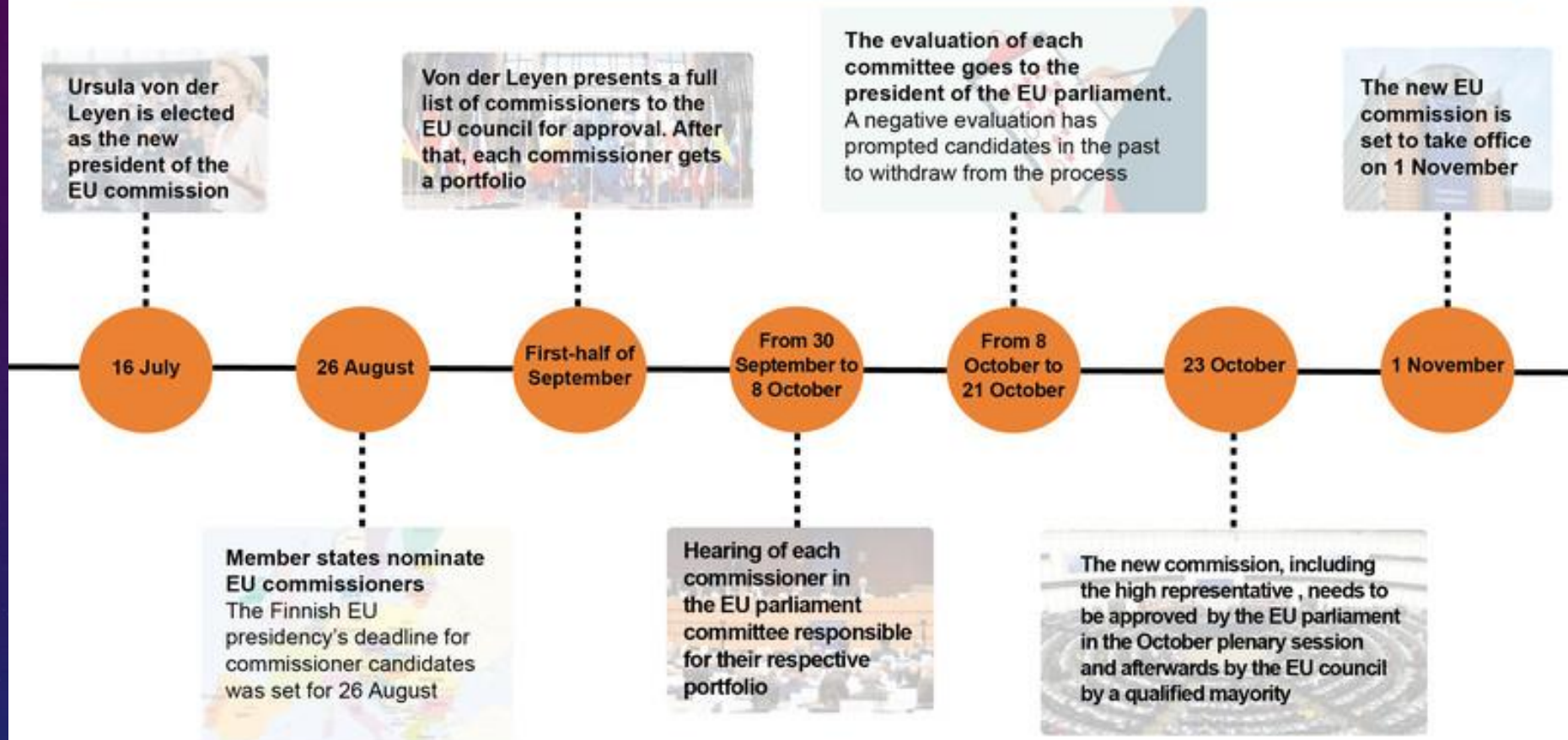
For example, the Commission:



## Election of the European Commission President



## 7 steps to the new European commission



\*\*\*In the event of a substantial portfolio change during the Commission's term of office, the filling of a vacancy or the appointment of a new Commissioner following the accession of a new member state, the Commissioner concerned is heard by the relevant committee as well.



**If any Member of the Commission**

- (a) no longer fulfils the conditions required for the performance of his duties or
- (b) if he has been guilty of serious misconduct



on application by  
**the Council**  
acting by a simple  
majority or  
**the Commission**



the CJEU may,  
compulsorily retire  
him

the Commission is  
responsible for the EP



the **European Parliament**  
may vote on a motion of  
censure of the  
Commission:  
at least 3 days after the  
motion has been tabled  
and only by open vote.



- the members of the Commission shall resign as a body
- and HR/VP shall resign from the duties that he carries out in the Commission



# Political supervision through the European Parliament

## Discussion of working program

- right to speak at the start of each European Council
- At the beginning and end of each six-month Council presidency

## Appointment of members of the EU organs and authorities

- Ombudsman
- Consulted: *President, Vice-President and Executive Board of the European Central Bank; members of the Court of Auditors*
- Commission

## Motions of censure and dismissal of members of the institutions and bodies of the EU

- Commission
- Ombudsman

## Taking action against EU institutions



## Reporting

- Ombudsman
- Commission, Council President, European Council

## Questioning

## **Investigations by committees of inquiry**

- at the request of at least one-quarter of its component Members,
- to set up a temporary committee of inquiry.
- investigate alleged contraventions of European law or alleged maladministration in its application in 12 months

## **The Petitions Committee of the European Parliament**

- Any citizen of the EU and to natural and legal persons resident or registered in a Member State has the right
- EU's fields of activity
- and affecting him, her, or it directly

## **Investigations by committees of independent experts**

- either alone or in cooperation with other institutions,
- ad hoc committees of inquiry
- Members: either MEPs or external experts, or both

# Political supervision by Member States

```
graph TD; A[Political supervision by Member States] --> B[Through representatives in the Council]; A --> C[national parliaments];
```

**Through representatives  
in the Council**

**national parliaments**

- Protocol on the Role of National Parliaments in the European Union
  - Protocol on the principles of subsidiarity and proportionality

**The Conference of European Affairs  
Committees**

*(Conference des organes spécialisés en  
affaires communautaires - COSAC)*

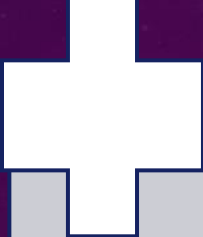


## EUROPEAN OMBUDSMAN


- transparency of the EU's decision-making process,
- accountability and inclusive decision-making
- if ethical standards are maintained by EU officials;
- management of EU public money
- ensuring that the EU's institutions and bodies guarantee fundamental rights in their work;
- good administration in administrative procedures and practices;
- respect for right and working conditions of staff EU (personnel issues).




**Independent body,  
elected by the EP for 5  
years**



## You should submit your complaint:

- within 2 years of becoming aware of the facts on which your complaint is based;
  - after having first contacted the EU institution concerned to try to resolve the matter;
  - in writing, including via the online complaint form available on the European Ombudsman's website
- 



## The Ombudsman cannot investigate:

- complaints against national, regional, or local authorities in the EU Member States, even when the complaints are related to EU matters;
- the activities of national or EU courts or ombudsmen;
- complaints against businesses or private individuals.

- ❖ administrative irregularities,
  - ❖ unfairness,
  - ❖ discrimination
- ❖ the abuse of power
- ❖ the failure to reply,
- ❖ the refusal or unnecessary delay in granting access to information in the public interest.





## Complaint about maladministration

Please read the section entitled 'How to complain' before filling out this complaint form.

Please continue on a separate sheet if necessary and enclose all the documents necessary to support your complaint.

1

First name: .....

Surname: .....

On behalf of (if applicable): .....

Address line 1: .....

Address line 2: .....

Town/City: .....

Postcode: .....

Country: .....

Nationality: .....

Tel.: .....

E-mail: .....

2

Against which European Union (EU) institution or body do you wish to complain?

- |   |   |
|---|---|
| <input type="checkbox"/> European Parliament                            | <input type="checkbox"/> European Investment Bank                   |
| <input type="checkbox"/> Council of the European Union                  | <input type="checkbox"/> European Central Bank                      |
| <input type="checkbox"/> European Commission                            | <input type="checkbox"/> European Personnel Selection Office (EPSO) |
| <input type="checkbox"/> Court of Justice of the European Union (*)     | <input type="checkbox"/> European Anti-Fraud Office (OLAF)          |
| <input type="checkbox"/> European Court of Auditors                     | <input type="checkbox"/> European Police Office (Europol)           |
| <input type="checkbox"/> European Economic and Social Committee         | <input type="checkbox"/> Other Union body (please specify)          |
| <input type="checkbox"/> Committee of the Regions of the European Union |   |

(\*) Except in its judicial role.

3

What is the decision or matter about which you complain? When did you become aware of it?

4

What do you consider that the EU institution or body has done wrong?

5

What, in your view, should the institution or body do to put things right?

6

Have you already contacted the EU institution or body concerned in order to obtain redress?

This is a mandatory condition for a complaint to be admissible. Evidence that you have contacted the relevant institution or body to seek redress must be annexed to the complaint form. Otherwise, you will be informed that we cannot deal with your complaint.

- ☐ Yes (please specify) ☐ No

7

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

- ☐ Yes (please specify) ☐ No

8

Has the object of your complaint already been settled by a court or is it pending before a court?

- ☐ Yes (please specify) ☐ No

9

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

- ☐ Yes ☐ No

Date:

### Information note on data processing and confidentiality

#### Data processing

Complaints to the Ombudsman and related correspondence often contain personal data, such as names, contact details and other information relating to identifiable individuals.

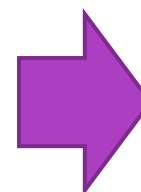
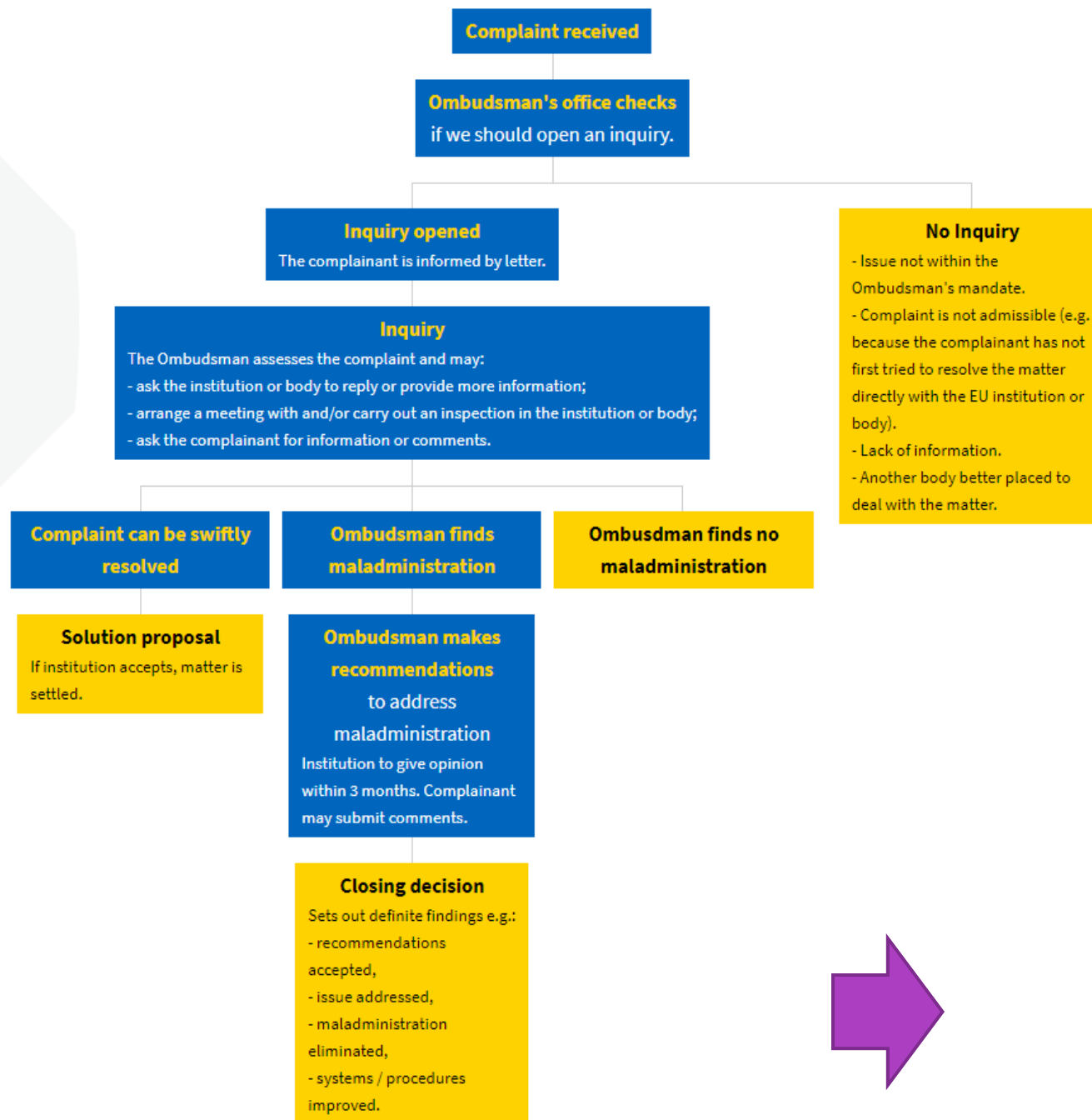
There are rights and obligations under European law (Regulation 2018/1725) as to how personal data is handled by EU institutions, including the European Ombudsman. These include an individual's right to obtain access to his or her own information held by this Office. To exercise these rights or to find out more, please contact our Office or our Data Protection Officer.

If a person considers that the Ombudsman has not handled his or her personal data properly, he or she may contact the European Data Protection Supervisor.

#### Confidentiality of your complaint and information

Complainants are requested to identify clearly any document or information that they consider to be confidential immediately on sending it to the Ombudsman.

Confidentiality can only apply if there would be some adverse effect if the information were to be disclosed. It might, for example, apply to financial information, commercially sensitive information or personal information about a private individual. Confidentiality cannot always be guaranteed. In particular, if you submit to the Ombudsman documents that contain the personal data of someone other than yourself, that person will most likely be able to obtain it from the Ombudsman, exercising their data protection rights. In any event, you should expect your complaint and any supporting documents to be shared in full with the institution or body you are complaining about, so that they can properly understand it and respond to the Ombudsman.



European Parliament

Launched a new 'Fast-Track' procedure for access to documents complaints <http://europa.eu/!fN66Rh>

## Help in accessing EU documents faster European Ombudsman 'Fast-Track'



## Advice, complaints and inquiries in 2018

**17 996**

People helped by the  
European Ombudsman  
in 2018



**14 596**

Advice given through the Interactive  
Guide on the Ombudsman's website

**2 180**

New complaints handled in 2018

**1 220**

Requests for information replied to by  
the Ombudsman's services

**490**

Inquiries opened by the  
European Ombudsman  
in 2018



**482**

Inquiries opened on the basis of  
complaints

**8**

Own-Initiative Inquiries opened

**545**

Inquiries closed by the  
European Ombudsman  
in 2018



**534**

Complaint-based inquiries closed

**11**

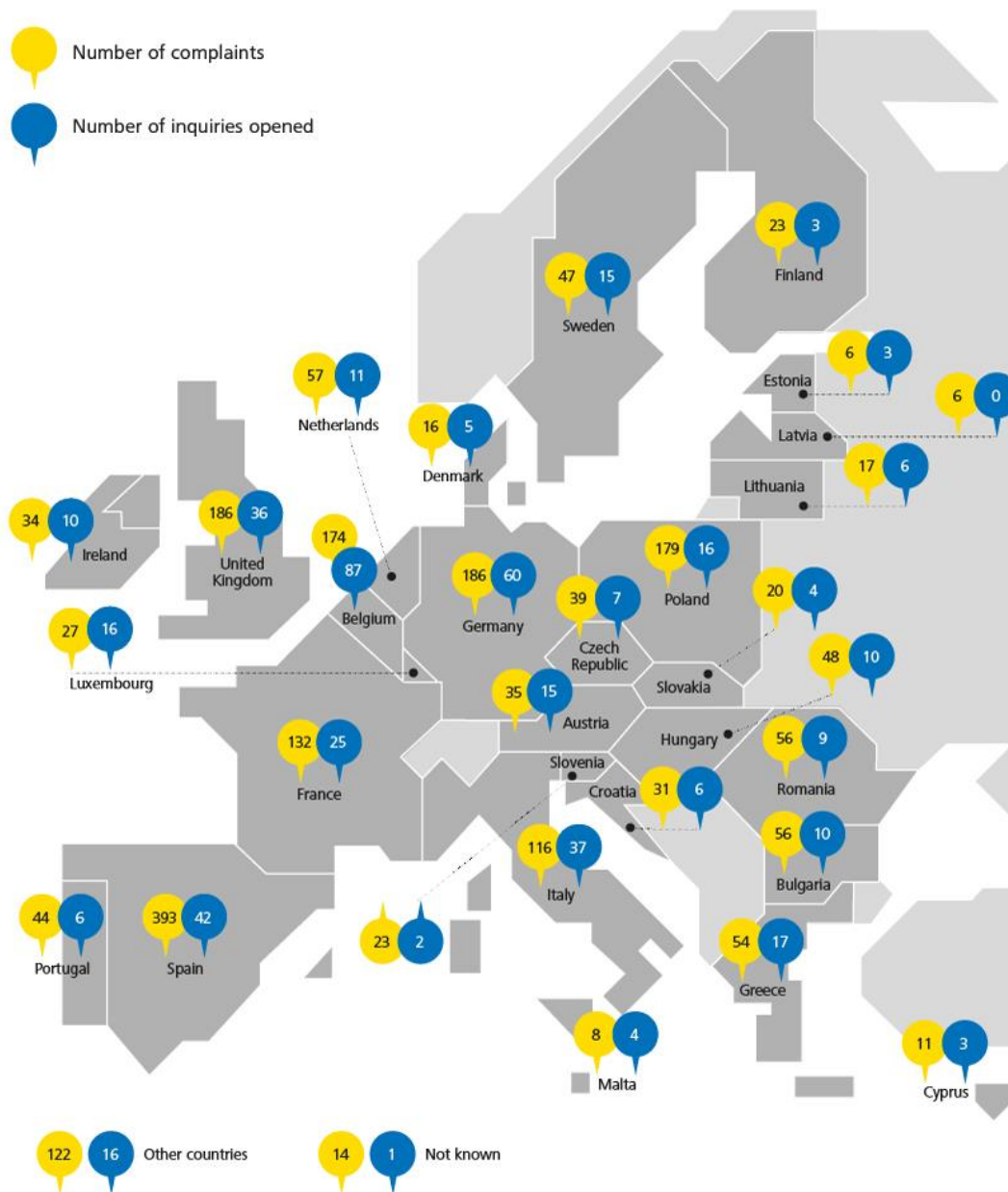
Own-initiative inquiries closed



# National origin of complaints registered and inquiries opened by the European Ombudsman in 2018

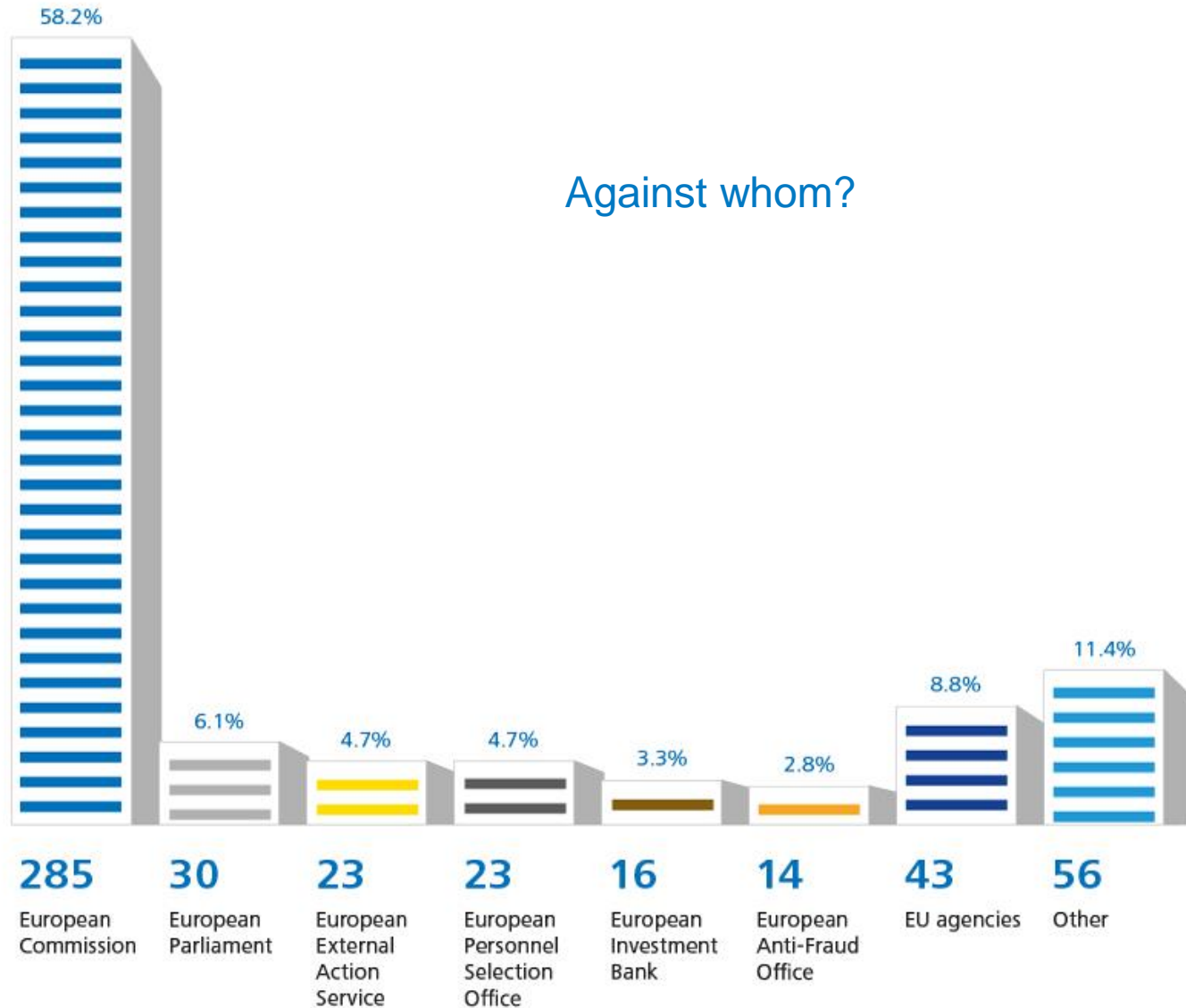
Number of complaints

Number of inquiries opened

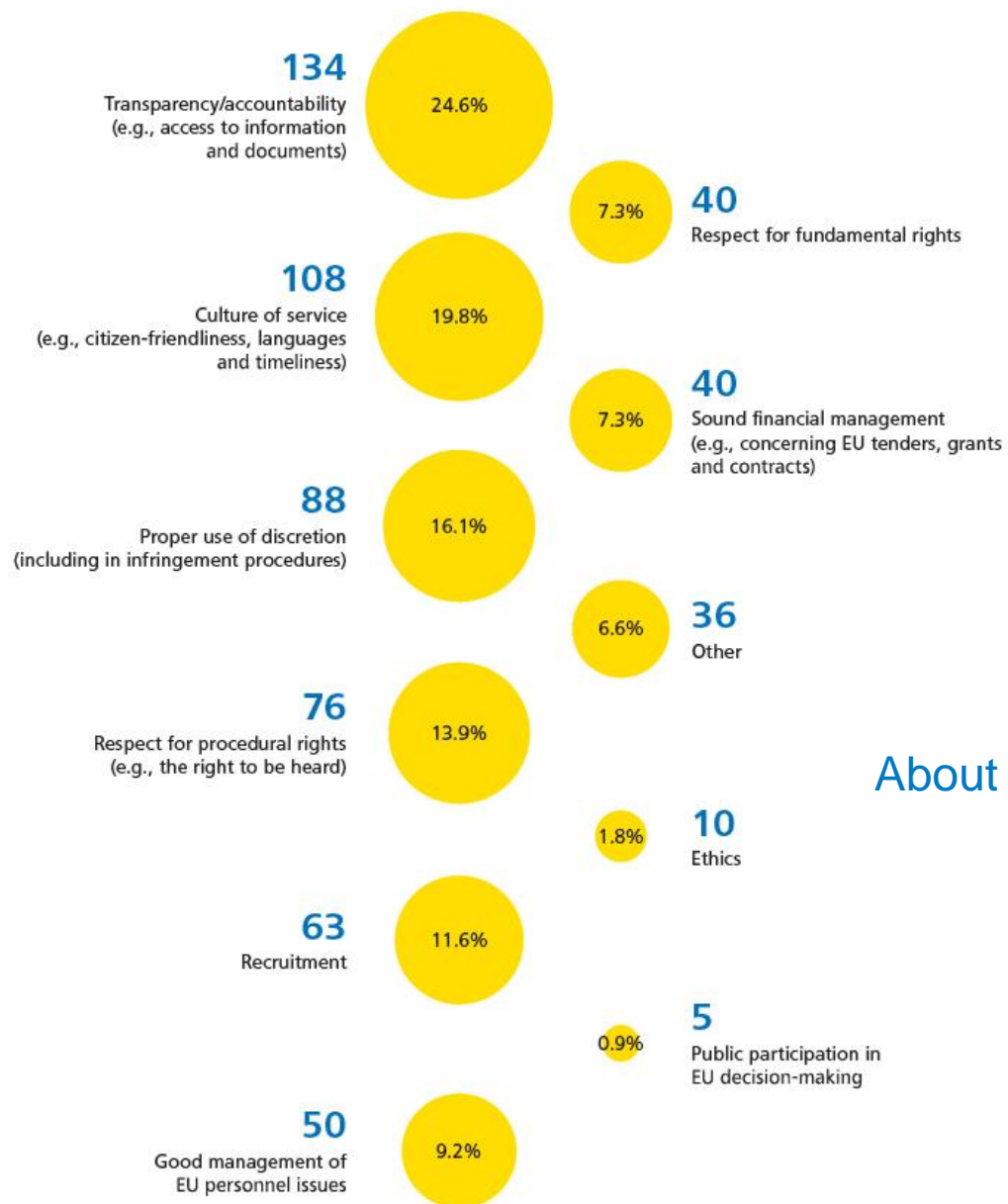




## Inquiries conducted by the European Ombudsman in 2018 concerned the following institutions



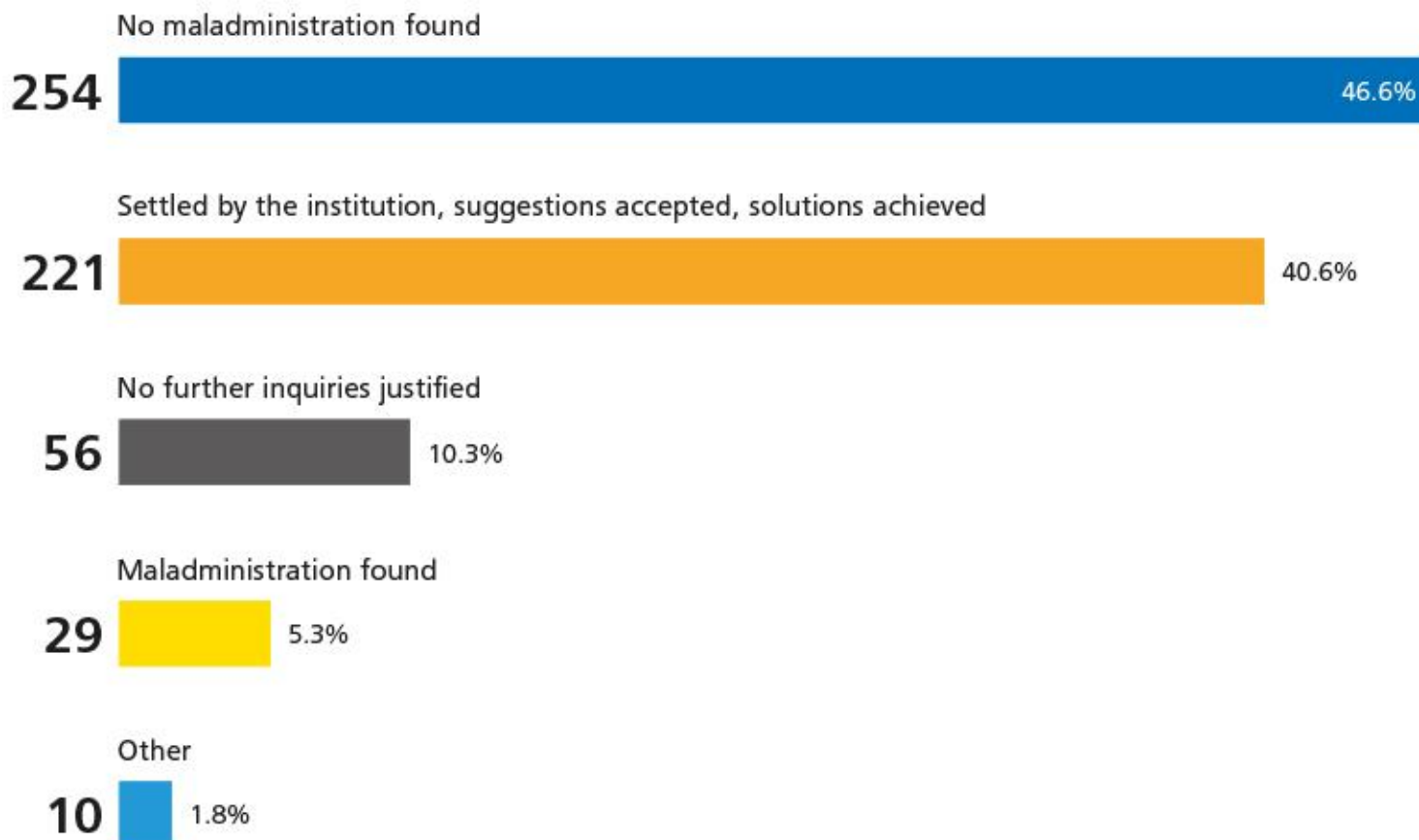
## Issue of inquiries closed by the European Ombudsman in 2018



About what?

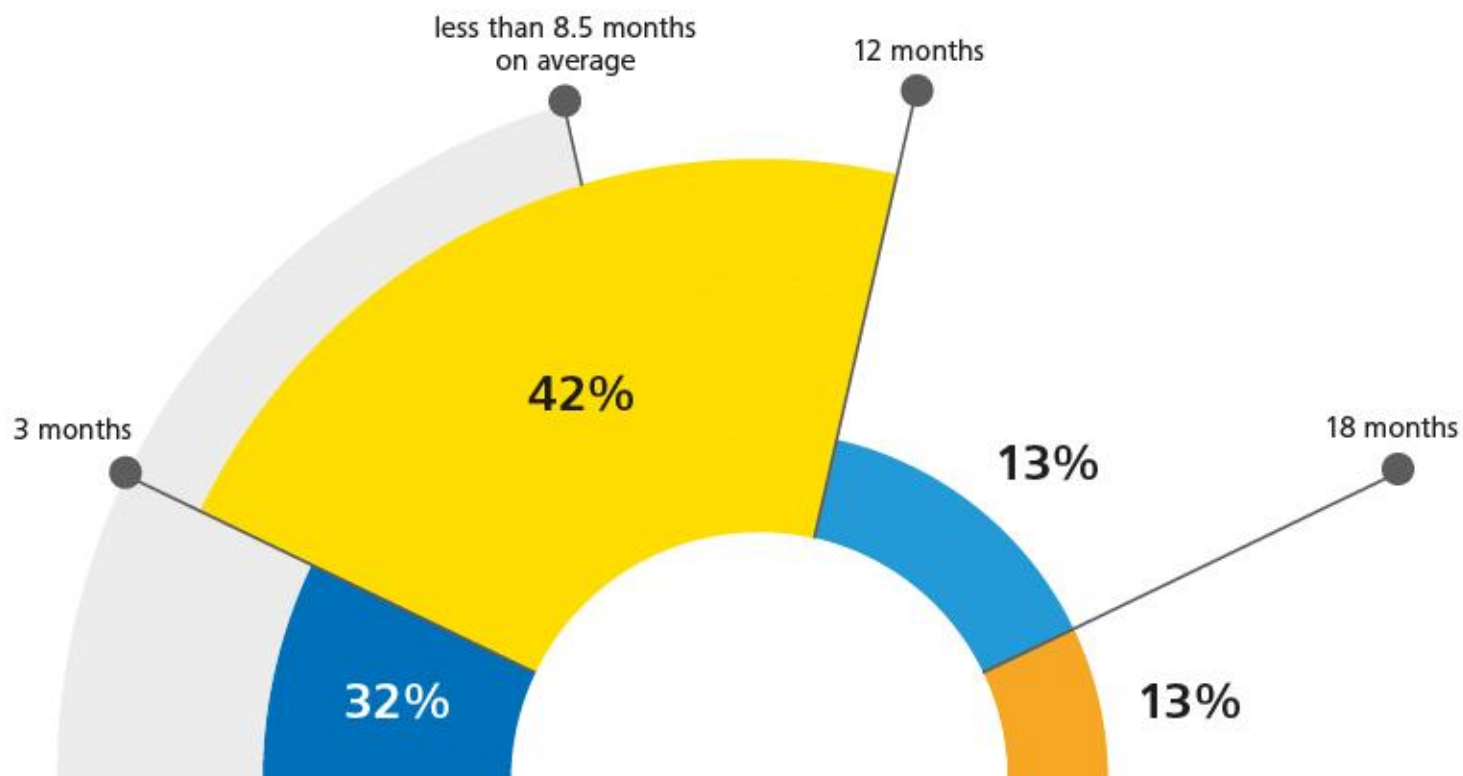
Note: In some cases, the Ombudsman closed inquiries with two or more subject matters. The above percentages therefore total more than 100%.

## Results of inquiries closed by the European Ombudsman in 2018



Note: In some cases, the Ombudsman closed inquiries on two or more grounds. The above percentages therefore total more than 100%.

## Length of inquiry of cases closed by the European Ombudsman in 2018



- Cases closed within 3 months
- Cases closed within 3 to 12 months
- Cases closed within 12 to 18 months
- Cases closed after more than 18 months<sup>1</sup>





## II. SUPERVISION OF INDIRECT ADMINISTRATION

# Supervision of Indirect administration

Execution of EU law – ensuring the protection of rights (and evaluation of obligations) issuing from EU obligations

## Administrative supervision

Domestic level

EU level

## Political

- Petition to the European Parliament
- Procedure of Art. 7. TEU

## Judicial

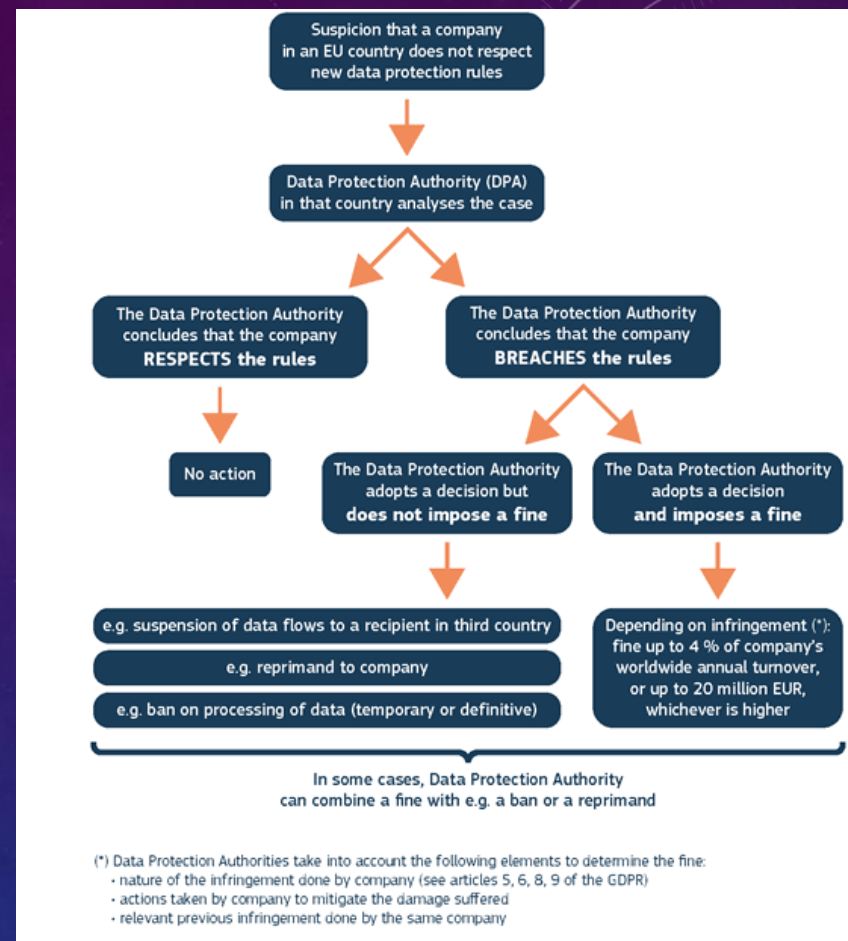
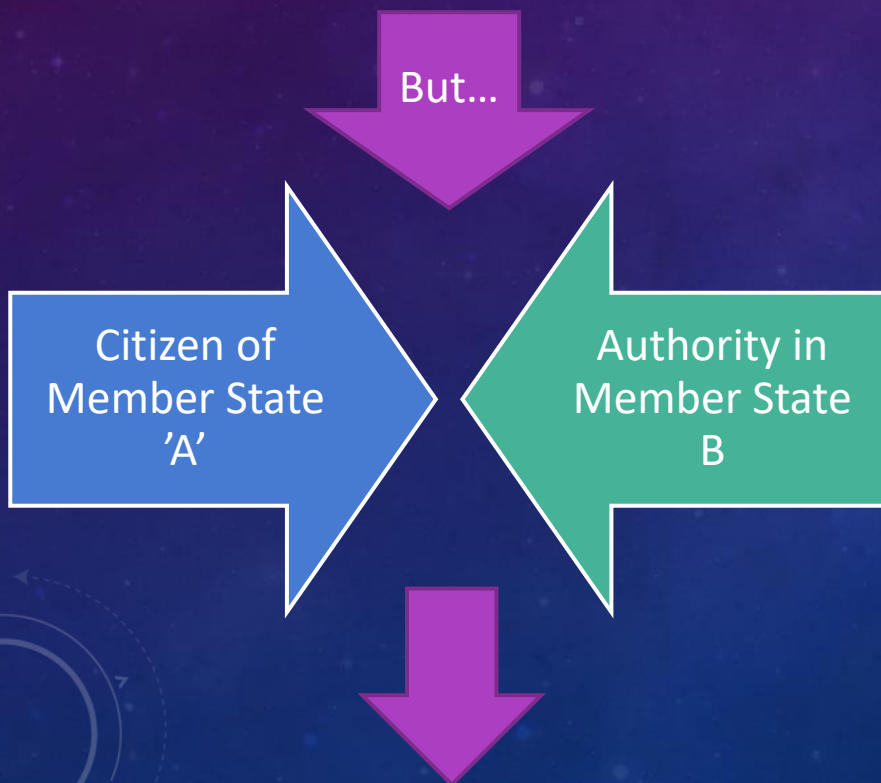
Domestic legal remedy for the breach of EU law

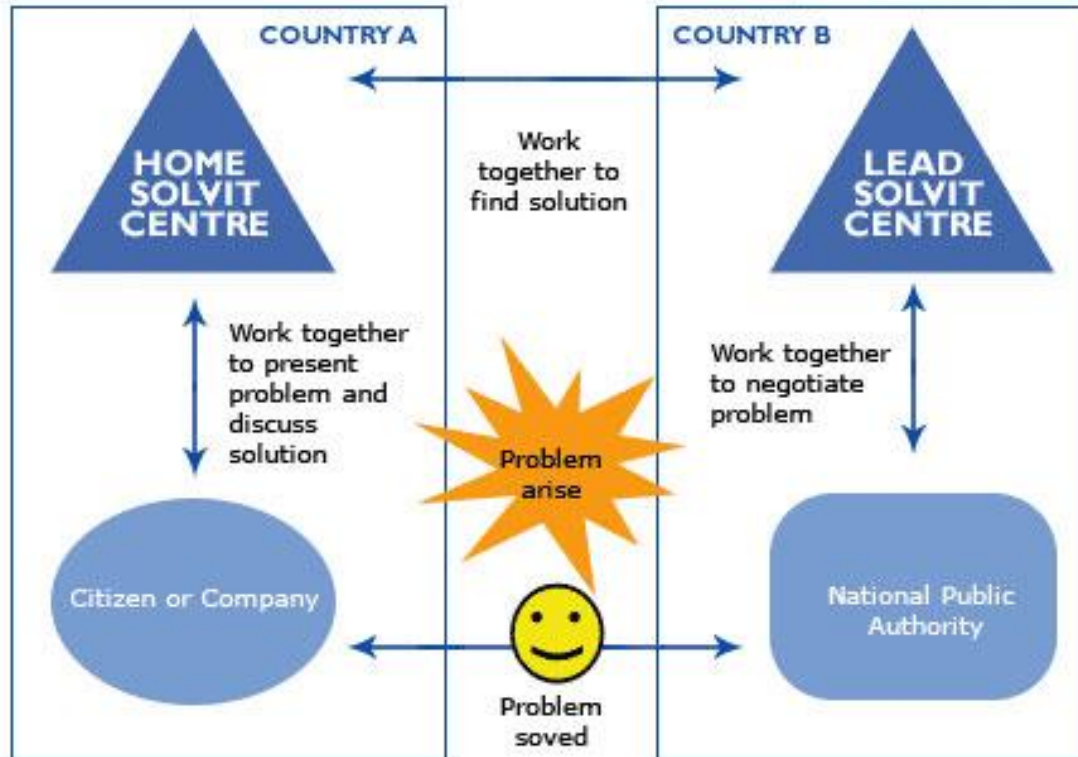
Member State liability for the breach of EU law before domestic courts

Member States liability for the breach of EU law before CJEU: infringement procedure

## a) Member States' own administrative system

with respect to infringements of EU law, the national authorities **must proceed with the same diligence** as that which they bring to bear in implementing corresponding national laws.  
[68/88 Commission v Greece





# SOLVIT

- ❖ your EU rights as a citizen or as a business are **breached by public authorities** in another EU country
- ❖ you have not (yet) taken your case to court (although Solvit can help if you've just made an administrative appeal)

- Getting your professional qualifications recognised
- Visa & residence rights
- Trade & services (businesses)
- Vehicles & driving licences
- Family benefits
- Pension rights
- Working abroad
- Unemployment benefits
- Health insurance
- Access to education
- Cross-border movement of capital or payments
- VAT refunds.

- EU
- Iceland
- Liechtenstein
- Norway





# EU level supervision of national administrative functioning

## Complaints to the Commission about breaches of EU law



EUROPEAN COMMISSION

Complaint – Infringement of EU law

Before filling in this form, please read "How to submit a complaint to the European Commission":

[https://ec.europa.eu/assets/sq/report-a-breach/complaints\\_en](https://ec.europa.eu/assets/sq/report-a-breach/complaints_en)

All fields with \* are mandatory. Please be concise and if necessary continue on a separate page.

1

### 1. Identity & contact details

#	Complainant*	Your representative (if applicable)*
Title* Mr/Ms/Mrs#	<input type="text"/>	<input type="text"/>
First name*	<input type="text"/>	<input type="text"/>
Surname*	<input type="text"/>	<input type="text"/>
Organisation#	<input type="text"/>	<input type="text"/>
Address*	<input type="text"/>	<input type="text"/>
Town/City*	<input type="text"/>	<input type="text"/>
Postcode*	<input type="text"/>	<input type="text"/>
Country*	<input type="text"/>	<input type="text"/>
Telephone#	<input type="text"/>	<input type="text"/>
E-mail#	<input type="text"/>	<input type="text"/>
Language*	<input type="text"/>	<input type="text"/>
Should we send correspondence to you or your representative*#	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

2

### 2. How has EU law been infringed?\*

#	Authority or body you are complaining about#
Name*	<input type="text"/>
Address#	<input type="text"/>
Town/City#	<input type="text"/>
Postcode#	<input type="text"/>
EU Country*	<input type="text"/>
Telephone#	<input type="text"/>
Mobile#	<input type="text"/>
E-mail#	<input type="text"/>

3

### 3.1 Which national measure(s) do you think are in breach of EU law and why?\*

<input type="text"/>
----------------------

4

### 4.2 Which is the EU law in question?\*

<input type="text"/>
----------------------

### 5.2 Describe the problem, providing facts and reasons for your complaint\* (max. 7000 characters):\*

<input type="text"/>
----------------------

6

### 6.4 Does the Country concerned receive (or could it receive in future) EU funding relating to the subject of your complaint?...

O Yes, please specify below ..... O No ..... O I don't know

<input type="text"/>
----------------------

7

### 7.5 Does your complaint relate to a breach of the EU Charter of Fundamental Rights?\*

The Commission can only investigate such cases if the breach is due to national implementation of EU law.

O Yes, please specify below ..... O No → → O I don't know

<input type="text"/>
----------------------

8

### 8. Previous action taken to solve the problem\*

Have you already taken any action in the Country in question to solve the problem?\*

IF YES, was it: O Administrative ..... O Legal:?

3.1 Please describe: (a) the body/authority/court that was involved and the type of decision that resulted; (b) any other action you are aware of.

<input type="text"/>
----------------------

3.2 Was your complaint settled by the body/authority/court or is it still pending? If pending, when can a decision be expected?\*

<input type="text"/>
----------------------

**IF NOT** please specify below as appropriate

- ☐ Another case on the same issue is pending before a national or EU Court
- ☐ No remedy is available for the problem
- ☐ A remedy exists, but is too costly
- ☐ Time limit for action has expired
- ☐ No legal standing (not legally entitled to bring an action before the Court); please indicate why:

☐

- ☐ No legal aid/no lawyer
- ☐ I do not know which remedies are available for the problem
- ☐ Other — specify

☐

**4. If you have already contacted any of the EU institutions dealing with problems of this type, please give the reference for your file/correspondence:**

- ☐ Petition to the European Parliament — Ref. ....
- ☐ European Commission — Ref. ....
- ☐ European Ombudsman — Ref. ....
- ☐ Other — name the institution or body you contacted and the reference for your complaint (e.g. SOLVIT, FIN-Net, European Consumer Centres)

☐

**5. List any supporting documents/evidence which you could — if requested — send to the Commission.**

 Don't enclose any documents at this stage.

☐

**6. Personal data\***

Do you authorise the Commission to disclose your identity in its contacts with the authorities you are lodging a complaint against?

☐ Yes ..... ☐ No

 In some cases, disclosing your identity may make it easier for us to deal with your complaint.



You must submit your complaint via the **standard complaint form**, which you can fill out in any official EU language.



Commission will confirm to you that it has received your complaint within 15 working days



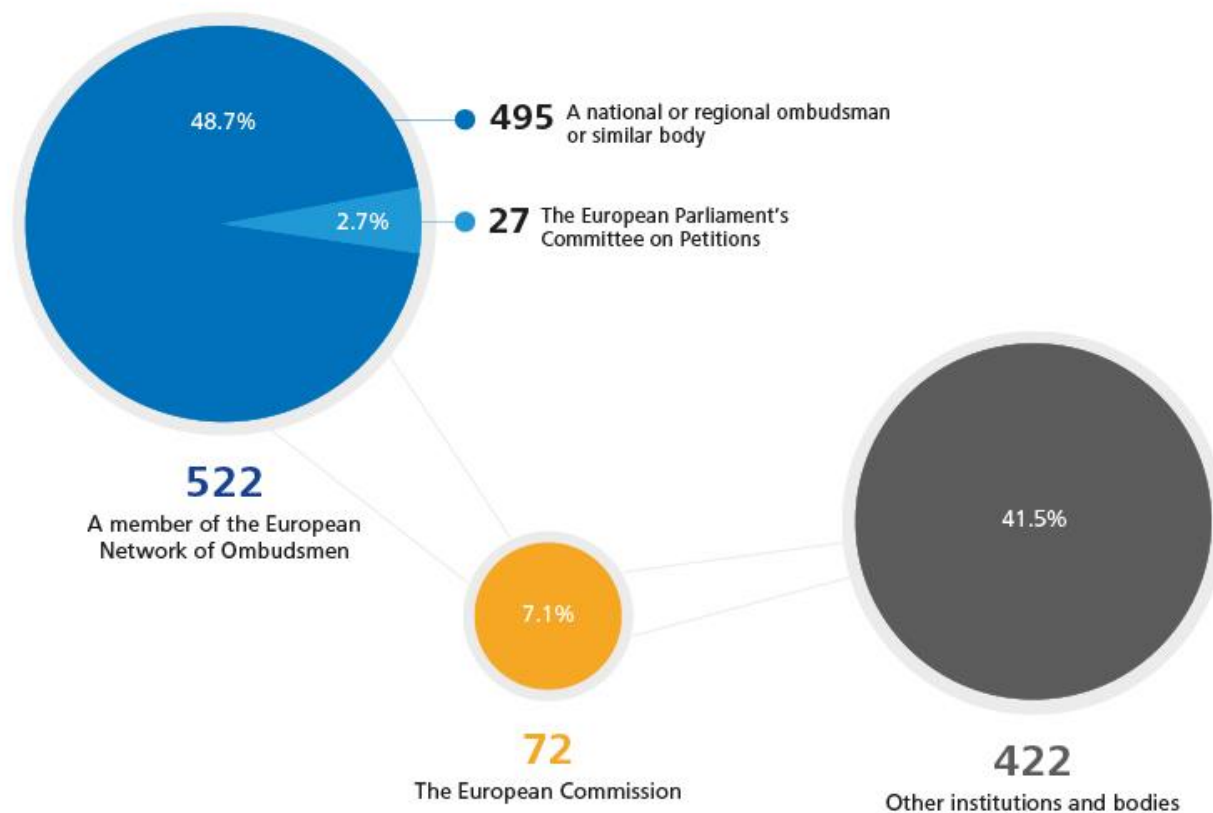
Within the following 12 months, the European Commission will assess your complaint and aim to decide...

your problem **does not involve a breach of Union law**, it will inform you by letter before it closes your file.

your problem could be solved **more effectively by any of the available informal or out-of-court problem-solving services**, it may propose to you that your file be transferred to those services

whether to initiate a **formal infringement procedure before the General Court** against the country in question

Complaints transferred to other institutions and bodies;  
complainants advised to contact other institutions and bodies by  
the European Ombudsman in 2018 (1 016 in total)



European Ombudsman

[www.ombudsman.europa.eu](http://www.ombudsman.europa.eu)



## c) Judicial supervision

In the absence of Union rules governing the matter, it is for the domestic legal system of **each Member State to designate** the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding EU rights.

Domestic judicial supervision

Judicial supervision by CJEU

national rules

- must not be less favourable than those relating to similar domestic claims (**principle of equivalence**) and
- must not embody requirements and timelimits such as in practice to make it impossible or excessively difficult to exercise those rights (**principle of effectiveness**)

Disagreement ? Interpretation of EU law and MS obligation =>

**preliminary ruling**

# A) Liability of Member States for breach of EU law towards the individuals

**Member State is liable and obliged to compensate the damage if:**

the rule of law infringed must be intended to confer rights on individuals

the breach must be sufficiently serious

there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties

## b) Member States liability for the breach of EU law before CJEU: infringement procedure

Observer of proper functioning:  
the Commission

Art. 4 TEU -  
principle of sincere  
cooperation

Monitoring  
implementation  
of EU law

Infringement  
procedure

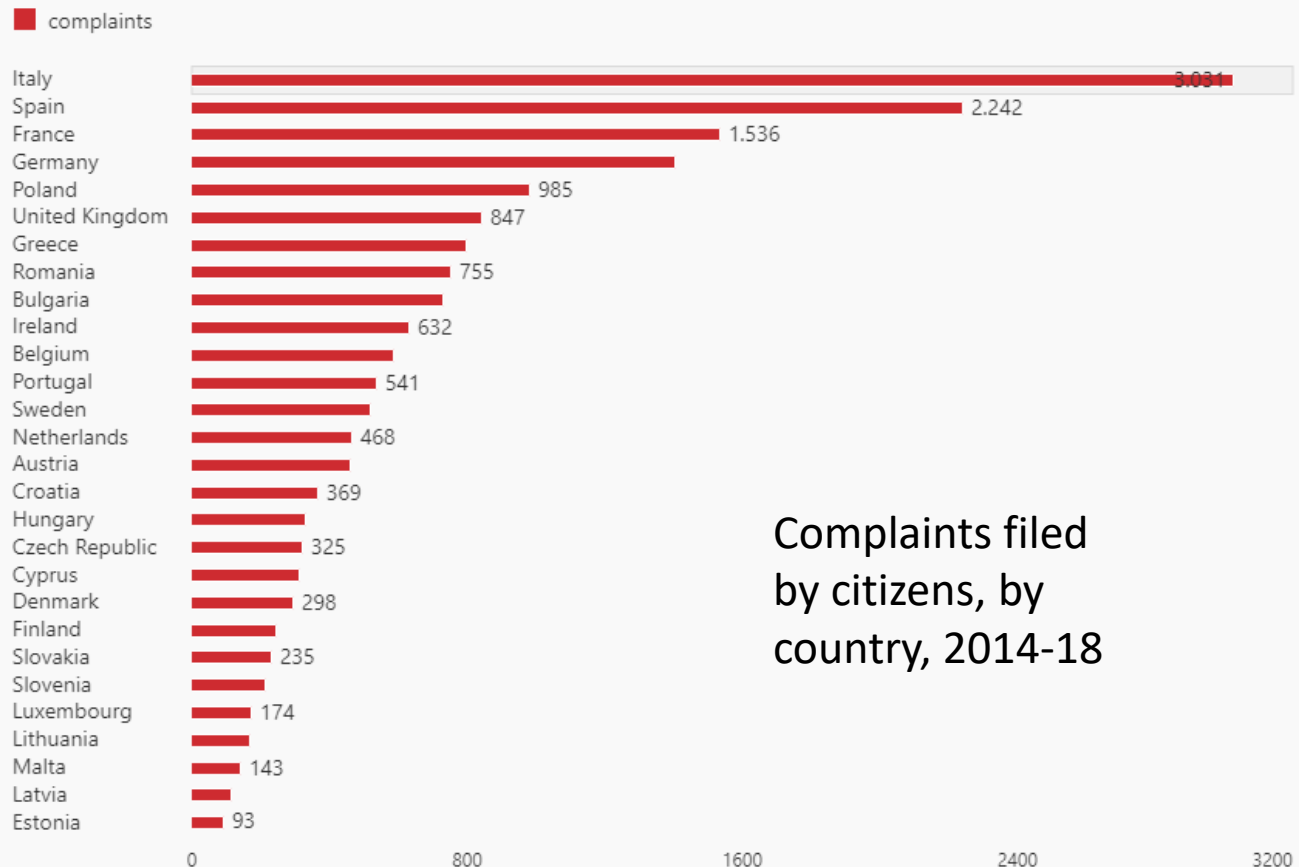
what measures national  
authorities have taken to  
incorporate EU law into  
national law and if they  
apply it in a proper way

Procedure if no  
agreement is reached on  
the alleged breach



# The Commission as the guardian of the Treaties

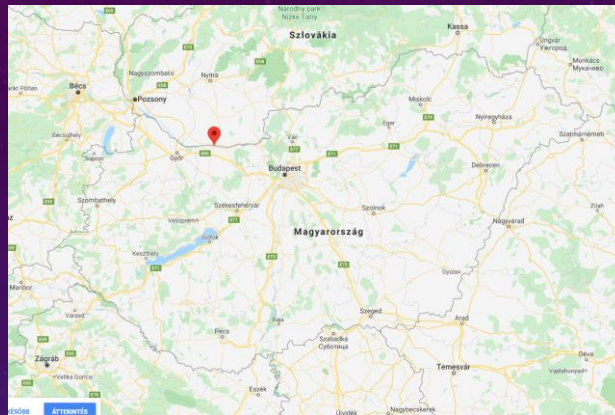
Member  
State against  
Member  
State



Complaints filed  
by citizens, by  
country, 2014-18



21 August 2009, László Sólyom, President of Hungary at the time, sought to enter Slovakia's territory on the Elizabeth Bridge at Komárom, but he was refused entry by the Slovak authorities



Slovakia

Hungary

Diplomatic  
relations

Basic rights (free  
movement

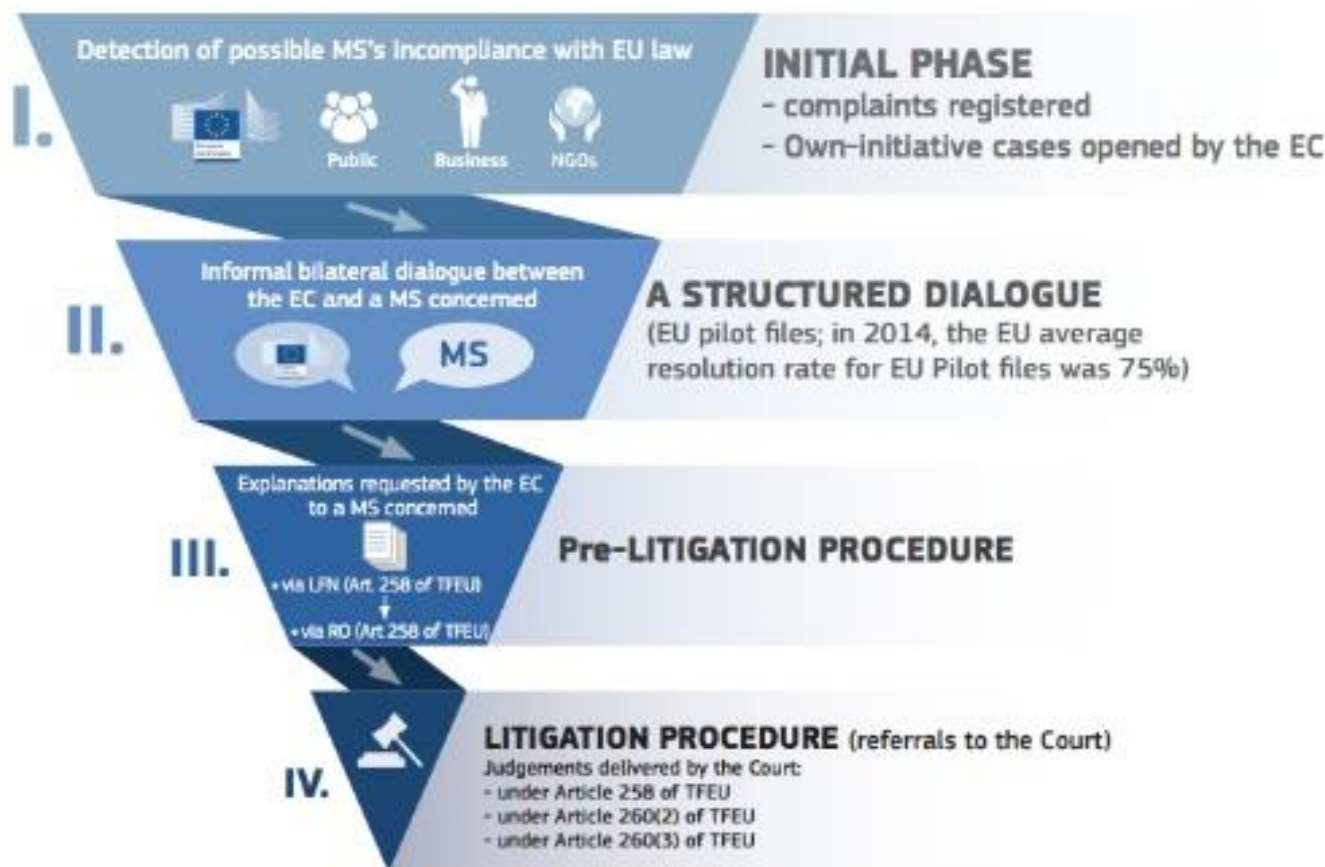
Anniversary of Warsaw Pact  
troops – among them  
Hungarian troops – had  
invaded Czechoslovakia:  
national security concerns

right of free  
movement- Directive  
2004/38/EC

C-364/10 Hungary v Slovakia

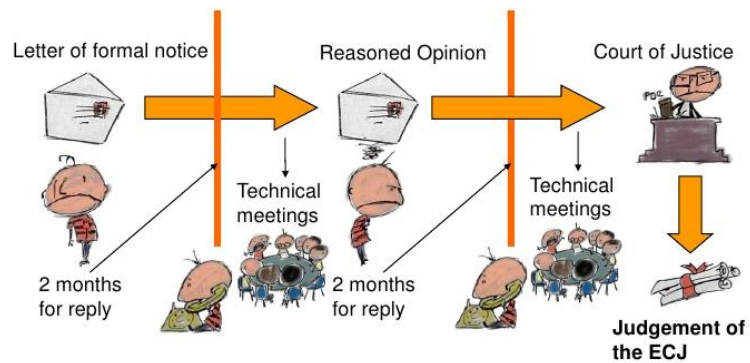


## Pre-litigation and litigation phase





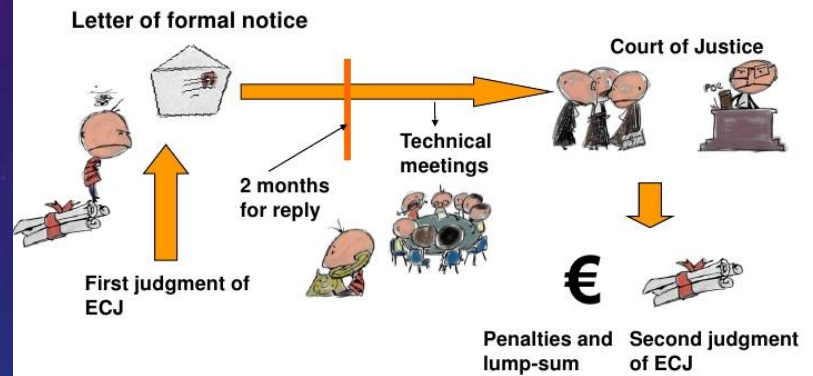
### The infringement procedure in practice Article 258



Drawings Benoit Clément, 2011.



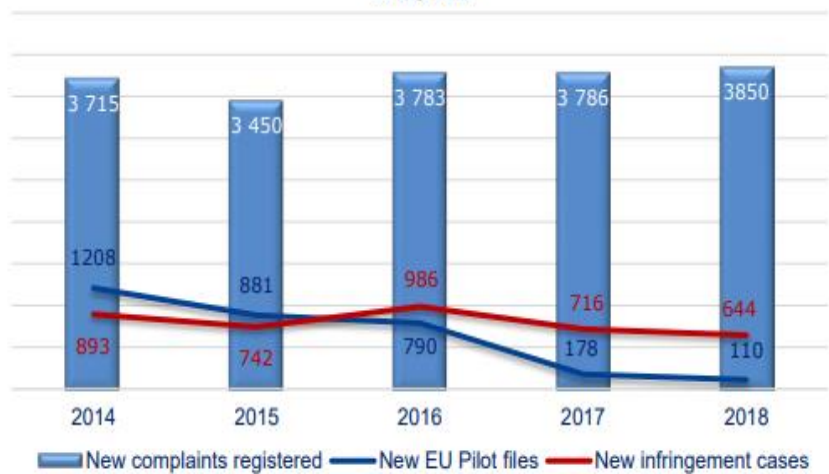
### The infringement procedure in practice Article 260



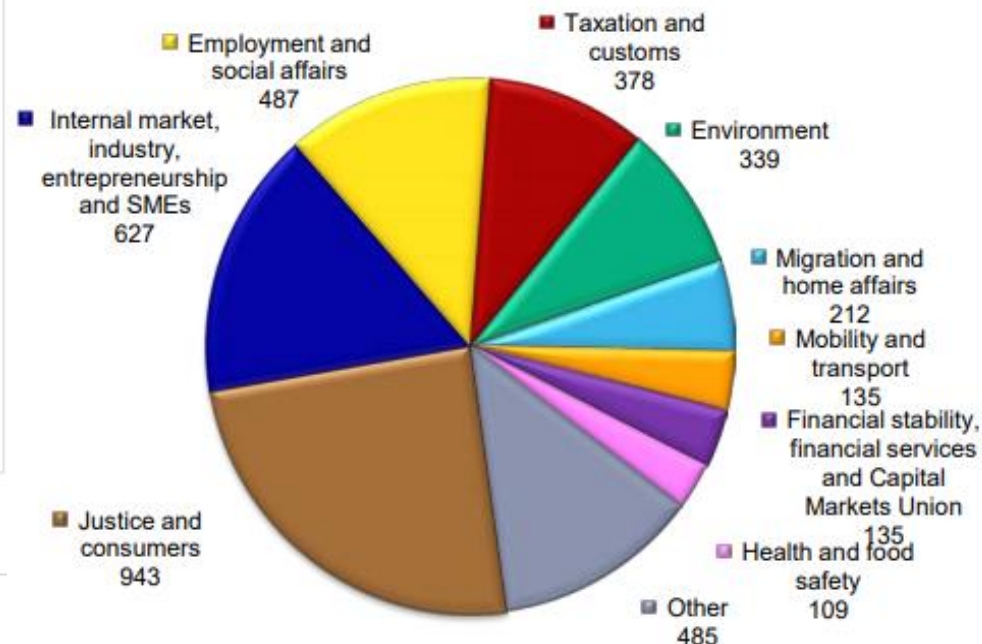
Drawings Benoit Clément, 2011.



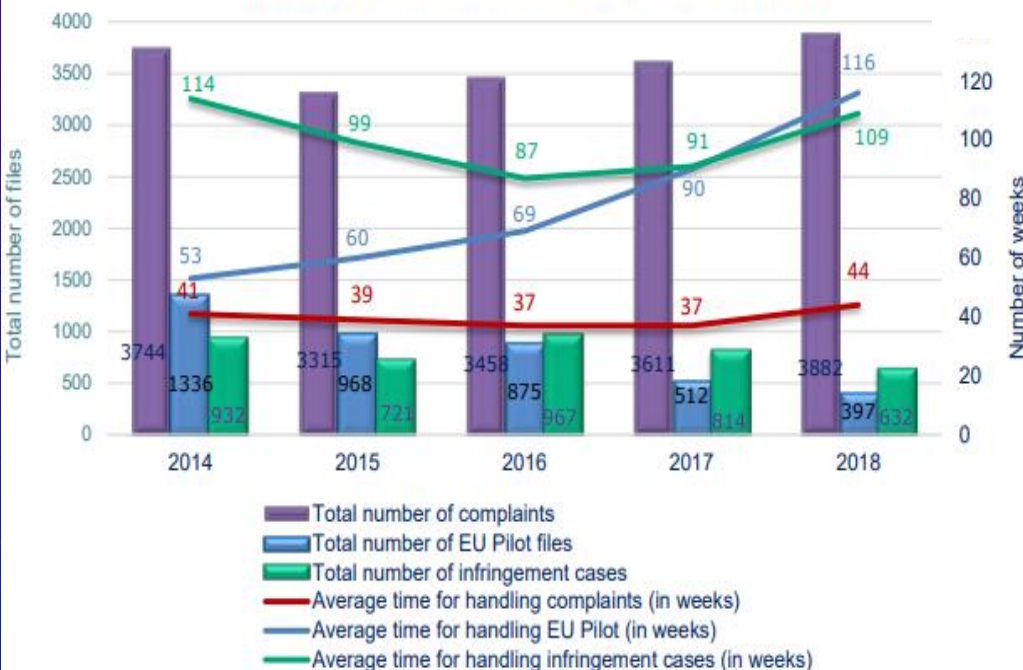
Trends in complaints and investigations about potential breaches of EU law



New complaints registered in 2018: main policy areas



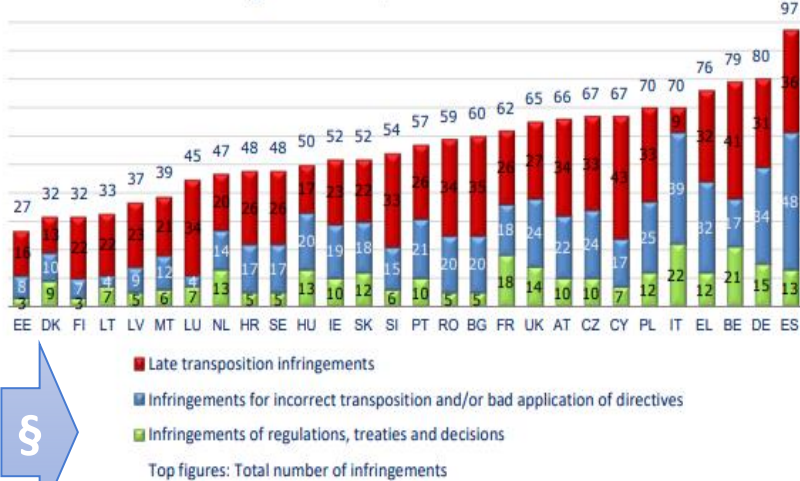
Time taken to investigate potential breaches of EU law



It is not rare that Member States do not fulfil (entirely) their obligations or breach EU law...

# Infringement procedure TFEU art. 258-59

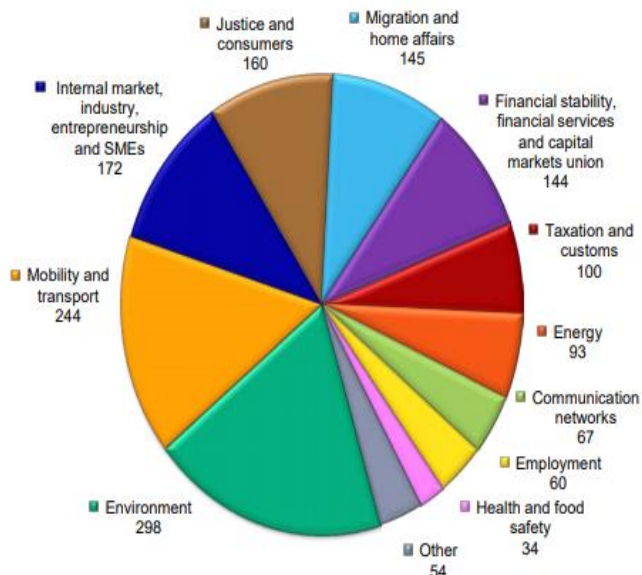
Infringement cases open on 31 December 2018



§

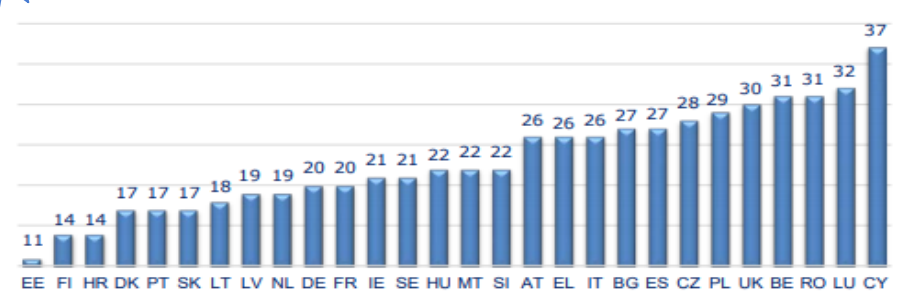
The following chart shows the breakdown of the infringement cases open at the end of 2018, by policy area:

Infringement cases open at end-2018: policy areas



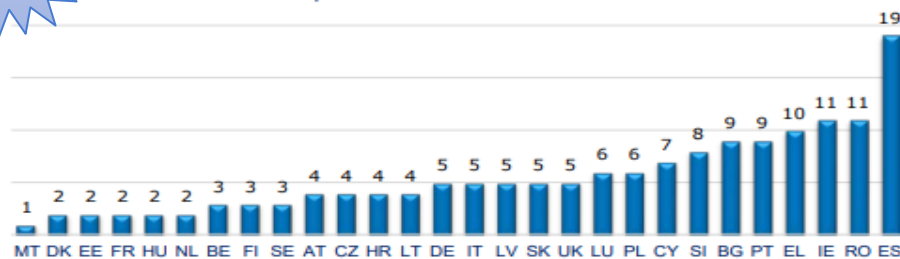
1.

New infringement cases at 31 December 2018



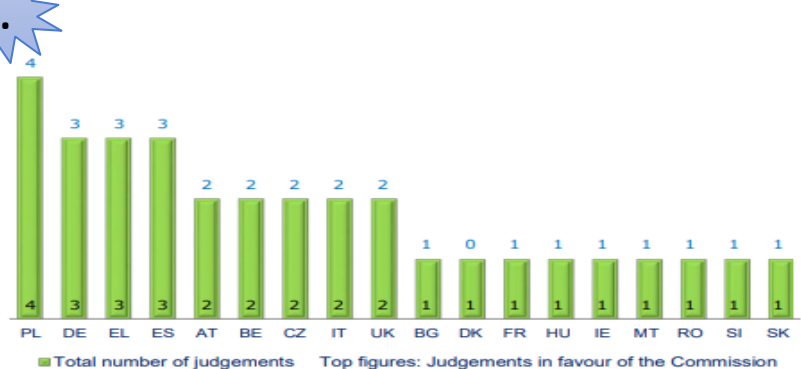
2.

Reasoned opinions sent to Member States in 2018



3.

32 judgments under Articles 258 and 260(2) TFEU



In 2018 the Court issued 27 judgments under Article 258 TFEU and five judgments under Article 260(2) TFEU. Thirty-one were in the Commission's favour, one was in the Member State's favour<sup>57</sup>.

Poland (four), Germany (three), Spain (two), and Austria (two) were the subject of the most Court judgments under Article 258 TFEU in 2018.





Commission considers appropriate in the circumstances:

- (1) The standard flat-rate amount for calculating the penalty payment is fixed at € 640 per day.
- (2) The standard flat rate for the lump sum payment is fixed at € 210 per day.
- (3) The special “n” factor for the 27 EU Member States is:

	Special factor 'n'	Minimum lump sum (thousands €)
Belgium	5,13	2707
Bulgaria	1,47	777
Czech Republic	3,36	1773
Denmark	3,22	1700
Germany	21,44	11323
Estonia	0,64	337
Ireland	2,84	1501
Greece	4,27	2255
Spain	13,66	7215
France	18,96	10008
Italy	17,00	8974
Cyprus	0,66	350
Latvia	0,77	405
Lithuania	1,20	632
Luxembourg	1,00	528
Hungary	2,84	1498
Malta	0,33	174
Netherlands	7,02	3704
Austria	4,23	2234
Poland	7,88	4163
Portugal	3,56	1881
Romania	3,53	1862
Slovenia	0,97	513
Slovakia	1,70	896
Finland	2,86	1511
Sweden	4,57	2411
United Kingdom	18,31	9666

# **Political supervision**

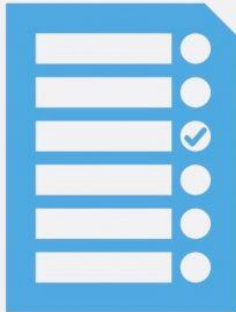


```
graph TD; A[Political supervision] --> B[EP Petition Committee]; A --> C[Art 7 TEU "nuclear option"]
```

**EP Petition  
Committee**

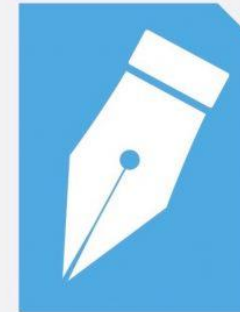
**Art 7 TEU  
"nuclear  
option"**

# EUROPEAN PARLIAMENT E-PETITION SYSTEM



THE E-PETITION SYSTEM IS THE MANIFESTATION OF EU CITIZENS RIGHT TO PETITION THE EP AS SET OUT IN BOTH THE LISBON TREATY AND THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS.

THIS CONDUCTS ONGOING REALITY CHECKS ON THE WAY IN WHICH EUROPEAN LEGISLATION IS IMPLEMENTED AND MEASURES THE EXTENT TO WHICH THE EUROPEAN INSTITUTIONS ARE RESPONDING TO YOUR CONCERNS



**2007**  
WAS FIRST INTRODUCED

**1500**  
ADMISSIBLE PETITIONS A YEAR ON AVERAGE

THE COMMITTEE OF ON A MONTHLY BASIS APART FROM AUGUST



PETITIONS MUST RELATE TO MATTERS WHICH FALL WITHIN THE EP'S COMPETENCE: IE YOUR RIGHTS AS CITIZENS, THE ENVIRONMENT, CONSUMER PROTECTION, FREE MOVEMENT THE INTERNAL MARKET, EMPLOYMENT ISSUES AND SOCIAL POLICY ETC.



THE **36** MEMBERS OF THE PETITION BOARD WHO CONVENE ON A MONTHLY BASIS.





# ARTICLE 7 TEU “NUCLEAR OPTION”

Systematic threat to the rule of law

clear risk of a serious breach of the values on which the  
Union is founded



## Why to care?

The EU is founded on the values of respect for **human dignity, freedom, democracy, equality, the rule of law and respect for human rights**, including the **rights of persons belonging to minorities**,

*\*as set out in Article 2 of the TEU and*

*\*as reflected in the Charter of Fundamental Rights of the European Union and*

*\*embedded in international human rights treaties,*

whereas those values, which **are common to the Member States** and to which all Member States have freely subscribed, **constitute the foundation of the rights enjoyed by those living in the EU**



## Problem of one Member State...**NO!**

**mutual trust**

in in each other's legal system

**The very nature**

of the Union and its citizens' fundamental rights under Union law

Carries a **negative impact** on the **image** of the Union, as well as its **effectiveness and credibility** in the defence of fundamental rights, human rights and democracy globally



## What to do at EU level?

**Infringement procedure**

Art 258-259 TFEU

**'nuclear option'**

Art 7 of the TEU

Since  
Amsterdam  
Treaty



Clear risk

Existence

European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine the **existence of a clear risk of a serious breach** by Hungary of **the values** on which the Union is founded

## PREVENTIVE MEASURES

When there is a risk of a serious breach of EU values

Article 7.1

**The Council determines there is a clear RISK of a breach**



**One third** of member states in the Council

or



the European Commission



the European Parliament

Procedure triggered by

## SANCTIONS MECHANISM

When a serious and persistent breach of EU values has taken place

**Phase 1:**

Article 7.2

**EU heads of state (European Council) determine that there HAS BEEN a serious and persistent breach**



**One third** of member states in the Council

or



the European Commission

Parliament should give consent by



absolute majority of all MEPs

and



majority of votes cast

The EU country concerned addresses the Council

**The Council takes a decision**



by a **MAJORITY** of at least 4/5 of member states

The EU country concerned is invited to submit observations before the decision

**The European Council takes decision BY UNANIMITY**

**Phase 2:**

Article 7.3

**THE COUNCIL CAN SUSPEND MEMBERSHIP RIGHTS, including voting rights**

**The vote requires a qualified majority**

72% of member states should vote in favour

&

representing 65% of the EU's population

The EU country concerned does not take part in the votes in the Council and the European Council

*"We are parting ways with western European dogmas, making ourselves independent from them ... We have to abandon liberal methods and principles of organising a society. The new state that we are building is an illiberal state, a non-liberal state."*

Viktor Orbán, speech given on 26 July 2014

## Values:

respect for

- human dignity
- freedom,
- democracy,
- equality,
- **the rule of law**
- human rights, incl. the rights of persons belonging to minorities

## Clear risk

- Hungary - since 2011

## Serious breach

- International and EU assessments
- No infringement procedure is possible or not effective

**WRONG!**

European Parliament resolution of **12 September 2018** on a **proposal** calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the ***existence of a clear risk of a serious breach*** by Hungary of ***the values*** on which the Union is founded

## Functioning of the constitutional and electoral system

- Venice Commission
- UN Human Rights Committee
- OSCE Office for Democratic Institutions and Human Rights
- Council for Democratic Elections



## Independence of the judiciary and of other institutions and the rights of judges

- Venice Commission;
- Group of States against Corruption (GRECO);
- **C-286/12 - Commission v. Hungary; C-288/12 – Commission v. Hungary,**
- ECtHR Gázsó v. Hungary, 2015; Baka v. Hungary



## Corruption and conflicts of interest

- GRECO;
- OSCE Office for Democratic Institutions and Human Rights;
- OLAF;
- Commission's EU Anti-corruption Report





## Privacy and data protection

- ECtHR Szabó and Vissy v. Hungary, 2016;
- UN Human Rights Committee 2018



## Freedom of expression

- Office of the OSCE Representative on Freedom of the Media 2011;
- Venice Commission 2012;
- OSCE Office for Democratic Institutions and Human Rights 2018;
- UN Human Rights Committee 2018



## Academic freedom

- Venice Commission 2017
- UN Human Rights Committee 2018



## Freedom of religion

- Council of Europe Commissioner for Human Rights 2011
- Venice Commission 2012
- *ECtHR Magyar Keresztény Mennonita Egyház and Others v. Hungary, 2014*



## Freedom of association

- Council of Europe Commissioner for Human Rights 2014;
- Venice Commission 2013;
- Council of Europe Commissioner for Human Rights 2017; Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe 2018
- President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law 2018
- UN Special Rapporteurs 2017
- Office of the UN High Commissioner for Refugees 2018



## Right to equal treatment

- UN Working Group on discrimination against women in law and in practice 2016
- UN Human Rights Committee 2018
- OSCE Office for Democratic Institutions and Human Rights 2018
- Commission reasoned opinion Directive 2006/54/EC and 92/85/EEC



## Rights of persons belonging to minorities, incl. Roma and Jews

- Council of Europe's Commissioner for Human Rights 2014
- European Commission against Racism and Xenophobia (ECRI) 2015
- Advisory Committee on the Framework Convention for the Protection of National Minorities 2016
- Committee of Ministers of the Council of Europe 2017
- UN Human Rights Committee 2018
- European Union Agency for Fundamental Rights (FRA) 2018
- OSCE Office for Democratic Institutions and Human Rights 2015
- *ECtHR Horváth and Kiss v. Hungary 2013; Balázs v. Hungary 2015; R.B. v. Hungary 2016; Király and Dömötör v. Hungary, 2017; M.F. v. Hungary 2017;*



## Economic and social rights

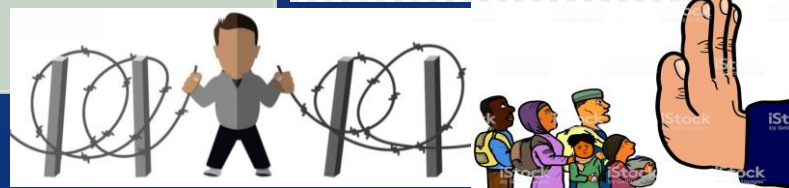
- UN Special Rapporteur on extreme poverty and human rights; UN Special Rapporteur on the right to adequate housing 2012; UN Special Rapporteur 2018; UN Committee on the Rights of Children's report 2014;
- Council of Europe's Commissioner for Human Rights 2014; European Committee of Social Rights 2018
- UN Human Rights Committee 2018



strike

## Fundamental rights of migrants, asylum seekers and refugees

- UN High Commissioner for Refugees 2015; 2017 - UN High Commissioner for Human Rights 2015; 2018
- Council of Europe Commissioner for Human Rights 2015- Council of Europe Lanzarote Committee 2017 - Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) 2017
- OSCE Office for Democratic Institutions and Human Rights 2015
- *ECtHR Ilias and Ahmed v. Hungary 2017;*
- *C-643/15 and C-647/15,*







National consultation & "Stop Soros" package

Infringement  
procedure is  
issued

*„It is the duty of all organs of the state to protect the country's constitutional identity and Christian culture”*

## Refugee crisis indicated problems topped in 2018 in Hungary

**7th amendment of the Fundamental Law (constitution)**

- Restriction of the Europe-clause
- Asylum seekers claim

**”Stop - Soros” law package**

**Criminal offence**

- Employees and activists can be sent to prison for helping anyone who wishes to apply for asylum
- detention conditions...

**Prohibited zone**

- 8 km from the border
- New tasks for the police

**Via safe countries - refused claim!**

- +condition for refugee status

Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones

(Europress, 25 July 2019)





**Alexei  
Torubarov**

- businessman in Russia
- after he was threatened by criminal groups, and wanted to take steps against corruption and local mafia, he joined Boris Nemtsov's Pravoye Delo (Right Cause) party

**Atrocities  
against him**

Investigations, unlawful trials, illegal arrests and jails in Austria and the Czech Republic, and systematic and continuous persecution for his political views

**2013**

- to flee to Hungary and seek for political asylum which was denied
- Opened court procedure

**2015**

law amendment: court have no longer competence to decide upon asylum

**Ping- pong  
game**

Authority v. court

**2017**

- Preliminary ruling (3rd time of court procedure...) by CJEU
- C-556/17

**2019**

recognised as a refugee after 6 years



The diagram features a large yellow arrow pointing left, labeled 'EU values', and a large red arrow pointing right, labeled 'Individual interests'. These two arrows are connected by a white line that forms a rectangular frame. Above the red arrow, there are two pink thought bubbles containing the text 'National security' and 'National sovereignty'. Below the red arrow, there is a single pink thought bubble containing the text 'constitutional identity'. The background is a dark blue gradient with faint, stylized circular patterns and numbers.

EU values

National  
security

National  
sovereignty

Individual  
interests

constitutional  
identity

**EP resolution on  
16 January 2020**



Rule of law in Poland and Hungary  
has worsened  
(In a resolution adopted with 446  
votes to 178 and 41 abstentions)



\*Unsatisfaction with hearings  
\*calls on the Council to address  
concrete recommendations including  
deadlines



The failure by the Council to make  
effective use of Article 7 continues to  
***undermine the integrity of common  
European values, mutual trust and  
the credibility*** of the European  
Union as a whole



Call for an EU **permanent mechanism**  
on democracy, rule of law and  
fundamental rights



# European Administrative Space



**Pre-accession requirements**



**Continuous influence on administration**

**Emergence of new policies**

**cooperative mechanisms of national authorities**

**fundamental law protection**

# Thank you very much for your kind attention!

This teaching material has been made at the University of Szeged, and supported by the European Union by the project nr. EFOP-3.6.2-16-2017-00007, titled Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.

