

# Putting the citizen at the centre of EU enforcement

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## **Abstract**

This paper, commissioned by the European Parliament's Policy Department for Justice, Civil Liberties and Institutional Affairs at the request of the Committee on Legal Affairs (JURI), proposes a more citizen-centred approach to monitoring and reporting on the application and enforcement of EU law by the European Commission. It would involve widening the lens through which the application and enforcement of EU law is monitored beyond reporting on the infringement procedure under Articles 258-260 TFEU. It would consider how citizens perceive their EU rights and interact with the full range of enforcement and redress mechanisms at their disposal and consider whether they are sufficiently well-designed to assist citizens to fully realise their rights.

This document was requested by the European Parliament's Committee on Legal Affairs.

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## LIST OF ABBREVIATIONS

<b>ADR</b>	Alternative Dispute Resolution
<b>AI</b>	Artificial Intelligence
<b>BEUC</b>	The European Consumer Organisation
<b>CJEU</b>	Court of Justice of the European Union
<b>CPC</b>	Consumer Protection Co-operation Network
<b>ECA</b>	European Court of Auditors
<b>ECC-Net</b>	European Consumer Centres Network
<b>EEA</b>	European Economic Area
<b>EURES</b>	European Employment Services
<b>EU</b>	European Union
<b>FIN-NET</b>	Financial dispute resolution network
<b>MEP</b>	Member of the European Parliament
<b>NEB</b>	National Enforcement Body
<b>NGO</b>	Non-governmental Organisation
<b>ODR</b>	Online Dispute Resolution
<b>SDG</b>	Single Digital Gateway
<b>SOLVIT</b>	Internal Market Problem Solving Network
<b>TEU</b>	Treaty on European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>VAT</b>	Value Added Tax

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## EXECUTIVE SUMMARY

### Background

The effective application and enforcement of European Union (EU) law is critical to the rule of law and the legitimacy of the EU. This is all the more important where the EU confers legal rights directly on citizens in the 27 Member States. Yet, as the complexity and breadth of EU law grows, so does the challenge of ensuring the law is effectively implemented, applied and enforced for it to be fully enjoyed by EU citizens.

While EU law is enacted at EU level, its implementation, application and enforcement are the responsibility of the Member States. Traditionally, the European Commission (hereinafter 'Commission') as 'guardian of the Treaties' can commence legal proceedings against a Member State which fails to comply with EU law under the infringement procedure set out in Articles 258 -260 of the Treaty on the Functioning of the European Union (TFEU). The Commission publishes an Annual Report, *Monitoring the Application of EU law* (hereinafter Report or 2023 Report)<sup>1</sup> to which the European Parliament responds. This analysis, commissioned by the European Parliament's Policy Department for Justice, Civil Liberties and Institutional Affairs at the request of the Committee on Legal Affairs (JURI), critiques the 2023 Annual Report published on 25 July 2024 **from the perspective of the citizen**.

It proposes the adoption of a broader **citizen-centred approach to monitoring and reporting on the application and enforcement of EU law**. The analysis will support the European Parliament's own-initiative report on 'Monitoring the application of European Union Law in 2023 and 2024 (2025/2016 (INI)).

The analysis first explains the EU **legal framework for granting EU citizens' rights** through secondary legislation which can be enforced directly before national courts. It explains the difference in rationale and legal status between two EU instruments, regulations and directives, and presents the challenges citizens face when wishing to enforce them. In recent years, there has been a **political shift by the EU legislature to adopting regulations rather than directives**. Although the directly applicable nature of regulations means they can be used to promote uniformity and reduce fragmentation in laws across the EU, non-compliance can still be an issue which needs to be monitored.

Traditionally, the enforcement of EU law is perceived as consisting of a **dual track model: public enforcement**, by the Commission and national authorities, and **private enforcement** before national courts. The analysis conducted in this paper demonstrates why this portrayal is outdated and fails to reflect the **multi-level and multi-faceted system of enforcement** which consists of new strategies, mechanisms and actors engaged in enforcing EU law.

Key trends include the proliferation of **new institutions, new mechanisms or management tools, a shift to compliance-based management strategies** and the **inclusion of new actors in the enforcement process**. This paper argues that the Commission should reconceptualise its understanding of 'enforcement' in the context of its Annual Report to incorporate an assessment of all the institutions, strategies, mechanisms and actors playing a role in this contemporary system of

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<sup>1</sup> European Commission, Monitoring the application of European Union law, 2023 Annual Report COM (2024) 358 final.

enforcement. Furthermore, this analysis advocates for a citizen-centred approach which would **consider how citizens perceive their EU rights and interact with the full range of enforcement and redress mechanisms to evaluate whether they are sufficiently well-designed to assist citizens to fully realise their rights**. This would reflect the EU's commitment to building a Union based on the rule of law, equality and uniformity, but also consolidate the legitimacy of the EU and rebuild the trust of citizens in its activities.

The Commission's 2023 Report narrowly focuses on the infringement procedure under Article 258-260 TFEU and fails to provide information on the full range of enforcement activities taking place to support citizens' wishing to fully enjoy their EU rights. The role of citizens is extremely limited under this procedure. Citizens can make complaints to the Commission alerting it to infractions, but the Commission has almost complete discretion as to whether it pursues a complaint or closes the case. The European Parliament needs to ensure the Commission takes the steps to provide more information and transparency on how it exercises this discretion.

Private enforcement plays a crucial role in the enforcement of EU rights by citizens. The system of judicial enforcement has been constructed by the European Union's Court of Justice through its jurisprudence. The European Commission regularly directs citizens who make complaints to either complain to their national authorities or resolve individual disputes and secure redress using alternative mechanisms, such as **SOLVIT, or court action**.

However, it takes no steps to consider how these public and private enforcement pathways interact with each other either at EU or national level for the benefit of citizens. Furthermore, notwithstanding the initiatives undertaken by the Commission to support national justice systems, citizens can face a number of barriers to enforcing their rights before courts including **doctrinal constraints, judicial politics, legislative complexity** and a **lack of access to justice including high costs and lengthy court proceedings**.

This analysis proposes one way to find more concrete solutions to the barriers facing citizens seeking to enforce their EU rights in practice, namely, to incorporate a **'bottom-up' approach to collecting data on how EU rights are perceived and enforced**. To illustrate the benefits of this socio-legal approach, the paper presents the findings of an **empirical study on the experience of air passengers during the COVID-19 pandemic and the barriers they faced which prevented them from enjoying their EU rights in practice**.

The case study revealed that despite extensive attempts by the Commission to raise awareness of how EU law can benefit citizens, the **levels of awareness of EU rights and the mechanisms available for their enforcement remain low**. Yet, **levels of trust in national authorities and economic operators to 'look after' the interests of citizens are high**.

There is a risk that poor or slow enforcement by national authorities and a lack of compliance with the law by private parties undermines this trust. Finally, the case study revealed that **young adults and older persons face more difficulties in enjoying their EU rights**. Young persons, while tech savvy, had low levels of information literacy, while older persons were more information literate but lacked digital literacy. While low levels of digital literacy in older persons are well-known, the lack of information

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literacy in young persons needs to be addressed urgently. The paper calls for more research to be conducted from a 'bottom-up' perspective on how these barriers can be removed. The paper introduces the **naming-blaming-claiming model** drawn from socio-legal literature as a way of uncovering why citizens experiencing harm fail to make use of their EU rights.

Finally, the paper makes **four recommendations** to the European Parliament to improve the effectiveness of its monitoring of the application and enforcement of EU law by viewing the process through the lens of the citizen.

**First**, it calls for the European Parliament to closely monitor the pledges made by the Commission in its *2023 Stocktaking Report on the Commission working methods for monitoring the application of EU law* to improve the experience of citizens who make complaints directly to the Commission or who bring a petition before the European Parliament about infringements of EU law. The Commission has almost unlimited discretion in pursuing complaints and petitions but the data given in the 2023 Annual Report on the level of complaints and why they were or were not pursued is not given. This lack of transparency limits the scrutiny that can be undertaken by the European Parliament.

**Second**, the European Parliament should call on the Commission to adopt a more holistic assessment of the monitoring of the application and enforcement of EU law which goes beyond reporting on infringement proceedings to include the full range of different enforcement mechanisms, how they interact with each other, and how they are perceived in practice from a citizens' perspective.

**Third**, to bolster this broader approach the paper presses for a more 'bottom-up' approach to the collation of data to uncover more effective solutions for the benefit of citizens. This data should be incorporated into the Commission's Better Regulation Guidelines and Toolbox.

**Fourth**, with the rapid advent of AI, the European Parliament should support the Commission to explore how AI could be used ethically (and sustainably) to aggregate and analyse the vast amounts of data available to support this broader approach.

## 1. INTRODUCTION

### KEY FINDINGS

The current focus of the Commission's Annual Report on monitoring the application of EU law, on infringement proceedings under Article 258–260 TFEU, is too narrow and 'top-down', limiting its usefulness as a means of improving the effectiveness of the design and enforcement of EU law for the benefit of citizens.

The European Commission directs citizens who make complaints to their national authorities, mechanisms such as SOLVIT or national court to resolve individual disputes and secure redress. Although the Commission is engaged in a range of initiatives to ensure these systems are effective, there is no systematic reporting of the effectiveness of these mechanisms in its Annual Report from the citizens' perspective and how they all interact with each other.

Citizens can face a range of barriers which undermine the effective enforcement of their EU rights in practice. By adopting a bottom-up approach to collating data in the field of EU air passenger rights, there is evidence to show that first, citizens may not be aware of the existence of their EU rights which are designed to protect them from harm. Second, even if they are aware of their rights and that they have been breached, they may not be aware of the different mechanisms for making complaints or seeking redress, e.g. ADR and ODR. Court action is seen as costly, time-consuming and requiring emotional resilience. Third, there is an expectation on the part of citizens that national authorities and economic operators will protect them. Fourth, young adults and older persons face greater barriers in securing their rights through a lack of awareness (young people) and a lack of digital know-how (older persons).

A broader conceptualization of 'enforcement' to include all the strategies, mechanisms and actors contributing to securing compliance and detecting non-compliance, as well as supporting citizens to find redress, should be adopted. This should be followed by a more holistic assessment which incorporates data collated using 'bottom-up' methods to reveal blind spots and new solutions for citizens seeking to enjoy their EU rights in full.

A shift to a citizen-centred approach would be challenging, particularly in terms of the sheer amount of data to be analysed. The ethical use of AI should be explored to assist with this task.

This analysis, commissioned by the European Parliament's Policy Department for Justice, Civil Liberties and Institutional Affairs at the request of the JURI Committee, will propose the adoption of a broader **citizen-centred approach to monitoring and reporting on the application and enforcement of EU law** conducted by the Commission and presented in its Annual Report, *Monitoring the Application of EU law*. Its role is to support the European Parliament's own-initiative report on 'Monitoring the application of European Union Law in 2023 and 2024 (2025/2016 (INI)). The focus by the European

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Parliament on exploring ways to improve the enforcement of EU law is to be welcomed and reflects a growing trend in the literature.<sup>2</sup>

This analysis will proceed by adopting a broad interpretation of 'enforcement' to incorporate all the institutions, strategies, mechanisms and actors which play a role in securing compliance or addressing non-compliance of EU law including monitoring, investigating and sanctioning infringements **and** in securing individual redress. In so doing, it brings together different strands of scholarship on rights and regulation.<sup>3</sup>

A citizen-centred approach would consider how citizens perceive their EU rights and how they interact with the full range of enforcement and redress mechanisms available. Are these mechanisms sufficiently well-designed to assist citizens to fully realise their rights? If not, what improvements could be introduced? This shift would reflect the EU's commitment to building a Union based on rule of law, equality and uniformity. It would consolidate the legitimacy of the EU and re-establish trust in the EU on the part of citizens.

This analysis will first set out the legal framework for conferring EU rights and the nature of these rights. It will consider the political shift by the EU legislature to adopting regulations rather than directives and the implications for citizens. The analysis will move to consider the current state of play in enforcing EU law. It will set out the traditional dual track model consisting of public enforcement, by the Commission and national authorities, and private enforcement before national courts. However, it will also point to new trends in both public and private enforcement which strongly suggest an analysis of the enforcement of EU law should encapsulate the full range of mechanisms, strategies and actors involved in the enforcement process.

The paper will then consider the current approach to monitoring the application and enforcement of EU law by the Commission set out in its 2023 Annual Report from the perspective of the citizen. The Report's traditional and principal focus on the infringement procedure under Article 258-260 TFEU in which the European Commission can instigate enforcement actions against the Member States provides a limited role for citizens and could be improved.

Furthermore, while the European Commission directs citizens who make complaints to resolve individual disputes and secure redress using alternative mechanisms including court action, it will identify some of the gaps and barriers citizens face when enforcing their EU rights. It will draw on a case study in the field of EU air passenger rights to provide concrete examples of some of the barriers citizens encounter. It will also demonstrate the benefits of incorporating bottom-up, citizen-centred empirical research to provide deeper insights into how the effectiveness of the application and

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<sup>2</sup> G. Falkner, O. Trieb, M. Hartlapp and S. Leiber, *Complying with Europe: EU Harmonisation and Soft Law in the Member States* (Cambridge University Press 2005); S. Drake and M. Smith, *New Directions in the Effective Enforcement of EU Law and Policy* (Edward Elgar Publishing 2016); M. Scholten and M. Luchtman, *Law Enforcement by EU Authorities: Implications for Political and Judicial Accountability* (Edward Elgar Publishing 2017); H-W. Micklitz and A. Wechsler (eds.), *The Transformation of Enforcement: European Economic Law in a Global Perspective* (Hart Publishing 2016); A. Blackham, *Reforming Age Discrimination Law: Beyond Individual Enforcement* (Oxford University Press 2022); Z. Rasnača, A. Koukiadaki, N. Bruun and K. Lörcher, *The Effective Enforcement of EU Labour Law* (Oxford University Press 2022).

<sup>3</sup> See further B. Morgan (ed.), *The Intersection of Rights and Regulation: New Directions in Sociolegal Scholarship* (Routledge 2007).

enforcement of EU law can be improved. Finally, based on this analysis, the paper will formulate concrete policy suggestions to address the challenges identified.

To this end, the paper follows the following structure: Section 1 sets out the area of research; Section 2 explains the legal framework for the conferral of rights on citizens and the legal nature of those EU rights. Section 3 provides an overview of the state of play of enforcement of EU law demonstrating how it has transformed from a dual model of enforcement to a multi-level and multi-faceted system of enforcement before examining public enforcement (Section 4) and private enforcement mechanisms in more detail (Section 5).

Taking EU air passenger rights as a case study and drawing on a socio-legal qualitative study, Section 6 will give concrete examples of the barriers and gaps to effective enforcement faced by citizens seeking to enjoy their EU rights. Section 7 will present some concrete suggestions to the European Parliament to improve its scrutiny of monitoring the application and enforcement of EU law from the perspective of the EU citizen.

## 2. THE LEGAL FRAMEWORK FOR THE CONFERRAL OF EU RIGHTS ON CITIZENS

### KEY FINDINGS

There has been a long tradition of regulating the EU and its Single Market through the conferral of individual rights on citizens and businesses (natural and legal persons) through secondary legislation. These rights can be conferred by regulations and directives.

Regulations take automatic and immediate legal effect in the national legal orders and do not require further enactment (directly applicable). Regulations promote uniformity and reduce fragmentation.

The objectives of directives are binding on Member States, but how these objectives are implemented is left to the discretion of the Member States. The exercise of this discretion promotes harmonization but can lead to differentiation at national level.

Both forms of secondary legislation require monitoring to ensure they have been implemented and applied correctly. The Commission's monitoring practice focuses primarily on the timely and correct implementation of directives.

The political shift to enacting regulations in preference to directives requires the Commission to amend or develop new monitoring practices to ensure compliance with regulations. The European Parliament should monitor the Commission's commitment to adopting a more systematic monitoring of regulations set out in its 2023 stocktaking exercise and referred to in its 2023 Annual Report.

Law has played a fundamental role in the European integration process.<sup>4</sup> EU legislation can impact on the life of EU citizens in a plethora of policy areas from security, energy, food and the environment to employment, consumer protection and the digital world. The complexity of EU law as the EU faces up to new societal problems in a world of geo-political and economic uncertainty can obscure the benefits for citizens.<sup>5</sup>

One of the long-established legislative techniques used by the EU legislature to ensure citizens benefit from EU integration and to shield them from harm is to vest them with directly effective rights which can be enforced before a court. These rights can confer corresponding legal obligations and duties on the EU institutions, Member States and other private parties ranging from retailers and employers to large technology companies. It should be noted that this practice of conferring rights is not applied in all policy areas. Not all fields lend themselves to the granting of subjective rights. Sometimes, there may be a political unwillingness to do so.

The principal legislative instruments used to confer rights directly on citizens are regulations and directives. These instruments have different legal characteristics which can have implications for their effective implementation and enforcement. According to Article 288 TFEU, regulations have general application and are directly applicable. This means that they take automatic and immediate legal effect in the legal orders of the Member States once they come into force. Regulations are therefore useful

<sup>4</sup> M. Dawson and F. de Witte, F., *EU Law and Governance* (Cambridge University Press 2022) at p. 102.

<sup>5</sup> For calls to address the legislative complexity of EU law as it is currently drafted, see: H. Xanthaki, *Legislative complexity and monitoring the application of EU law*, Policy Department for Justice, Civil Liberties and Institutional Affairs, European Parliament, 2025.

for securing the uniformity of EU law in all the Member States and for avoiding the pitfalls associated with the late or incorrect implementation of directives. Yet, regulations can also require further implementation. They can also be seen as too intrusive in the national legal system infringing the principles of subsidiarity and proportionality. In contrast, directives are seen as most suited to complying with the principle of subsidiarity. Article 288 TFEU states that the objective of a directive is binding on Member States, but the method of implementation is at the discretion of the Member States and can be adapted to reflect the national legal system or culture of the Member States. While directives are useful to harmonise national laws, the delegation of their transposition and implementation to national administrations can lead to non-compliance issues such as drift from or contestation of the original objective.<sup>6</sup> Citizens can also face doctrinal restraints when relying on rights contained in directives before the national courts where the dispute is between two private parties (this is discussed further below in Section 5.4.1).

The political shift to legislating through regulations<sup>7</sup> rather than directives has advantages and disadvantages as discussed above. Regulations are more attuned to addressing the fragmentation of the Single Market to promote innovation and growth. They can also constrain the discretion of the Member States when implementing EU law promoting uniformity. However, there is also a danger that the use of regulations is seen as too intrusive and disproportionate. The European Parliament as well as the national parliaments will have an important role to play in scrutinizing the increased use of regulations to ensure the principles of subsidiarity and proportionality are not infringed.<sup>8</sup>

At present, the Commission's monitoring of enforcement focuses primarily on the transposition of directives. As regulations are directly applicable, there will be no implementation date, but it will still be necessary to ensure Member States implement the substantive content correctly. Regulations can also be prone to issues with non-compliance (see the example of the Regulation 261/2004 in the field of EU air passenger rights discussed in Section 6). The Commission has acknowledged it will need to 'step up its efforts to monitor and enforce the implementation and application of regulations in a more systematic and strategic manner.'<sup>9</sup> In 2023, the Commission undertook a stocktaking exercise on its working methods for monitoring the application of EU law which includes recommendations to undertake more systematic monitoring of regulations.<sup>10</sup> The European Parliament should ensure the Commission adopts these recommendations and develops robust mechanisms for monitoring the correct application of regulations.

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<sup>6</sup> See M. Smith, *Challenges in the implementation of EU law at national level*, Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, PE 608.841 – November 2018, at p. 3.

<sup>7</sup> This shift and its implications for monitoring the application and enforcement of EU law are discussed further a complementary in-depth analysis: see H. Schulte-Noelke, M. McGuire, *Monitoring the Application of EU Law in the Member States: Assessment of the European Commission's 2023 Annual Report and Recommendations for Improving EU Law Enforcement*, Policy Department for Justice, Civil Liberties and Institutional Affairs, European Parliament, 2025.

<sup>8</sup> See Protocol (No.1) On the Role of National Parliaments in the European Union OJ C 202, 7.6.2016; and Protocol (No.2) on the application of the principles of subsidiarity and proportionality OJ C 115, 9.5.2008.

<sup>9</sup> Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: Enforcing EU law for a Europe that delivers COM (2022) 518 final, p. 28.

<sup>10</sup> Commission Staff Working Document: Stocktaking report on the Commission working methods for monitoring the application of EU law SWD (2023) 254 final.

### 3. ENFORCING EU LAW: THE STATE OF PLAY

#### KEY FINDINGS

The traditional **dual model** for enforcing EU law through a **public enforcement** system utilising the Commission and/or national authorities complemented by litigation brought by private parties before the national courts is outdated (**private enforcement**).

The enforcement of EU law has been transformed into a **multi-level, multi-faced system** with a large range of institutions, strategies, mechanism and actors involved in the enforcement process.

The European Parliament could call for greater reflection on the part of the Commission in its Annual Report on how these different elements of this complex system interact and assist citizens to enforce their EU rights effectively.

For citizens, EU rights are only meaningful when the corresponding legal obligations are complied with, and where there are effective mechanisms to secure compliance and/or redress. Where there are barriers to citizens' enjoying their rights in full, the effectiveness and legitimacy of EU law is called into question. This section gives an overview of the mechanisms for enforcing EU law and identifies new trends.

Traditionally, the institutional structure for enforcing EU law has two pillars: **public enforcement** and **private enforcement**. Public enforcement refers to the monitoring of compliance with the law and investigating and sanctioning infringements in the general interest. At EU level, the European Commission is granted this task as 'guardian of the Treaties' by virtue of Article 17 Treaty on European Union (TEU). At national level, the task of implementation and enforcement is delegated to the Member States and their national authorities.

**Private enforcement** entails the ability of private parties to resolve disputes and secure compliance and/or redress on an individual basis, primarily by instigating legal proceedings directly before a national court through the constitutional doctrines of direct effect, indirect effect and State liability. Since the Treaty of Lisbon, Member States are under an obligation to 'provide remedies sufficient to ensure effective legal protection in the fields covered by Union law' under Article 19 (1) subparagraph 2 TEU. National courts can refer questions on the validity and interpretation of EU law to the EU's Court of Justice (CJEU) for a preliminary ruling under Article 267 TFEU.

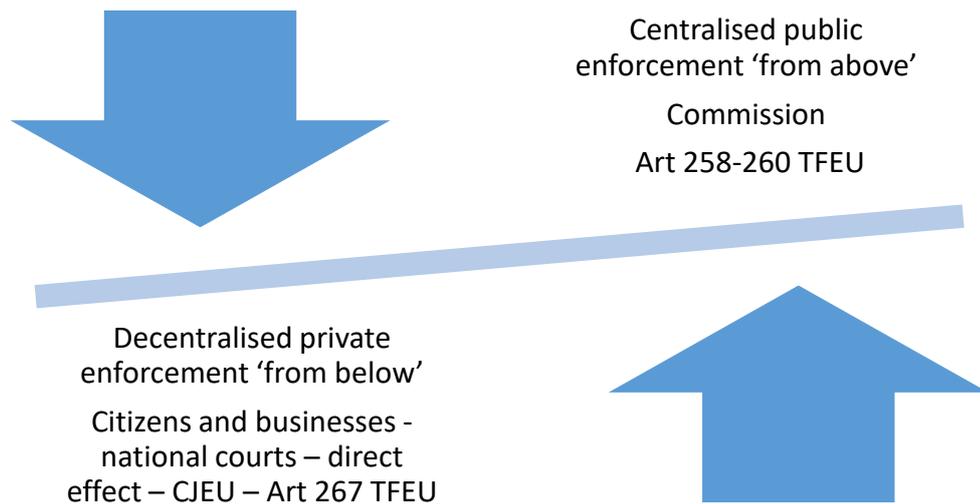


Figure 1: The classic model of dual enforcement in EU law

Yet, this classic dual model of enforcement has evolved quite significantly over the past two decades. A number of trends have been identified by legal scholars and political scientists. All point to the emergence of a multi-level, multi-faceted system of enforcement involving new institutions, a broader range of enforcement strategies including command and control *and* compliance-based strategies, the involvement of non-state actors, and the proliferation of new mechanisms including networks.<sup>11</sup>

This transformation of the enforcement landscape can be attributed to a number of factors. First, as the membership of the EU has expanded and the number of fields in which the EU has competence has increased, the risk of non-compliance with EU obligations has also grown. Enforcement is costly at all levels. Consequently, the European Commission has devised new ways to share all or some of the tasks and workload with other actors and mechanisms.

Second, there has been a shift from deterrence-based ‘command and control’ measures to embracing tools which promote compliance at an earlier stage as part of the Better Regulation Agenda. To ‘persuade rather than punish’ has become the preferred policy choice. This is encapsulated in the Foreword of the 2023 Report by President von der Leyen and her reference to working closely with the Member States to foster a ‘culture of compliance.’<sup>12</sup> Von der Leyen adds that ‘robust enforcement mechanisms remain a backstop.’<sup>13</sup> This approach reflects a trend found in regulatory scholarship called ‘responsive regulation’ which suggests enforcement bodies should adopt a mix of compliance and deterrence strategies to secure optimal compliance.<sup>14</sup> It advocates the adoption of measures (or

<sup>11</sup> See further S. Drake and M. Smith (eds), *New Directions in the Effective Enforcement of EU Law and Policy* (Edward Elgar Publishing 2016).

<sup>12</sup> See Annual Report 2023, Foreword at p. 4.

<sup>13</sup> Ibid.

<sup>14</sup> I. Ayres and J. Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press 1992); N. Gunningham, ‘Enforcement and Compliance Strategies’ in R. Baldwin, M. Cave and M. Lodge (eds.), *The Oxford Handbook of Regulation* (Oxford University Press 2010), 120-145.

different tools from the toolbox) which can be customised to incentivise compliance and deter non-compliance according to the motivations and capabilities of the offenders. Third, with more actors involved in the process of enforcement across multiple levels, there has been a need for some cooperating and coordinating mechanisms such as networks. A network can also act as a forum for promoting consistency and sharing best practice.<sup>15</sup>

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<sup>15</sup> M. Maggetti, *Introduction to Regulation and Governance* (Edward Elgar Publishing 2025), p. 54.

## 4. THE PUBLIC ENFORCEMENT OF EU LAW

### KEY FINDINGS

The public enforcement of EU law takes place at EU level (**centralised enforcement**) and national level (**decentralised enforcement**).

The Commission is the primary enforcer of EU law at EU level and has been conferred powers under the Treaties to instigate infringement proceedings against Member States which fail to comply with their obligations under EU law. Articles 258–260 TFEU is the main infringement procedure and consists of an administrative and judicial stage.

The role of the citizen in the infringement process is very limited. A citizen can make a complaint directly to the Commission. However, the Commission has an almost unfettered discretion as to whether it pursues any infraction under the infringement procedure. There is insufficient detail in the 2023 Report for the European Parliament to scrutinise how the Commission exercises its discretion under the infringement procedure, particularly in relation to complaints from citizens or with regard to petitions forwarded to the Commission from the European Parliament.

In 2023, the Commission undertook a stocktaking exercise to review how it handled individual complaints and committed to making improvements. The European Parliament needs to hold the Commission to account on these commitments.

For some time, the number of infringements reaching the judicial stage has decreased. The reasons for this decline are disputed. In 2023, the numbers went up to 82 from 35 in 2022 but the 2023 Annual Report does not clearly explain why this was the case.

The Commission often directs individuals to take their complaints to national authorities, or to alternative mechanisms such as SOLVIT, or to start judicial proceedings before a national court.

Member States have a wide margin of discretion in how they organize their monitoring, investigating and sanctioning activities. The effectiveness of enforcement by national authorities can be hindered by a lack of expertise, capacity and resources. There may be no political will to pursue infringements, or the national authorities may be subject to 'regulatory capture.'

The Commission has been assisted in its enforcement activities in more recent years by new mechanisms such as networks and agencies. The 2023 Report refers to a range of new governance tools including the network, SOLVIT which resolves cross-border disputes arising between citizens/businesses and the administration of another Member State. However, it has been reported elsewhere that awareness of SOLVIT is low. There is no mention of the work of EU agencies in the Report.

The public enforcement of EU law refers to the monitoring, investigating and sanctioning of non-compliance with EU law by public authorities in the public interest. These enforcement activities take place at EU level (**centralised enforcement**) and at national level by the national authorities of the Member States (**decentralised enforcement**).

## 4.1 Centralised enforcement under Article 258–260 TFEU

Traditionally, it has been the function of the Commission as ‘guardian of the Treaties’ to monitor the implementation and application of EU law by the Member States. Article 17 (1) TEU confers executive functions on the Commission to ‘ensure the application of the Treaties, and of measures, adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union.’ To this end, the Commission is conferred **general enforcement powers** under Articles 258 and 260 TFEU to bring infringement proceedings against Member States before the Court of Justice. The Commission is conferred with more specialised enforcement powers under the Treaties which are outside the scope of this paper.<sup>16</sup>

Infringement proceedings brought under Article 258 TFEU can be divided into two formal stages: the *administrative* stage and the *judicial* stage.

- **Administrative stage**

The administrative stage consists of three distinct phases. First, the *pre-contentious* phase when the Member State is given an opportunity to explain its position to the Commission. Second, if the matter is not resolved informally, the Commission will *formally notify* the Member State of the alleged infringement asking it to respond within two months (save in urgent cases). The Commission will normally decide within 12 months whether to close the case or proceed to the next stage. The third stage is when the Commission issues a *reasoned opinion* to the Member State setting out the alleged infringement. After issuing the reasoned opinion, if the matter is not resolved to the Commission’s satisfaction, legal proceedings are initiated before the Court of Justice: the judicial phase.

- **Judicial stage**

If the Court of Justice finds an infringement, the Court issues a declaratory judgment. The Court has no jurisdiction to order the annulment of national law or to award individual remedies. Article 260 TFEU affords the Commission the power to initiate a follow-up Court action to financially sanction a Member State which has failed to take the necessary measures to comply with a finding of an infringement by

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<sup>16</sup> Article 7 TEU (rule of law infringements); Article 108 (2) TFEU (state aid), Article 114 (9) TFEU (internal market), Article 348 TFEU (where a Member State has been considered to improperly use powers under Article 346 TFEU or 347 TFEU relating to security matters). Article 126 TFEU confers monitoring powers in the field of monetary policy (excessive deficit procedure). In the field of competition law, the Commission has extensive investigative and sanctioning powers under Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in [Articles 101 and 102] of the Treaty, OJ 2003 L1/1.

the Court.<sup>17</sup> Article 260 (2) TFEU provides a swifter procedure which confers the power on the Commission to ask the Court to impose financial sanctions on a Member State under the Article 258 TFEU procedure if the alleged breach amounts to a failure to transpose a directive by the set deadline.

## 4.2 The exercise of the European Commission's discretion under Article 258 TFEU

The Commission can become aware of an infringement of EU law on its own initiative (this category includes petitions forwarded by the European Parliament) or through direct complaints from citizens, businesses and NGOs.<sup>18</sup>

The Commission has almost absolute discretion at each stage of the infringement proceedings. It can set the criteria for exercising its discretion and deciding how to exercise its discretion in each individual case.<sup>19</sup> This broad discretion has been confirmed by the Court.<sup>20</sup> The Court has held that the core aim of the infringement proceedings is to provide an 'objective' enforcement mechanism for infringements of EU law by the Member States. This has been interpreted to mean that 'the Commission will bring cases before the Court on an objective finding of fact. It does not mean that the Commission is an objective actor who pursues all infringements with equal vigor.'<sup>21</sup> The Court has held that it will 'under no circumstances consider the motivation of the Commission to bring the specific proceedings and it consistently rejects individual challenges against the Commission's use of discretion under Article 258 TFEU.'<sup>22</sup> Nevertheless, the Court has placed procedural constraints on the Commission's exercise of its discretion, such as the need for reasonable time limits.<sup>23</sup>

In practice, this means that the Commission enjoys almost complete substantive and judicial discretion when deciding to initiate an infringement, subject only to the general doctrines of EU law.<sup>24</sup> It follows

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<sup>17</sup> The Commission is required to specify the amount of the lump sum or penalty payment to be paid by the Member State and imposed by the Court if the action is successful.

<sup>18</sup> M. Smith, 'The visible, the invisible and the impenetrable: innovations or rebranding in centralized enforcement' in S. Drake and M. Smith (eds.), *New Directions in the Effective Enforcement of EU Law and Policy* (Edward Elgar Publishing 2016), at pp 45-76 at 64.

<sup>19</sup> Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, Study for the PETI Committee, 'The Boundaries of the Commission's Discretionary Powers when Handling Petitions and Potential Infringements of EU Law: From Legal Limits to Political Collaboration in Enforcement?' PE 703.589, November 2022, p. 8, 19 and 35.

<sup>20</sup> See P. Craig and G. de Burca, *EU Law: Text, Cases and Materials, UK version* (8<sup>th</sup> edition Oxford University Press 2024), pp. 481-482.

<sup>21</sup> M. Smith, 'The visible, the invisible and the impenetrable: innovations or rebranding in centralized enforcement' in S. Drake and M. Smith (eds.), *New Directions in the Effective Enforcement of EU Law and Policy* (Edward Elgar Publishing 2016), at p. pp. 45-76 at 59 citing Case C-71/97 *Commission v Spain* [1998] ECR I-5991.

<sup>22</sup> Case C-394/02 *Commission v. Greece* [1995] ECR I-4713, paras. 15-16.

<sup>23</sup> See further P. Craig and G. de Burca, *EU Law: Text, Cases and Materials, UK version* (8<sup>th</sup> edition Oxford University Press 2024), pp. 479-480.

<sup>24</sup> Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, Study for the PETI Committee, 'The Boundaries of the Commission's Discretionary Powers when Handling Petitions and Potential Infringements of EU Law: From Legal Limits to Political Collaboration in Enforcement?' PE 703.589, November 2022.

that it would be unlikely that an action brought against the Commission by the European Parliament for failure to act (Article 265 TFEU) on the grounds that the Commission had failed to instigate enforcement proceedings against a Member States under Article 258 TFEU would be successful.

Four grounds have been identified as justifying this broad discretion:<sup>25</sup>

- (i) the Commission has limited resources and would not have capacity to pursue every infringement of EU law;
- (ii) A reading of Article 258 and Article 260 TFEU clearly demonstrates that the Commission has a discretion to pursue an infringement. It follows that it is for the Commission only to evaluate whether the start enforcement proceedings is the best course of action. How the Commission exercises its judgement can change over time and may be influenced by a range of factors from the political direction and priorities of each Commission to a lack of resources.<sup>26</sup> For example, a Director or Commissioner may prefer to prioritise drafting new legislation over enforcement activities.<sup>27</sup>
- (iii) Infringement proceedings are viewed as just one way of securing a legal remedy under EU law. If the Commission decides not to pursue an enforcement action, there is a view that other avenues for redress may be available (discussed below);
- (iv) the division of infringement proceedings into an administrative and judicial stage in Article 258 TFEU assumes there is a degree of discretion and room for the Commission to negotiate with a member state to secure compliance. Otherwise, there would only be a judicial stage. Consequently, it has been observed that there is very limited judicial accountability of how the Commission exercises its discretion reinforcing the importance of effective political accountability by the European Parliament, supported by other actors such as the EU Ombudsperson and European Court of Auditors.<sup>28</sup>

The main aim of enforcement activities is to secure compliance rather than to punish and sanction a Member State.<sup>29</sup> The majority of instances of non-compliance are resolved within the *administrative* stage. Over time, the Commission has brought in new mechanisms to assist with this task including EU Pilot, a structured problem-solving dialogue. In a Special Report by the European Court of Auditors in 2024 which analysed the Commission's management of its infringement proceedings, it was observed that the use of EU Pilot between 2012–2023 led to Member States complying with EU law in 74% of cases without the need for formal infringement proceedings to be launched. However, the average handling times were long with 28.4 months being the average in 2023.<sup>30</sup> The Commission has also

<sup>25</sup> Ibid at p. 35.

<sup>26</sup> Ibid at p. 35.

<sup>27</sup> M. Smith, 'The visible, the invisible and the impenetrable: innovations or rebranding in centralized enforcement' in S. Drake and M. Smith (eds.), *New Directions in the Effective Enforcement of EU Law and Policy* (Edward Elgar Publishing 2016), at pp 45–76 at 66.

<sup>28</sup> See for example, European Court of Auditors, 'Special Report 28/2008; Enforcing EU Law – The Commission has improved its management of infringement cases but closing them still takes too long', 17 December 2024.

<sup>29</sup> Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, Study for the PETI Committee, 'The Boundaries of the Commission's Discretionary Powers when Handling Petitions and Potential Infringements of EU Law: From Legal Limits to Political Collaboration in Enforcement?' PE 703.589, November 2022, p. 17.

<sup>30</sup> European Court of Auditors, 'Special Report 28/2008; Enforcing EU Law – The Commission has improved its management of infringement cases but closing them still takes too long', 17 December 2024.

introduced measures to improve the capacity of Member States to discuss and pre-empt potential problems with transposing and implementing new directives into national law<sup>31</sup> such as training for national administrations and the judiciary.

The number of cases reaching the judicial stage had been in decline for some time. For example, 69 cases were referred to the Court of Justice in 2015 but only 35 in 2022. Although it should be noted that the figure went up in 2023 with 82 cases referred.<sup>32</sup> The reasons for this decline are contested. The Commission has justified this reduction with reference to (i) a more strategic approach to enforcement matters; (ii) a shift to compliance-based strategies within the administrative stage of the infringement procedure; and (iii) the introduction of other complementary mechanisms to which it directs complainants such as SOLVIT (discussed below at Section 4.5). It views infringement proceedings before the Court as a measure of last resort.

Some commentators have disputed this view and suggest that the reason for a sharp reduction in the number of infringements since 2004 is political. It has been claimed that the Commission, concerned about criticism of its arguably 'aggressive enforcement policy' against the Member States and fear that the latter would withdraw support for its policy agenda, has sacrificed its role as enforcer of the Treaties to follow the 'politics of forbearance'.<sup>33</sup> This claim has been explicitly rebuffed by President Von der Leyen<sup>34</sup> in response to a priority question by an MEP (Sophie in't Veld).<sup>35</sup> It should be noted that the commentators who made the original criticism responded in a blog post to President Von der Leyen.<sup>36</sup> The media has also drawn attention to their criticism of the Commission in July 2025.<sup>37</sup>

It is unlikely that there is a singular reason for the decline in infringement proceedings. Nevertheless, there is a growing consensus that the Commission's reporting on how it exercises its discretion under Article 258 TFEU lacks transparency and sufficient detail. Consequently, more co-operation is required between the Commission and the European Parliament on this matter.<sup>38</sup>

<sup>31</sup> Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, Study for the PETI Committee, 'The Boundaries of the Commission's Discretionary Powers when Handling Petitions and Potential Infringements of EU Law: From Legal Limits to Political Collaboration in Enforcement?' PE 703.589, November 2022, p. 40.

<sup>32</sup> Annual Report 2023, p. 8.

<sup>33</sup> R.D. Keleman and T. Pavone, 'Where have the guardians gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union' (2023) 75 (4) *World Politics* 779-825.

<sup>34</sup> [Parliamentary question P-000097/2022 \(ASW\), Answer given by President von der Leyen on behalf of the European Commission, 21<sup>st</sup> February 2022](#). Accessed 10<sup>th</sup> September 2025.

<sup>35</sup> [Parliamentary question P-000097/2022, Are you still there, Guardian of the Treaties? 10<sup>th</sup> January 2022](#). Accessed 10<sup>th</sup> September 2025.

<sup>36</sup> See [R.D. Keleman and T. Pavone, 'Forbearance and Enforcement at the European Commission: A Response to von der Leyen, EU Law Enforcement Blog, 31 May 2022](#). Accessed 10 September 2025.

<sup>37</sup> The Economist, 'The sleeping policeman at the heart of Europe: Enforcement of EU law has become an afterthought' 5<sup>th</sup> July 2025 [https://www.economist.com/europe/2025/07/03/the-sleeping-policeman-at-the-heart-of-europe?utm\\_campaign=shared\\_article](https://www.economist.com/europe/2025/07/03/the-sleeping-policeman-at-the-heart-of-europe?utm_campaign=shared_article) Accessed 10<sup>th</sup> September 2025.

<sup>38</sup> For a summary of the European Parliament's response to the European Commission's Annual Reports on the Monitoring and Application of EU Law and calls for openness and transparency, see further: H. Schulte-Noelke, M. McGuire, *Monitoring the Application of EU Law in the Member States: Assessment of the European Commission's 2023 Annual Report and Recommendations for Improving EU Law Enforcement*, Policy Department for Justice, Civil Liberties and Institutional Affairs, European Parliament, 2025.

In response to previous demands,<sup>39</sup> the Commission has sought to provide greater transparency on how it exercises its discretion by issuing a number of soft law documents. The most important guidance on how the Commission exercises its discretion is the 2017 *Communication from the Commission, EU law: Better results through better application*.<sup>40</sup> In 2023, the Commission undertook a stocktaking exercise to review the 2017 document and made a commitment to improve how complaints are handled.<sup>41</sup> The 2023 exercise is explicitly referred to in the 2023 Annual Report and appears to address concerns raised in the 2022 PETI report<sup>42</sup> and the 2024 Special Report of the European Court of Auditors.

It follows that the Annual Report on the Monitoring of the Application and Enforcement of EU Law and Policy plays a critical role in demonstrating to these key actors and the wider public about how the Commission wields its discretionary powers. To this end, it is disappointing that the 2023 Annual Report sheds very little light on how these powers were exercised. While it presents data demonstrating an increase in the number of infringement proceedings brought before the Court of Justice in 2023 from 35 in 2022 to 82 in 2025, it only refers to this as 'illustrating the Commission's resolve to enforce EU law.'<sup>43</sup> The Report proceeds to give examples of its enforcement activities but there is insufficient data available to allow the European Parliament to scrutinise the exercise of the Commission's almost unfettered discretion in any meaningful way.<sup>44</sup>

### 4.3 The role of the citizen under the infringement procedure

From the citizen's perspective, a complaint can be made directly to the Commission on its standard complaint form.<sup>45</sup> The Commission sets a 12 month limit for deciding whether to pursue the complaint or close the case. The Commission emphasises that its role is to ensure general application of EU law in the Member States rather than resolve individual disputes. While the Commission has recognised that complaints brought by citizens, businesses and NGOs, are an important source of information about infringements,<sup>46</sup> their role in the infringement procedure is limited.<sup>47</sup> The Commission has full

<sup>39</sup> Ibid.

<sup>40</sup> Commission Communication, EU law: Better results through better application (2017) C18/10 19.1.2017.

<sup>41</sup> Commission Staff Working Document: Stocktaking report on the Commission working methods for monitoring the application of EU law SWD (2023) 254 final.

<sup>42</sup> Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, Study for the PETI Committee, 'The Boundaries of the Commission's Discretionary Powers when Handling Petitions and Potential Infringements of EU Law: From Legal Limits to Political Collaboration in Enforcement?' PE 703.589, November 2022.

<sup>43</sup> Annual Report 2023, p.8.

<sup>44</sup> For a more detailed analysis of the 2023 Report, see: H. Schulte-Noelke, M. McGuire, *Monitoring the Application of EU Law in the Member States: Assessment of the European Commission's 2023 Annual Report and Recommendations for Improving EU Law Enforcement*, Policy Department for Justice, Civil Liberties and Institutional Affairs, European Parliament, 2025.

<sup>45</sup> Introduced in 1999: [Report a breach of EU law by an EU country - European Commission](#)

<sup>46</sup> Commission Communication, EU law: Better results through better application (2017) C18/10 19.1.2017.

<sup>47</sup> C. Harlow and R. Rawlings, 'Accountability and Law Enforcement: The Centralized EU Infringement Procedure' (2006) *European Law Review* 447; M. Eliantonio, 'The Role of NGOs in Environmental Implementation Conflicts: "Stuck in the Middle" between Infringement Proceedings and Preliminary Rulings?' (2018) 40 *Journal of European Integration* 753; K. Reiners and E. Versluis, 'NGOs as New Guardians of the Treaties? Analysing the Effectiveness of NGOs as Decentralised Enforcers of EU Law' (2023) 30 *Journal of European Public Policy* 1518.

discretion on whether it pursues an individual complaint.<sup>48</sup> The Commission has emphasised on several occasions the function of the infringement procedure as an 'objective' mechanism for securing compliance with EU law rather than a means of defending individual interests. To this end, its website directs citizens and businesses to alternative mechanisms such as SOLVIT and national authorities as well as national courts. While it may be understandable for the Commission to refuse to pursue all individual complaints since they have limited resources and such complaints are likely to be motivated by private interest rather than public interest, this argument is less convincing where a complaint has been made by an NGO.

The Commission has responded to criticism of its exclusion of citizens who make complaints from the 'bilateral' procedure between the Commission and the Member State and calls for greater transparency. As discussed above, it also publishes its own internal procedural rules on how it deals with complainants in its 2017 Communication on EU Law: Better Results through Better Application. However, the Special Report of the European Court of Auditors found that there was still room for improvement in the handling of complaints. For example, between 2012–2023, for 38% of complaints, the 12 month benchmark was not met. It also observed that handling times had increased even though the number of complaints received had dropped falling from 854 in 2012 to 120 in 2023, and found inconsistency in the how the 2017 guidance was being applied. The Commission's 2023 stocktaking exercise seeks to improve the 2017 guidance.

Citizens can also bring a petition before the European Parliament. According to the European Court of Auditors, around 700 are forwarded to the Commission each year and can refer to infringements of EU law, but there are no statistics available on how many the Commission follows up as an own-initiative case, either under EU Pilot or the infringement procedure as there is no link between the internal petitions database and its Themis database (introduced in 2020), or whether it has received a complaint on the same matter.<sup>49</sup>

#### 4.4 Public enforcement at national level

It is the Member States which are primarily responsible for implementing EU legislation as well as monitoring, investigating and sanctioning non-compliance in the majority of policy areas. There is a general obligation under Article 4 (3) TEU to 'take any appropriate measures, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.'<sup>50</sup>

The enforcement strategy chosen by the EU legislature for a particular piece of legislation and the nature and degree of the intrusion of EU law into the national institutional, procedural and remedial autonomy of the Member State can vary considerably between policy areas. For example, EU legislation may contain specific measures which require a Member State to designate a national body which will be responsible for monitoring, investigating and sanctioning compliance with EU law. It may also require the national legislature to enact penalties for non-compliance with EU law adopted in the general

<sup>48</sup> Case 247/87 *Star Fruit* [1989 ECR 291; Case T-182/97 *Smanor* [1998] ECR II-271; Case C-111/11 P *Ruipérez Aguirre and ATC Petition* EU:C: 2011:491.

<sup>49</sup> ECA Special Report, para. 70.

<sup>50</sup> See also Article 288 (3) TFEU and Article 291 (1) TFEU.

interest which are 'effective, dissuasive and proportionate.' However, no uniform pattern in EU legislation is followed which leads to considerable variation in how EU law is applied and enforced in the Member States.

The decentralization of enforcement to the national level has several advantages. It absolves the need for an arguably expensive EU level administration with capacity to police the application and enforcement of EU law at national level. National administrations are likely to have closer relationships with actors and be more attuned to the different barriers to effective application and more likely to secure compliance. Decentralised enforcement action is also closer to citizens and reflects the commitment to subsidiarity.

Nevertheless, the degree of variation in the organization of enforcement at national level is high<sup>51</sup> and has been referred to as 'an enforcement patchwork'.<sup>52</sup> Furthermore, effective enforcement can be thwarted by a lack of resources, capacity, expertise, or political priorities which may lie elsewhere. The close relationships between the national regulator and regulatee can lead to 'regulatory capture'.

## 4.5 New trends in public enforcement

### 4.5.1 Networks

The EU has experienced the proliferation of new bodies and actors involved in enforcement activities including transgovernmental and transnational networks. Transgovernmental networks operate with government representatives as the main actors whereas transnational networks concern co-operation and co-ordination between independent experts or representatives from interest organisations. Yet their role and effectiveness as new management instruments to promote the enforcement of EU law including securing compliance with EU law and resolving disputes is under-developed in the literature.

In the context of enforcing EU law, the Commission will often direct complainants from citizens and businesses relating to the internal market to SOLVIT.<sup>53</sup> SOLVIT is a transgovernmental network which provides information and assistance to citizens facing the misapplication of EU law by national authorities in a cross-border situation. The Commission often refers to the work of SOLVIT in its Annual Reports. It plays an important role for citizens in securing compliance and resolving disputes in a speedy fashion.

Another network which plays an important role in assisting citizens with obtaining redress is the ECC-Net. In 2023, the network reported that it helped over 125,000 consumers. In 22,500 cases, the network was able to secure redress directly from the trader.<sup>54</sup> Despite the clear benefits of these networks for

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<sup>51</sup> M. Scholten, M. Maggetti and E. Versluis, 'Political and judicial accountability in shared enforcement in the EU' in M. Scholten and M. Luchtman (eds), *Law Enforcement by EU Authorities: Implications for Political and Judicial Accountability*, (Edward Elgar Publishing 2017) pp. 353-375 at 355.

<sup>52</sup> M. García Quesada, 'The EU as an 'Enforcement Patchwork': The Impact of National Enforcement for Compliance with EU Water Law in Spain and Britain' (2014) 34 *Journal of Public Policy* 331.

<sup>53</sup> See M. Lottini, 'The SOLVIT network and the effective enforcement of EU law: what is new?' in S. Drake and M. Smith, *New Directions in the Effective Enforcement of EU Law and Policy* (Edward Elgar Publishing 2016), pp. 130-151; D. S. Martinsen and M. Hobolth, 'The effectiveness of transgovernmental networks: managing the practical application of European integration in the case of SOLVIT' in S. Drake and M. Smith, *New Directions in the Effective Enforcement of EU Law and Policy* (Edward Elgar 2016) pp. 152-174.

<sup>54</sup> [European Consumer Centres Network - ECC Net - European Commission](#) Last accessed 24<sup>th</sup> September 2025.

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citizens, there are only ad hoc references to them in the Commission's Annual Reports and awareness levels remain low (see section 6.0).

#### 4.5.2 EU agencies

In more recent years, the EU has centralised direct enforcement powers in some EU agencies to monitor compliance, investigate and sanction non-compliance with EU law by private actors.<sup>55</sup> This has been termed 'direct enforcement' by some scholars as opposed to 'indirect enforcement' which refers to the monitoring of compliance by national authorities.<sup>56</sup> A key rationale of this development is to secure better compliance as private actors can work with sectoral experts who are independent from political interference.<sup>57</sup> There is no mention of how these EU agencies work with the Commission to secure compliance in the Annual Report.

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<sup>55</sup> M. Scholten, 'Mind the Trend! The Enforcement of EU Law is Moving to "Brussels"' (2017) 24 *Journal of European Public Policy* 1348.

<sup>56</sup> M. Scholten and M. Luchtman (eds), *Law Enforcement by EU Authorities: Implications for Political and Judicial Accountability*, (Edward Elgar Publishing 2017), p. 1.

<sup>57</sup> M. Scholten, M. Maggetti and E. Versluis, 'Political and judicial accountability in shared enforcement in the EU' in M. Scholten and M. Luchtman (eds), *Law Enforcement by EU Authorities: Implications for Political and Judicial Accountability*, (Edward Elgar Publishing 2017), pp. 353-375 at 357.

## 5. THE PRIVATE ENFORCEMENT OF EU LAW

### KEY FINDINGS

The ability of citizens (and businesses) to instigate legal proceedings directly before a national court for breach of EU law (private enforcement) originated in the jurisprudence of the Court of Justice in 1963 and is well-established.

Through its case law, the Court of Justice has interpreted EU law teleologically to further develop this 'judge-made system of private enforcement,' yet it can be complex and lack visibility for citizens and businesses seeking to enforce their EU rights judicially.

Although the Commission regularly directs citizens to enforce their EU rights before the courts, **citizens can face a number of barriers stemming from doctrinal constraints (especially when seeking to enforce rights derived from directives), judicial politics, legislative complexity and a lack of access to justice.**

The Commission has taken a number of steps to bolster national judiciaries and has brought infringement proceedings against Member States when the ability of the national judiciary to engage as a key component of the EU legal order has been undermined.

The Commission has developed new mechanisms to improve access to justice including legislation which promotes collective redress and extra-judicial redress such as ADR and ODR.

Although the Commission could be considered to be one of the 'chief architects' of this multi-level, multi-faceted systems for enforcing EU law (along with the Court of Justice), the Commission does not consider holistically the effectiveness of these different pathways from the perspective of a citizen.

The private enforcement of EU law refers to the capacity of citizens as well as businesses and NGOs to instigate court action directly before a national court to enforce EU law. This pillar of enforcement is seen by the Commission as distinct from public enforcement since it is often motivated by private interest. Nevertheless, litigation can also be a tool for legal mobilization to further policy goals in the collective interest. For example, an NGO may support a citizen to bring legal proceedings to bring about policy change (strategic litigation).<sup>58</sup>

### 5.1 The private enforcement model created by the Court of Justice

The capacity of individuals to rely on EU law directly before a national court rather than rely on public enforcement is not set out in the Treaties. It is a creation of the Court of Justice starting with its seminal judgment in Case 26/62 *Van Gend en Loos*.<sup>59</sup> In this case, the Court adopted a teleological interpretation of the Treaty to introduce the constitutional doctrine of direct effect which confers on citizens and businesses *as a matter of EU law* the capacity to bring legal actions directly before a national court to enforce EU rights which are clear, precise and unconditional. The Court of Justice has developed this system of private enforcement further in subsequent case law by virtue of its jurisdiction

<sup>58</sup> See further L. Vanhala, *Making Rights a Reality? Disability Rights Activists and Legal Mobilization* (Cambridge University Press, 2011).

<sup>59</sup> Case 26/62 *Van Gend en Loos* [1963] ECR 1, 13.

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to deliver preliminary rulings under Article 267 TFEU.<sup>60</sup> In 2024, the General Court was conferred jurisdiction to deliver preliminary rulings in six specific policy fields.

In its early case law, the Court of Justice was reluctant to intrude on the national procedural and remedial autonomy of the Member States. Any action brought before a national court on the basis of EU law would follow national procedural and remedial rules. The Court of Justice has since departed from this approach by requiring national procedural rules to comply with the principle of effectiveness (national procedural rules should not render the exercise of EU rights impossible in practice) and the principle of equivalence (actions brought on the basis of EU law should be subject to the same national rules as those which apply to actions brought on the basis of national law). In its *Francovich* judgment,<sup>61</sup> the Court famously introduced a new remedy based on EU law, the principle of State liability, which confers citizens (and businesses) with the EU right to bring an action for damages against a Member State for breach of EU law.

The Court has also recognised the principle of effective judicial protection as a general principle of EU law. Since the Treaty of Lisbon, Member States are under an obligation to 'provide remedies sufficient to ensure effective legal protection in the fields covered by Union law' (Article 19 (1) second subparagraph). The fundamental right to an effective remedy and right to a fair trial are also set out in Article 47 of the EU Charter for Fundamental Rights which has been recognised as having direct effect by the Court of Justice. In addition, Article 47, paragraph 3, states that 'legal aid should be available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'<sup>62</sup> Beyond these broad provisions, the EU legislature has introduced some limited sectoral secondary legislation which harmonises national procedural rules and remedies. Nevertheless, citizens can still face barriers to the effectiveness of private litigation as an avenue for enforcing EU rights. These barriers are discussed below in section 5.4.

## 5.2 The relationship between public and private enforcement

In *Van Gend en Loos*, the Court observed that the role of private enforcement before the courts is to complement the public enforcement by the Commission as set out in the original EEC Treaty. It held that, 'the vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by Articles [now 258 and 259] to the diligence of the Commission and of the Member States.'

While public and private enforcement are viewed as complementary mechanisms, they are also seen by the Commission as distinct and serving different functions. Public enforcement through the infringement procedure is intended to protect the general interest and uniform application of EU law.

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<sup>60</sup> See further S. Drake, 'More effective private enforcement of EU law post-Lisbon: aligning regulatory goals and constitutional values' in S. Drake and M. Smith, *New Directions in the Effective Enforcement of EU Law and Policy* (2016) Edward Elgar 12-44.

<sup>61</sup> Joined Cases C-6 and 9/90 *Francovich* [1991] ECR I-5357.

<sup>62</sup> For an extensive analysis of Article 47 EUCFR from the perspective of the Court of Justice, see M. Bonelli, M., Eliantonio and G. Gentile, *Article 47 of the EU Charter and Effective Judicial Protection, Volume I: The Court of Justice's Perspective* (Hart Publishing, 2022).

Private enforcement is designed to protect an individual's right in a specific case. Nevertheless, despite these distinctions, the Commission recognises the role of the preliminary ruling procedure as a mechanism for uniform application and enforcing citizens' EU rights. It has declared that it will not pursue infringement proceedings where a preliminary ruling on the same issue is pending.<sup>63</sup> It has drawn attention to the use of its right to submit observations in all preliminary ruling proceedings before the CJEU especially in state aid and competition law cases. Nevertheless, these interventions do not appear to be systematically analysed to uncover structural weaknesses in the legal design of EU rights and their enforcement.

### 5.3 New trends in private enforcement

In recognition of the important role played by national courts as a pathway for redress by citizens,<sup>64</sup> the Commission has taken steps to support Member States to improve the effectiveness of their national justice systems through the European Semester and by financially supporting justice reforms and training programmes for judges. The EU Justice Scoreboard presents annual data on the 'efficiency, quality and independence' of national court systems which feeds into the Commission's Rule of Law Report.

This includes important data on *inter alia* caseloads, the length of proceedings and costs. The underpinning rationale for the assessment is that effective justice systems in the Member States are seen as essential to upholding the rule of law but also to attract investment and promote growth. In the 2025 report, new data was included which was more citizen-focused (rather than market-focused) including data on the accessibility of justice for victims of crime, victims of violence against women/domestic violence and persons at risk of discrimination such as older persons as well as digitalization with a view to improving access to justice. The Commission has also promoted the establishment of cross-border networks in a number of fields to promote co-operation, support and share good practice between national judiciaries.

There have been several EU measures adopted in the field of civil justice which bolster the use of court action as an effective dispute resolution mechanism. These include the EU small claims procedure which can assist with cross-border claims, and collective redress, which enables citizens to bring a collective action when there is mass harm. Furthermore, we have seen the introduction of EU legislation to promote extra-judicial redress including alternative dispute resolution (ADR) and online dispute resolution (ODR).

In addition, new specialist courts have been introduced and there has been an expansion of the jurisdiction of the General Court. For example, since 1 October 2024, the jurisdiction to hear and deliver preliminary rulings in the following six specific areas has been transferred from the Court of Justice to the General Court: the common system of VAT; excise duties; the Customs Code; the tariff classification of goods; compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services; and the system for greenhouse gas emission allowance

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<sup>63</sup> 2017 Commission Communication, p 15.

<sup>64</sup> 2022 Communication, p.7.

trading. The Annual Report does not extend to reporting on the effectiveness of the enforcement of EU law before the EU Courts, national courts or through the use of extra-judicial redress mechanisms.

## 5.4 Barriers to the effective enforcement of EU rights before national courts

Since citizens who make complaints are routinely directed by the Commission to resolve issues via alternative mechanisms including the courts, it is important to consider the barriers citizens' face when seeking to fully secure their EU rights through judicial proceedings at the national level. This section identifies four constraints on the effective enforcement of EU rights by citizens before their national courts.

### 5.4.1 Doctrinal constraints

At the crux of this study is the notion of rights. In the context of EU law, the conferral of rights to citizens and businesses has been central to the success of the European Union's integration project. Ever since the CJEU's seminal 1963 *Van Gend en Loos* judgment,<sup>65</sup> in which it introduced the doctrine of direct effect, the legal capacity of private actors to independently challenge the alleged unlawful behaviour of a Member State or other private actors has been turbo-boostered. In later case law, the Court extended the doctrine of direct effect to cover regulations and directives, albeit in a more limited fashion for the latter (see below), and from the economic to social sphere including consumer protection.

This 'judge-made system of enforcement' does present some difficulties for citizens seeking to enforce their EU rights. While post-*Van Gend en Loos*, the 'vertical direct effect' of regulations and directives was recognized allowing EU rights conferred by these EU instruments to be invoked in judicial proceedings against a Member State (or state body which could be considered to be an 'emanation of the State'), in *Marshall (No.1)*,<sup>66</sup> the Court prohibited the 'horizontal direct effect' of directives.<sup>67</sup> This means that directives cannot be relied upon in a horizontal court action between two private parties.

This denial creates a gap in the effective enforcement of directives in disputes between two private parties and is particularly problematic in policy fields such as employment law and consumer protection where EU legislation often takes the form of a directive. In essence, it means that the extent to which an individual can rely on a directive is dependent on the status of the defendant. This 'enforcement gap' has to a large extent been addressed by the Court's development of alternative constitutional doctrines which promote enforcement such as the broad interpretation of what constitutes an 'emanation of the State', the principle of 'indirect effect' or conform interpretation<sup>68</sup> and the principle

<sup>65</sup> Case 26/62 *Van Gend en Loos* [1963] ECR 1.

<sup>66</sup> Case 152/84 *Marshall (No.1)* [1986] ECR 723.

<sup>67</sup> The Court of Justice has consistently refused to reverse this prohibition in its case law despite persistent calls to do so from academics and the judiciary.

<sup>68</sup> See S. Drake, 'Twenty Years after "Von Colson": The Impact of "Indirect Effect" on the Protection of the Individual's Community Rights' (2005) 30 *European Law Review* 329; S. Drake, 'Von Colson and the Principle of "Indirect Effect" in P. Craig and R. Schuetze, *Landmark Cases in EU Law: Constitutional Cases* (Hart Publishing 2025).

of State liability.<sup>69</sup> The current trend to adopt regulations rather than directives can be beneficial to citizens and help avoid this gap in enforcement.

#### 5.4.2 Judicial politics

There are further weaknesses in depending on national courts for enforcing EU rights as an enforcement strategy. Its success is contingent on the ability and willingness of national courts including national constitutional courts to play their role in ensuring compliance with EU law. This includes adhering to the primacy of EU law, sending references under the preliminary ruling procedure and respecting the authority of the judgments of the Court of Justice.

Some national constitutional courts have pushed back against the well-established doctrine of primacy in more recent years asserting that it is national law rather than EU law which determines the outer limits of EU law. In some Member States, the independence of the judiciary and the operation of the preliminary ruling procedure have been under threat. Consequently, these practices have been the target of the Commission's enforcement activities including infringement proceedings.<sup>70</sup>

#### 5.4.3 Legislative complexity

It has been argued elsewhere that the high degree of legislative complexity of EU instruments hinders the effective implementation, application, monitoring and enforcement of EU law for citizens, the Member States and for the EU institutions.<sup>71</sup> For citizens (and businesses) who are often the main audience of EU legislation, legislative complexity hinders compliance and effective enjoyment before the national courts. Furthermore, it is argued that legislative complexity leads to increased volumes of litigation. This has a number of implications. First, there are financial implications for all parties including the EU and the Member States who fund the administration of justice. Second, litigation can be lengthy and so deny citizens the benefit of their EU rights in a timely fashion. Third, frequent litigation before the Court of Justice on particular provisions can arguably lead to interpretations of the law which amount de facto to the transfer of law-making from the legislature to the judiciary. In the EU, this has been termed 'Eurolegalism'.<sup>72</sup>

#### 5.4.4 Access to justice

Several of the new trends in private enforcement discussed above in section 5.3 either directly or indirectly promote access to justice. For example, the introduction of measures promoting extra-judicial redress such as ADR and ODR offer citizens a low cost and speedy route to enforcing their EU rights. This is important as it is well-established that court action can be costly, time-consuming and slow particularly in cross-border disputes. In the EU, there is wide variation between the Member

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<sup>69</sup> See further T. Lock, 'Is Private Enforcement of EU Law through State Liability a Myth? An Assessment 20 Years after *Francovich*' (2012) *Common Market Law Review* 1675.

<sup>70</sup> M. Dawson and F. de Witte, *EU Law and Governance* (Cambridge University Press 2022) at p. 116.

<sup>71</sup> See: H. Xanthaki, *Legislative complexity and monitoring the application of EU law*, Policy Department for Justice, Civil Liberties and Institutional Affairs, European Parliament, 2025.

<sup>72</sup> See further R. D. Kelemen, *Eurolegalism: The Transformation of Law and Regulation in the European Union* (Harvard University Press, 2011).

States as illustrated by the EU Justice Scoreboard. In the 2025 Annual Report, it was reported that in 2023, civil and commercial cases were resolved in less than one year in most Member States and had decreased in four Member States. Nevertheless, in Greece, the estimated time needed to resolve a litigious civil and commercial dispute in 2023 was 771 days compared to 120 days in Lithuania.

## 6. IDENTIFYING BARRIERS TO THE EFFECTIVE ENFORCEMENT OF EU RIGHTS IN PRACTICE

### KEY FINDINGS

From the Commission's perspective, citizens should seek to enforce their EU rights via national authorities, networks such as SOLVIT or by bringing legal actions before the national court. This 'top-down' perspective rests on three key assumptions: EU citizens are aware of their EU rights; EU citizens are aware of the various mechanisms available to make complaints or seek redress; citizens have the emotional, financial and legal capacity to engage fully with these mechanisms when their rights have been infringed.

An empirical case study on the experience of air passengers whose flights were cancelled during the COVID-19 pandemic demonstrates that these three behavioural assumptions were not met:

(i) There were low levels of awareness of air passenger rights although levels of awareness increased as the pandemic continued and media coverage increased.

(ii) There were low levels of awareness of the different ways to seek redress or make a complaint. There was considerable reluctance to pursue court action which was seen as a time-consuming and costly. There was a deep mistrust of claims management firms.

(iii) There were high levels of trust in national authorities and economic operators (airlines) to resolve the problem.

(iv) Young adults were the least likely to consider they had been harmed and did not know where to find advice. Older persons were the least likely to make a complaint to an airline or seek further redress due to lack of digital literacy.

The socio-legal model of 'naming, blaming and claiming' is useful for unpacking why this breach of an EU right did not materialise into a legal dispute for these participants.

Socio-legal empirical research which takes a 'bottom-up' view can reveal useful insights which can be fed into the policy evaluation process and proposals for reform. Placing more information online does not necessarily increase levels of awareness.

As explained above, the Commission's current approach to citizens experiencing a breach of EU law is to direct them to seek a resolution with a national authority, a resolution mechanism such as SOLVIT, or to seek redress before a national court. The Commission has also adopted a large range of initiatives to develop and support these mechanisms (see Section 5.3). However, it is posited in this analysis that the effectiveness of this approach in practice rests on certain assumptions. First, it is assumed that EU citizens are aware of rights EU law may have conferred on them. Second, it is assumed that EU citizens have an awareness of the full range of enforcement and redress mechanisms on offer whether public or private. Third, it is assumed that EU citizens have the inclination and resources (emotional, financial and legal) to engage with the dispute resolution mechanisms available to secure their rights and/or obtain redress when they have been infringed.

The Commission has adopted a range of initiatives to provide information and promote citizens' awareness of their EU rights and routes to enforcement and redress. The 2023 Report refers to the centrally run 'Your Europe' website which acts as a Single Digital Gateway (SDG) to provide a single access point for EU and national portals providing information, assistance, advice and problem-solving services available to citizens and businesses on Single-Market related issues at EU and national level.<sup>73</sup> However, a report commissioned by the European Parliament in 2013<sup>74</sup> which identified 44 points of Single Point Contact providing advice on online information, advice and assistance for European citizens and businesses concluded that the awareness levels for online services provided by the EU is low and the understanding of their scope and competencies is weak. The study's main findings on citizens' and businesses' awareness and knowledge of online services were stark and set out below:

- 91.6% of consumers/citizens and businesses surveyed did not know of any online services at the European level they would turn to if they had problems undertaking any activity or action in another European country.
- Less than 1.5% of consumers could spontaneously identify any of the main European online services. In the case of businesses, less than 1% could identify any online services, the exception being the website, Europa.eu, where 2% of business spontaneously identified this portal.
- When seeking information or advice about living, working, studying or any other activity in Europe the most common response was a national level institution (2.8% of consumers/citizens and 4.8% of business). The second most likely route for citizens and consumers is an internet search (1.4%). When citizens and business were asked about specific online services, awareness of these services remained low.
- No business identified SOLVIT when asked which services they were aware of and less than 0.5% of consumers surveyed identified SOLVIT. Even upon specific prompting, SOLVIT was the least well known service amongst consumers and the third least well known for business.
- Awareness of FIN-NET was low amongst consumers surveyed with 5% of consumers saying they had heard of FIN-NET when specifically asked.
- Consumer awareness of ECC-NET was similarly low, with 0.2% of consumers spontaneously identifying this service. When prompted however, 16% reported to know of the ECC-NET which was the third best known service after EURES (20%) and the European Youth Portal (17%).

The results of this European Parliament survey suggest that the current approach of the Commission to providing more information and advice from the top-down does not necessarily increase awareness levels among citizens and may undermine the recent upgrade to the Your Europe portal. A deeper dive

<sup>73</sup> [Single digital gateway - European Commission](#) (Last accessed on 24<sup>th</sup> September 2025). The portal has been upgraded since its introduction in 2006. See further Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (Text with EEA relevance).

<sup>74</sup> European Parliament Study for the Directorate-General for Internal Policies, Policy Department A (Economic and Scientific Policy), A Single Point of Contact (2013) IP/A/IMCO/ST/2012-17 PE 507.453 ([https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507453/IPOL-IMCO\\_ET\(2013\)507453\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507453/IPOL-IMCO_ET(2013)507453_EN.pdf)) (Last accessed on 24<sup>th</sup> September 2025).

into why citizens and businesses organisations lack awareness is required. This next section seeks to make a small contribution to the debate.

## 6.1 Barriers to enforcing EU air passenger rights under Regulation 261/2004: A bottom-up perspective

This section presents the findings of an empirical study on the experience of air passengers whose flights were cancelled during the COVID-19 pandemic. The aim of the project was to ascertain the levels of awareness of air passengers during this period as well as any routes to redress. At the time, EU law was still applicable in the UK. Incorporating this case study in this analysis has two aims. First, to illustrate more concretely some of the barriers citizens face when trying to enjoy their EU rights. Second, to demonstrate the benefit of conducting empirical research from the citizens' perspective to find out how the 'law on paper' works in practice.<sup>75</sup> It has been argued that more data of this nature can uncover more effective solutions for citizens' seeking to fully enjoy their EU rights.<sup>76</sup>

Regulation 261/2004<sup>77</sup> is the principal EU legal instrument regulating air passengers' legal rights when their travel is disrupted and is often presented as one of the EU's flagship instruments demonstrating the benefits of EU membership to its citizens. The Regulation is ambitious and provides all air passengers in the EU and EEA with a high level of consumer protection when they face 'serious inconvenience and disruption' to a flight resulting either from denied boarding, involuntary downgrading and upgrading, delay or cancellation. If legal protection is triggered by one of these four events, air passengers may access a suite of directly applicable and directly effective rights ranging from free refreshments, hotel accommodation, phone calls or emails,<sup>78</sup> to refunds or re-routing<sup>79</sup> as well as the possibility of a financial payout of up to €600 subject to certain conditions.<sup>80</sup>

As the coronavirus spread to Europe in the spring of 2020, restrictions on international travel were swiftly imposed by government authorities leading to the mass cancellation of flights. In the EU and UK,<sup>81</sup> air passengers whose flights were cancelled by their airline had a legal right to a cash refund within seven days. There were widespread reports these rights were not being respected and many passengers were being issued with travel vouchers instead.<sup>82</sup>

<sup>75</sup> In the context of age discrimination in the UK and Australia, see for example, A. Blackham, *Reforming Age Discrimination Law: Beyond Individual Enforcement* (Oxford University Press 2022).

<sup>76</sup> For a similar call in the context of consumer law, see C. Riefa and S. Saintier, *Vulnerable Consumers and the Law: Consumer Protection and Access to Justice* (Routledge 2021).

<sup>77</sup> Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or delay of flights, and repealing Regulation (EEC) NO 295/91 (Text with EEA relevance): OJ L 46/1 17.2.2004.

<sup>78</sup> The right to care, Regulation 261/2004, Article 9.

<sup>79</sup> The right to assistance, Regulation 261/2004, Article 8.

<sup>80</sup> The right to compensation, Regulation 261/2004, Article 7.

<sup>81</sup> Although the UK officially left the European Union on 31 January 2020 at 23.00 GMT, it entered into a transition period until 31 December 2020 at 23.00. During this period, EU law was still fully applicable. On exit from the EU, the substance of the law on air passenger rights set out under Regulation 261/2004 remained applicable in UK law.

<sup>82</sup> See further S. Fassiaux, 'Covid-19: The regulation of air passenger rights and how the need for reform unveils an erosion of the rule of law' (2021), *European Journal of Consumer Law/Revue européenne du droit de la consommation* 21-53.

In the event of non-compliance, air passengers are encouraged to contact their airlines. If the response is not satisfactory, as mapped out in this analysis, air passengers can complain to the national authority designated under Regulation 261/2004 as their national enforcement body (NEB), or complain to their national European Consumer Centre, pursue legal proceedings before a national court (with the option of seeking help from a claims management firm), or seek help from ADR bodies. The Commission does not have direct powers to force the airlines to comply with the law but works with the national authorities and cross-border networks such as the ECC-Net to secure compliance.<sup>83</sup>

The most pertinent findings of this empirical study into the **awareness of EU air passenger rights and mechanisms for enforcement and redress in the context of cancelled flights during the Covid-19 pandemic** are set out below.

## 6.2 Low awareness of EU air passenger rights

First, we found that the levels of citizens' awareness of their air passenger rights was worryingly low and not always accurate. This finding undermines the very notion of enforceable EU rights. These findings are supported by data collated in the [2024 Eurobarometer report](#) which revealed that only 30% of respondents were aware of their rights as air passengers and the [Special Report by the European Court of Auditors, Air Passenger Rights during the COVID-19 pandemic: key rights not protected despite Commission efforts](#).<sup>84</sup>

## 6.3 Low levels of awareness of enforcement and redress mechanisms

The research demonstrated very low levels of awareness of how to secure redress or make a complaint. No participant was aware of the national enforcement body to which they could make a complaint, the national ECC-Net or the sectoral aviation ADR bodies.

## 6.4 High levels of trust in national authorities and economic operators (airlines)

A third, and more surprising, finding was the high level of trust that citizens placed in airlines and national authorities. Many assumed that if their flight plans were disrupted, these actors would "take care of things." They also assumed the advice given by airlines on their websites accurately reflected the law. While this trust presents a potential asset to build on, particularly by national enforcement bodies, it also creates a false sense of security if these bodies do not act swiftly.

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<sup>83</sup> During the COVID-19 pandemic, in response to non-compliance with Regulation 261/2004 by many airlines, consumer groups played an important role in notifying the European Commission and national enforcement authorities (NEBs) of the scale of non-compliance. In June 2020, the European Commission working in conjunction with the NEBs responded to the first ever external alert brought by the European Consumer Organisation (BEUC) and took action under the Consumer Protection Co-operation Network (CPC) to pressurise 16 European airlines to commit to providing air passenger with better information and reimbursement of passengers in the event of flight cancellations within good time. Only one airline refused to pay cash refunds to those passengers who had been forced to accept travel vouchers in the early stages of the pandemic. Furthermore, the Commission approached Member States to assess levels of compliance with Regulation 261/2004. It instigated infringements proceedings against Member States which adopted legislation allowing airlines to issue vouchers instead of refunds.

<sup>84</sup> European Court of Auditors Special Report 15/21: Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts (26<sup>th</sup> June 2021).

## 6.5 Higher levels of vulnerability in young adults and older persons

We also discovered a disconnect between the groups currently protected by legislation and those who are, in fact, vulnerable in practice. While EU law explicitly seeks to protect passengers with reduced mobility or unaccompanied children, our research revealed that young people and older travellers are also at risk. Young people, despite being digitally literate, had low levels of awareness often failing to reach the "naming" stage set out below (information literacy). Meanwhile, older individuals, although more inclined to complain, lacked the technical knowledge or digital access required to initiate claims (digital literacy). These findings challenge the assumption that existing protections are sufficient and call for a more realistic understanding of vulnerable groups in the context of enforcement.

## 6.6 The Naming-Blaming-Claiming Model

Interestingly, due to the scale and length of the crisis, the participants became more aware of their legal rights due to media coverage and that they were not being respected. However, they did not make use of any of the redress option. Our research identified two primary reasons: first, a continued lack of awareness of available mechanisms, both public and private, and second, a range of socio-psychological factors including distrust of claims management firms and a reluctance to bring court action which is seen as complex, costly and time-consuming. To better understand this behavioural gap, we turned to socio-legal literature, which frames 'dispute emergence' in three stages: naming the harm, blaming a responsible party, and finally claiming, i.e., taking action to seek redress from the responsible party.<sup>85</sup> Adopting a socio-legal approach allows us to look beyond the law and conferral of rights and the supporting institutional framework to the behaviour of the individual conferred with these rights and how they behave when their rights have been infringed.

- **Naming**

The first phase is naming. This is where a person has an 'experience' and acknowledges to themselves that this event has caused them some harm. This has also been described as acknowledgement of a *justiciable* event.<sup>86</sup> In theory, the conferral of rights through EU law should make this naming stage more straightforward. In the context of air passenger rights, it is the stage where the air passenger acknowledges to themselves that the flight cancellation has caused them some kind of harm, whether it be inconvenience, disappointment, frustration, anger, or finding themselves out of pocket. In our study, whether a participant reached this stage varied. The age of the participant and the extent to which they engaged with traditional media outlets such as state-funded TV stations and newspapers increased the likelihood of them perceiving the flight cancellation as harm.

- **Blaming**

The second stage is blaming. This is where an experience which causes harm is transformed into a 'grievance'.<sup>87</sup> This occurs when a person attributes an injury to the fault of another individual or social

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<sup>85</sup> W.L.F. Felstiner, R.L. Abel and A. Sarat, 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...' (1980-1981) 15 *Law and Society Review*, 631.

<sup>86</sup> A. Olesen and O. Hammerslev, O, 'The dynamic and iterative pre-dispute phase: the transformation from a justiciable problem into a legal dispute' (2023) 50 *Journal of Law and Society* 120-138.

<sup>87</sup> *Ibid*, p. 635.

entity.<sup>88</sup> It is only if this stage is reached that there is the potential to bring a legal case. In the context of flight cancellations, participants who had named their grievance were able to easily identify the airline as the responsible party. Nevertheless, there were some participants who were sympathetic to the plight of the airlines in unprecedented circumstances and were reluctant to 'blame' them for something that was outside their control. The extent of blame was influenced by the level of harm/loss experienced by the consumer.

- **Claiming**

The third stage is claiming. This is where 'someone with a grievance voices it to the person or entity believed to be responsible and asks for some remedy'.<sup>89</sup> The last phase involves holding the 'blamed' party responsible. Claiming occurs when the air passenger contacts the airline and requests a remedy. If the airline resolves the dispute, the experience could end there. If, on the other hand, the airline denies, or ignores the accusation, it may transform into a legal dispute.

Both the blaming phase and the claiming phase may be influenced by advice or solution proffered by different third parties. In addition, a consumer's decision on whether to pursue redress were affected by their appraisal of whether this effort was worthwhile or too burdensome. There were participants who seemed to have a financial and emotional threshold on when they would pursue a complaint with the airline. A participant was less likely to pursue a complaint if the cost of the flight was low, e.g. less than €100, than if it was high, e.g. €3000. Participants also displayed different levels of emotional resilience in making complaints and dealing with conflict.

Strikingly, none of the participants progressed beyond the third stage to bring a legal action. That is, they failed to move from recognising an experience as harmful to actively pursuing a legal solution even when it was clear their rights had been infringed. All participants expressed a strong reluctance to pursue court action. Equally, there were high levels of mistrust in claims management firms. When questioned on their awareness of alternative dispute resolution mechanisms such as making a complaint to the national enforcement body or use aviation ADR bodies, not a single participant was aware of their existence. In conclusion, this study signals a need for a deeper understanding of consumers' decision-making in pursuing their consumer rights which should feed into the policy evaluation process under the Better Regulation Agenda and the current proposals for reform.<sup>90</sup>

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<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> COM (2023) 753: Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union.

## 7. POLICY RECOMMENDATIONS

This paper analyses the monitoring of the application and enforcement of EU law from the perspective of citizens. It has identified weaknesses in the current assessment which is presented annually by the European Commission in its Annual Report. This section will make recommendations to improve this process and to suggest four ways in which the European Parliament, and in particular, its JURI Committee, can influence the achievement of this objective.

### 7.1 To improve the scrutiny of the exercise of the Commission's discretion in infringement proceedings.

The 2023 Annual Report only showcases 'good news' stories from the Commission's activities within the remit of the infringement procedure under Articles 258-260 TFEU with a brief mention of some of the supporting mechanisms including networks such as SOLVIT and the Your Europe portal. It also refers briefly to its annual Rule of Law report and its 2023 stocktaking exercise on its working methods for monitoring the application of EU law. It provides a snapshot of the Commission's enforcement activities in areas which are a political priority and highlights the use of the different enforcement tools at its disposal. From the perspective of the citizen, the current report is unsatisfactory. It gives very little insight into how the Commission's almost unfettered discretion in pursuing enforcement activities (or not) against Member States has been exercised. This is also problematic for the European Parliament which plays an important role in holding the Commission to account.

The Commission exercises a wide discretion in deciding whether and how it responds to non-compliance by a Member State. The legal restraints on how the Commission exercises its discretion are extremely limited. It is not under a legal obligation to investigate all breaches of EU law. Indeed, it would not have the resources to do so.

The Commission is guided in the exercise of its discretion by soft law measures, particularly the 2017 Communication which has been subject to a stocktaking exercise in 2023. **The European Parliament should scrutinise the exercise of the Commission's discretion focusing on whether changes have been made following the recommendations in the European Court of Auditors Special Report 28/2024 and the 2023 stocktaking exercise.**

Furthermore, to ensure political accountability in how this discretion is exercised in the context of enforcement, the Annual Report needs to give more data particularly on how it responds to complaints and petitions brought by citizens and NGOs.

### 7.2 To call for a more holistic assessment of the application and enforcement of EU law in recognition of the EU's contemporary multi-level and multi-faceted system of enforcement

From the foregoing analysis, it is clear that from the perspective of the citizen and the European Parliament, the EU's multi-level system and multi-faceted system for enforcing EU rights is complex and fragmented. While there has been some recognition of the breadth and depth of enforcement activities and actors involved in enforcement at EU and national level by the Commission in its 2022

Communication 'Enforcing EU Law for a Europe that delivers', there is no systematic monitoring of the effectiveness of this proliferation by the Commission in its 2023 annual report, or how the different elements of this multi-faceted system of enforcement interconnect and work together. Indeed, there is a growing academic debate on how the enforcement architecture could be more coherent. More research is needed on these developments and how they all interact.

Nevertheless, the Commission plays an influential role in how the enforcement system is designed and how the different parts can interact with each other. The narrow focus of the Report on the use of the infringement procedure by the Commission with an occasional reference to other mechanisms is insufficient to guarantee transparency and accountability and does not reflect the breadth and depth of enforcement strategies and mechanisms at play or the range of actors involved in the enforcement process. **The contemporary picture of enforcement activity is much broader and should be monitored more effectively by the Commission and should be reported to the European Parliament.** This suggestion would require a re-conceptualisation of the meaning of 'enforcement' to include the full range of enforcement activities. In addition, these should be assessed and evaluated **from the perspective of the citizen.** By viewing how the different enforcement and dispute resolution pathways are perceived by citizens could identify weaknesses and new innovative solutions. This is particularly important where the EU legislature seeks to regulate through the conferral of rights.

In addition, while conferring rights can be a way empowering citizens, there is concern that directing citizens to the courts to secure redress when faced with non-compliance is not sustainable.<sup>91</sup> For example, in the context of air passenger rights, the establishment of a new jurisdiction for the General Court to hear disputes relating to passenger rights cannot be the most efficient or effective use of resources for the litigants or for those who fund the administration of justice.

### **7.3 To call for the Commission to incorporate data collected from a 'bottom-up' perspective in the monitoring of the application and enforcement of EU rights**

The current approach to monitoring the application and enforcement of EU rights is from a top-down institutional perspective. Citizens are consulted and give feedback but this tends to take place when new laws are being drafted. It is recommended that how citizens perceive and interact with their EU rights in practice as well as the different enforcement and redress mechanisms should be incorporated into the enforcement activities of the Commission and added to the Commission's Better Regulation guidelines<sup>92</sup> and toolbox<sup>93</sup> for promoting compliance. This would build on the broader conceptualisation of enforcement referred to in section 7.2. This data would allow the European Parliament to scrutinise the proposals of the Commission from the perspective of citizens more effectively.

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<sup>91</sup> See C. Hodges, 'Delivering Dispute Resolution: A Holistic Review of Models in England and Wales' (Hart Publishing 2019).

<sup>92</sup> Commission Staff Working Document: Better Regulation Guidelines SWD (2021) 305 final.

<sup>93</sup> Better Regulation toolbox, July 2023 edition: [Better regulation: guidelines and toolbox](#) Last accessed 24<sup>th</sup> September 2025.

## **7.4 To co-operate with the Commission to explore the ethical use of technology including AI in the monitoring and application of EU law**

This analysis argues for a citizen-centred approach to the monitoring and application of EU law which has two key elements. First, it should incorporate a more holistic assessment of the enforcement activities and encapsulate the broad range of enforcement activities undertaken to promote compliance, address non-compliance and secure redress for citizens. Second, it should include an assessment of how the different enforcement mechanisms operate in practice from the citizens' perspective.

There is no doubt that the scale of this task would be challenging. However, the Commission already undertakes extensive monitoring as well as evaluations and fitness checks. Further data is available from national authorities and other EU bodies such as Eurobarometer reports, the EU Justice Scoreboard, Reports by the European Court of Auditors and the EU Ombudsperson.

It is recommended that the European Parliament works in collaboration with the European Commission to explore how new technology including AI could super-charge the collation and analysis of vast amounts of existing but fragmented data to reveal a more authentic picture of the effectiveness of enforcement activities in the EU.

The rapid development of AI has the potential to revolutionise the EU policy and law-making process making it more efficient and effective. It has been argued elsewhere that there are numerous AI tools which are either already available or which could be developed to assist with the different phases of the EU legislative process: pre-enactment information analysis, pre-enactment impact forecasting, consultation and public participation, drafting support and post-enactment monitoring of EU law.<sup>94</sup>

From a citizen's perspective, of particular interest would be the possibility to augment impact assessments to enable a wider range of data to be assessed including citizens' perspectives as well as simulating how stakeholders may adapt their behaviour and undertake scenario planning.<sup>95</sup> AI could also enhance the public consultation process by increasing the scale of analysis and scrutinising for 'sentiment analysis' of public attitudes to certain provisions.

AI could also provide interactive support through chatbots and prepare communication documents better suited for public consumption.<sup>96</sup> This could enhance current attempts by the Commission to raise awareness through its Single Point of Contact policy raising levels of information literacy. AI tools could also contribute to clearer drafting reducing legislative complexity (2.4).

One of the key suggestions in this analysis is for the Commission to adopt a broader, more holistic monitoring of the application and enforcement of EU law to take account of the multiplicity of actors that play a role in the process. AI tools could be used to improve data collection in terms of scale and

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<sup>94</sup> See further: G. Sartor, T. R. Dal Pont, *Artificial Intelligence and Monitoring the Application of EU Law*, Policy Department for Justice, Civil Liberties and Institutional Affairs, European Parliament, 2025.

<sup>95</sup> *Ibid*, Section 2.2.

<sup>96</sup> *Ibid*, Section 2.3.

scope, but also to assist with policy evaluation.<sup>97</sup> AI tools could be developed to collate and analyse a large range of data to identify non-compliance and also to help establish the root causes of non-compliance (e.g. through social impacts evaluation).

AI tools could also analyse complaints and petitions brought by citizens (businesses and NGOs) as well as regulatory implementation and judicial application. It has also been suggested it can be used to assess news and media reports (sentiment monitoring).

It is important to acknowledge that there are limitations and risks to utilising AI tools to improve the monitoring and application of EU law. This includes the need for good data (both 'top-down' and 'bottom-up')<sup>98</sup> which has been ethically collated with respect for fundamental rights.<sup>99</sup> Safeguards should be put in place to ensure the data is not contaminated with misinformation or even disinformation which could undermine the integrity of any results.

As argued elsewhere, it is important that the assessment of compliance with fundamental rights is not delegated to AI but is based on human judgement. AI should always be seen as tool to assist rather than replace human endeavor. At present, Gen AI tools have their limits and are prone to 'hallucinate' or 'confabulate' which means 'they can present coherent and plausible information without adequate evidence'.<sup>100</sup>

There is clear role for the European Parliament to work in co-operation with the Commission to discover new ways in which AI could be used to improve the monitoring of the application and enforcement of EU law.

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<sup>97</sup> Ibid, Section 3.2.

<sup>98</sup> Ibid, Section 2.5.

<sup>99</sup> Ibid, Section 6.

<sup>100</sup> Ibid, Section 1.3.

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This paper, commissioned by the European Parliament's Policy Department for Justice, Civil Liberties and Institutional Affairs at the request of the Committee on Legal Affairs (JURI), proposes a more citizen-centred approach to monitoring and reporting on the application and enforcement of EU law by the European Commission. It would involve widening the lens through which the application enforcement of EU law is monitored beyond reporting on the infringement procedure under Articles 258-260 TFEU. It would consider how citizens perceive their EU rights and interact with the full range of enforcement and redress mechanisms at their disposal and consider whether they are sufficiently well-designed to assist citizens to fully realise their rights.

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