

EU environmental law

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The protection of the environment in the Treaties

- Treaties establishing the European Communities 1951-1957:
 - essential objective (···) constant improvement of the living and working conditions of their peoples (...) and to ensure their harmonious development (...)
- 1986 Single European Act: first explicit environmental legal base for environmental policy
- Maastricht Treaty 1992: objectives, decision-making process, principles
- Amsterdam Treaty 1997: sustainable development, extension co-decision procedure
- Nice Treaty 2001
- Lisbon Treaty 2007: international environmental role (climate change)

EEC competences: The Founding Treaty

- Art. 235 & 100 EECT
- ECJ:
 - Case C-240/83 *Procureur de la République v Association de Défense de Bruleurs de Huiles Usagées*
 - Essential objective
 - Case C-302/86 *Commission v Denmark*
 - Protection of the environment
 - Mandatory requirement
 - Proportionality
- Multiple legal basis
- Shared competence between MS and EU institutions
- Role of ECJ

EC competences: The SEA and the Maastricht Treaty

- Single European Act
 - Articles 130r, 130s, 130t EEC
 - Article 100a(3) (4)EEC
 - High level of environmental protection
- Maastricht Treaty
 - Article 3(k) EC - Policy in sphere of environment
 - Arts. 174, 175, 176 EC
 - Qualified Majority and codecision
 - Article 95 EC

EC competences: The Amsterdam Treaty

- Article 2 EC: Sustainable Development
- Article 3(1)(I): EC policy in sphere of environment
- New Article 6 EC: principle of integration
- Articles 174, 175 and 176 EC



EU competences : The Lisbon Treaty

- Art. 3 TEU: environmental protection as EU aims
- Art. 11 TFEU: integration of environmental dimension
- Art. 191-193 TFEU: Environmental policy + specific reference to climate change in Art. 191(1)
- Art. 37 EU Charter of Fundamental Rights
- Multiple legal basis
- Shared competence between MS and EU institutions (Art. 2 & 4 TFEU)

The protection of the environment in the Treaties.

- The EC Treaty 1992, Art. 2 (EC objectives):
 - to promote (...) a harmonious, balanced and *sustainable development* of economic activities, (...), sustainable and non-inflationary growth (...), *a high level of protection and improvement of the quality of the environment*, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

The protection of the environment in the Treaties.

- The Lisbon Treaty 2007, Art. 3 (EU objectives):
 - The Union shall (...) work for the sustainable development of Europe based on balanced economic growth and (...) a high level of protection and improvement of the quality of the environment. (...)
 - It shall (...) promote social justice and protection, (...) solidarity between generations (...)
 - In its relations with the wider world, the Union shall (...) contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights (...)

The protection of the environment in the Treaties.

- The Lisbon Treaty 2007, Art. 21.2 (external action):
 - The Union shall define and pursue *common policies and actions*, and shall work for a high degree of cooperation in all fields of international relations, in order to: (....)
 - (d) *foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; (...)*
 - (f) *help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development; (...)*

The protection of the environment in the Treaties.

- Art. 11 TFEU:
 - The requirements of the protection of the environment must be integrated into the definition and implementation of the EU policies and actions, in particular with a view to promoting sustainable development

EU environmental strategy

- Key challenges:
 - Climate change and clean energy
 - Sustainable transport
 - Sustainable consumption and production
 - Conservation and management of natural resources
 - Public health
 - Social inclusion, demography and migration
 - Global poverty and sustainable development challenges

Objectives of EU environmental policy

- Objectives (Article 191 TFEU):
 - the conservation, the protection and improvement of environmental quality
 - the protection of people's health
 - The prudent and rational use of natural resources
 - promoting measures at international level to deal with regional or worldwide environmental problems and in particular combating climate change.

The principles of the EU environmental policy

- Art. 191 TFEU:
 - High level of protection
 - Precautionary principle and preventive action
 - Rectification of environmental damage at source
 - “Polluters pays” principle
- Sustainable use of natural resources

- Precautionary principle
- Public participation and access to information
- Principle of good governance
- Principle of integration

Precautionary principle

- Preventive action principle + precautionary principle (TEC 1992)
- Decision making process under conditions of scientific uncertainty
- Environmental protection, human health, consumer protection
- Judicial application: ECJ, Case C-318/98, *Fornasar*; ECJ, Case C-180/96, *BSE*; ECJ, Case C-127/02, *Waddenze*; CFI, Case T-70/99, *Alapharma Inc.*

Public participation and access to information

- Title II TEU: Provisions on democratic principles: Art. 11 TEU:
 - dialogue with associations and civil society
 - extensive consultations with stakeholders
 - citizens' initiative
- Art. 15 .1 TFEU (participation of civil society)
- Art. 15.3 TFEU (access to information)

Principle of good governance

- Article 15.1 TFEU

1. In order to promote good governance and ensure the participation of civil society, institutions and bodies of the Union shall act with utmost respect the principle of openness.

- Article 21.2 TEU

2. The Union shall define and pursue common policies and actions and strive to achieve a high degree of cooperation in all fields of international relations in order to:

- h) promote an international system based on stronger multilateral cooperation and good global governance

Principle of integration

- Article 11 TFEU
 - The demands of environmental protection must be integrated into the definition and implementation of policies and actions of the Union, in particular with a view to promoting sustainable development.
- Judicial application: ECJ, Case C-513/99, *Concordia Bus*

EU Decision-making in environmental policy (art. 192 TFEU)

- Co-decision procedure for the realization of the objectives set out in Art. 191 TFEU
- Special procedure: unanimity in the Council / consultation to the European Parliament, the Economic and Social Committee and the Committee of the Regions:
 - ✓ tax provisions;
 - ✓ measures affecting spatial planning; quantitative management of water or the availability of such resources; land use, with the exception of waste management;
 - ✓ measures significantly affecting the choice of a Member State between different energy sources and the general structure of its energy supply.

EU Decision-making in environmental policy (art. 194 TFEU)

- TFEU EU Energy policy (“In the context of the establishment and functioning of the internal market and with regard to the need to preserve and improve the environment”):
 - Ensure the functioning of the energy market;
 - Ensure security of energy supply in the Union;
 - Promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
 - Promote the interconnection of energy networks.
- Decision-making procedure:
 - Ordinary legislative procedure
 - Special legislative procedure and unanimity – measures primarily of a fiscal nature

Decision-making in environmental policy: Role of MS

- Art. 191.2: “(…) In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.”
- Art. 191.4: “Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.”

Decision-making in environmental policy: Role of MS

- Art. 193: “The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission.”

Principles in the application of EU Law

- Direct effect & supremacy principles (ECJ case law)
- Pre-emption doctrine: limits the national legislator's competence (ECJ case law)
- Subsidiarity & proportionality principles (TFUE)
- Loyal co-operation principle (TFUE)

The EU environmental policy

- Legislation (regulations, directives, decisions)
- Programmatic tools (Action Programmes)
- Financial instruments (LIFE, MED, etc.)
- Technical tools (eco-label, EMAs, EIA)
- Market instruments (environmental audits, emissions markets)
- Voluntary tools (voluntary agreements)

The EU environmental legal tools

- Legislation (art. 288 TFUE):
 - Regulations.
 - Directives.
 - Decisions.
 - Recommendations.
 - Opinions.

The EU environmental programmes

	Period covered	Date approved	OJ reference
1st	1973–1976	22.11.73	C112 20.12.73
2nd	1977–1981	17.05.77	C139 13.06.77
3rd	1982–1986	07.02.83	C 46 17.02.83
4th	1987–1992	19.10.87	C328 07.12.87
5th	1993–2000	01.02.93	C138 17.05.93
6th	2002–2012	22.07.02	L242 10.09.2002

The EU environmental policy

- The 7th EAP
- Covers the period 2013-2020
- Towards a resource-efficient, low-carbon economy
- “Living well, within the limits of our planet”
- 2020 timeframe - 2050 vision – 9 priority objectives
- 3 Thematic priority objectives:
 - Protecting nature and strengthening ecological resilience
 - Boosting sustainable, resource-efficient, low-carbon growth, and
 - Effectively addressing environment-related threats to health.

Environmental market-based instruments

- Tradable permits designed to achieve reductions in pollution (emissions of CO₂) or the use of resources (fish quotas)
- Environmental taxes
- Environmental subsidies and incentives
- Liability and compensation schemes

Environmental voluntary agreements

- Communication on Voluntary Agreements ([COM\(96\)561](#)): ‘agreements between industry and public authorities on the achievement of environmental objectives’
- Passengers cars, detergents

The EU environmental policy

- *Substantive* environmental standards applying to specific environmental media or sources of environmental interference (sectoral)
- *Procedural* environmental standards applying to conduct of environmental policy by public authorities and environmental rights of citizens (horizontal)

The EU environmental policy

Main areas covered (sectoral):

- Water quality
- Air quality
- Noise control
- Industrial pollution control
- Waste prevention and management
- Management of chemicals
- Management of GMOs
- Nature conservation and biodiversity

The EU environmental policy

Main instruments used (procedural):

- Integrated environmental permits (IPPC)
- Environmental impact assessment (EIA)
- Strategic environmental assessment (SEA)
- Environmental management and audit (EMAS)
- Freedom of access to environmental information
- Public participation in environmental decision-making
- Access to justice in environmental matters

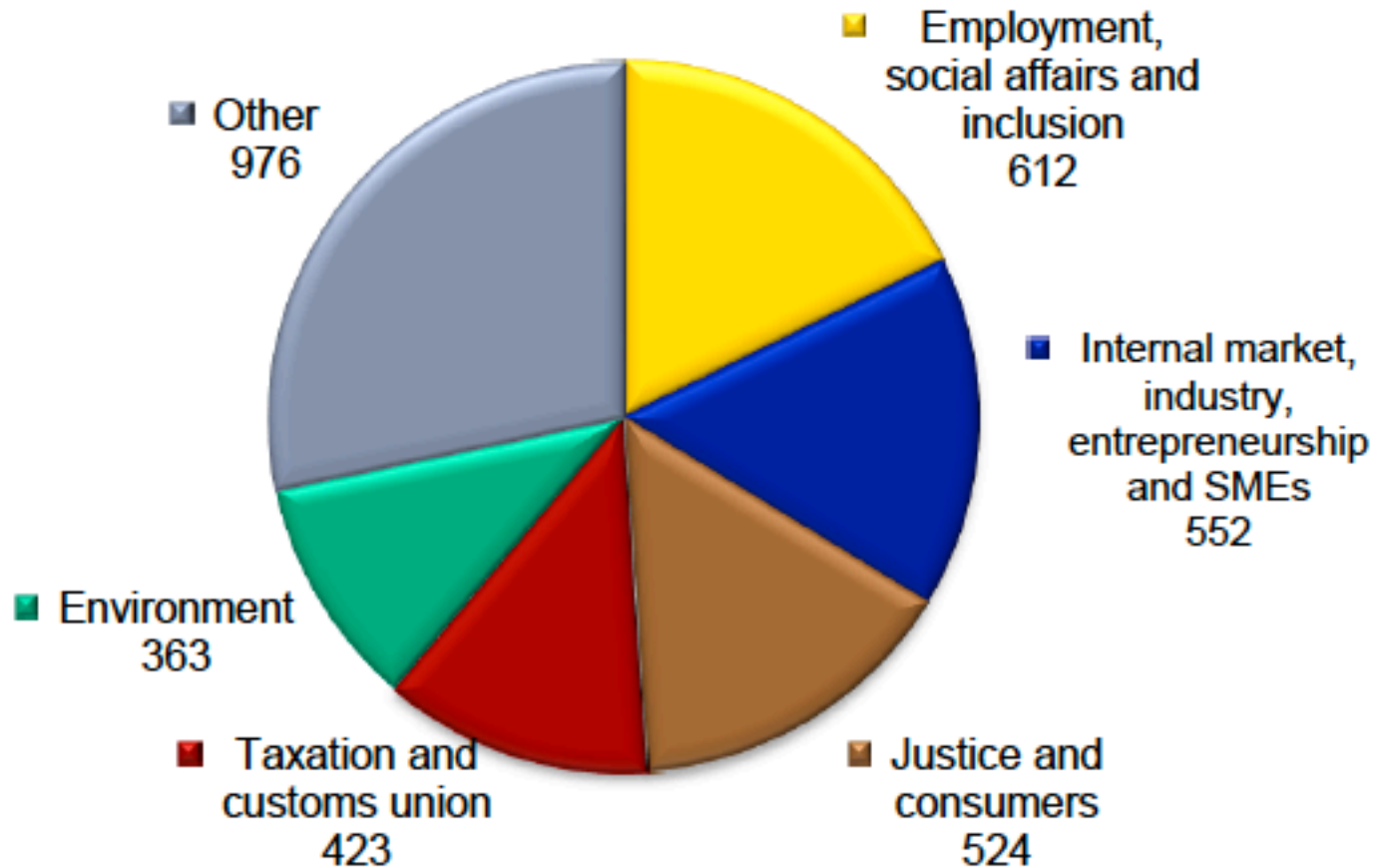
Application of EU environmental Law

REPORT FROM THE COMMISSION: Monitoring the application of European Union law: 2015 Annual Report, COM (2016) 463:

- “The Commission targeted its enforcement of EU environmental rules towards achieving the Europe 2020 objectives and contributing to a stronger and more 'circular' economy which uses resources in a more sustainable way.”
- “Significant shortcomings in the implementation and enforcement of EU environmental legislation persist in some Member States. This is particularly the case in waste management, waste water treatment infrastructure and compliance with air quality limit values.”
- “In 2015 mobility and transport, energy and environment were the three policy areas with the highest number of potential infringements (with 96, 84 and 77 new EU Pilot files respectively). The Member States primarily concerned were Italy, Portugal and Germany (37, 30 and 28 new EU Pilot files respectively). “

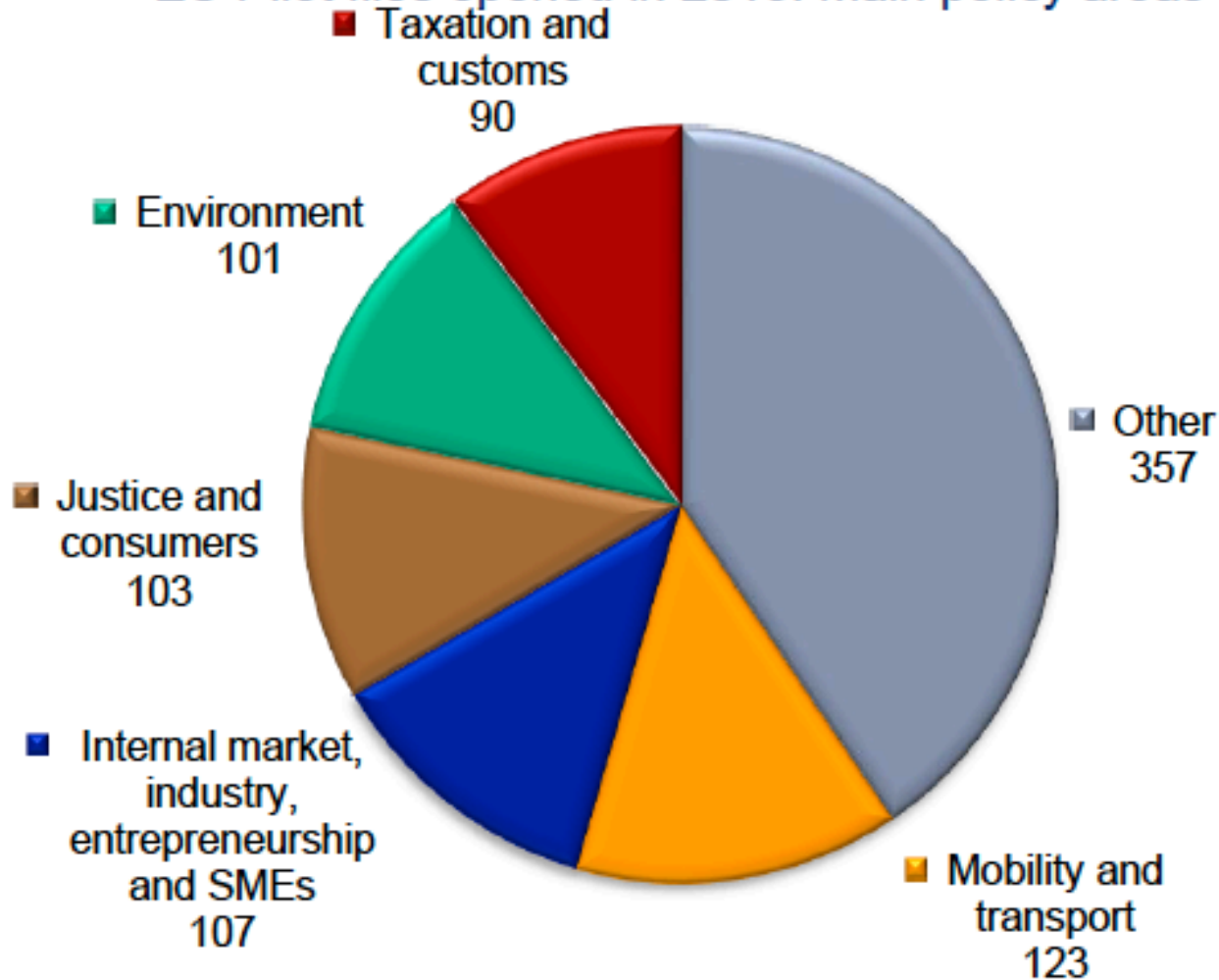
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New complaints registered in 2015: main policy areas



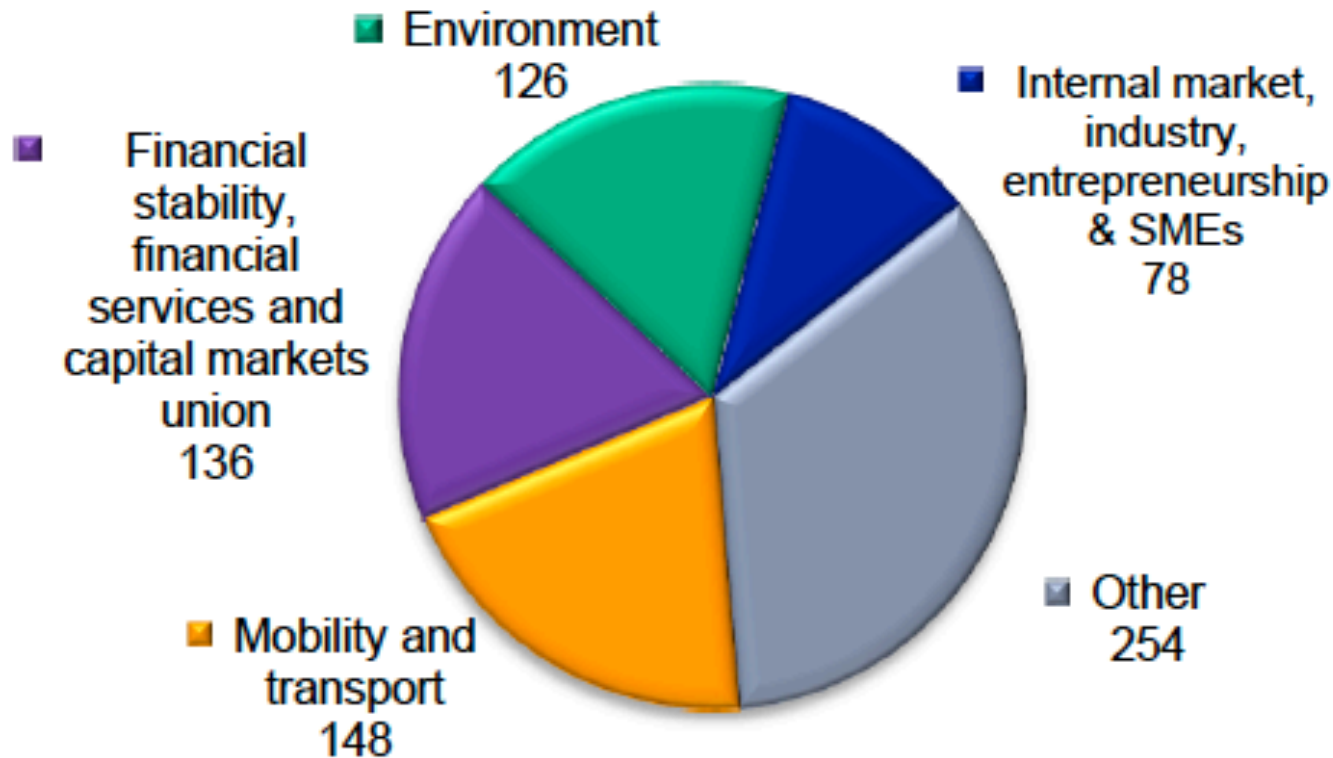
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EU Pilot files opened in 2015: main policy areas



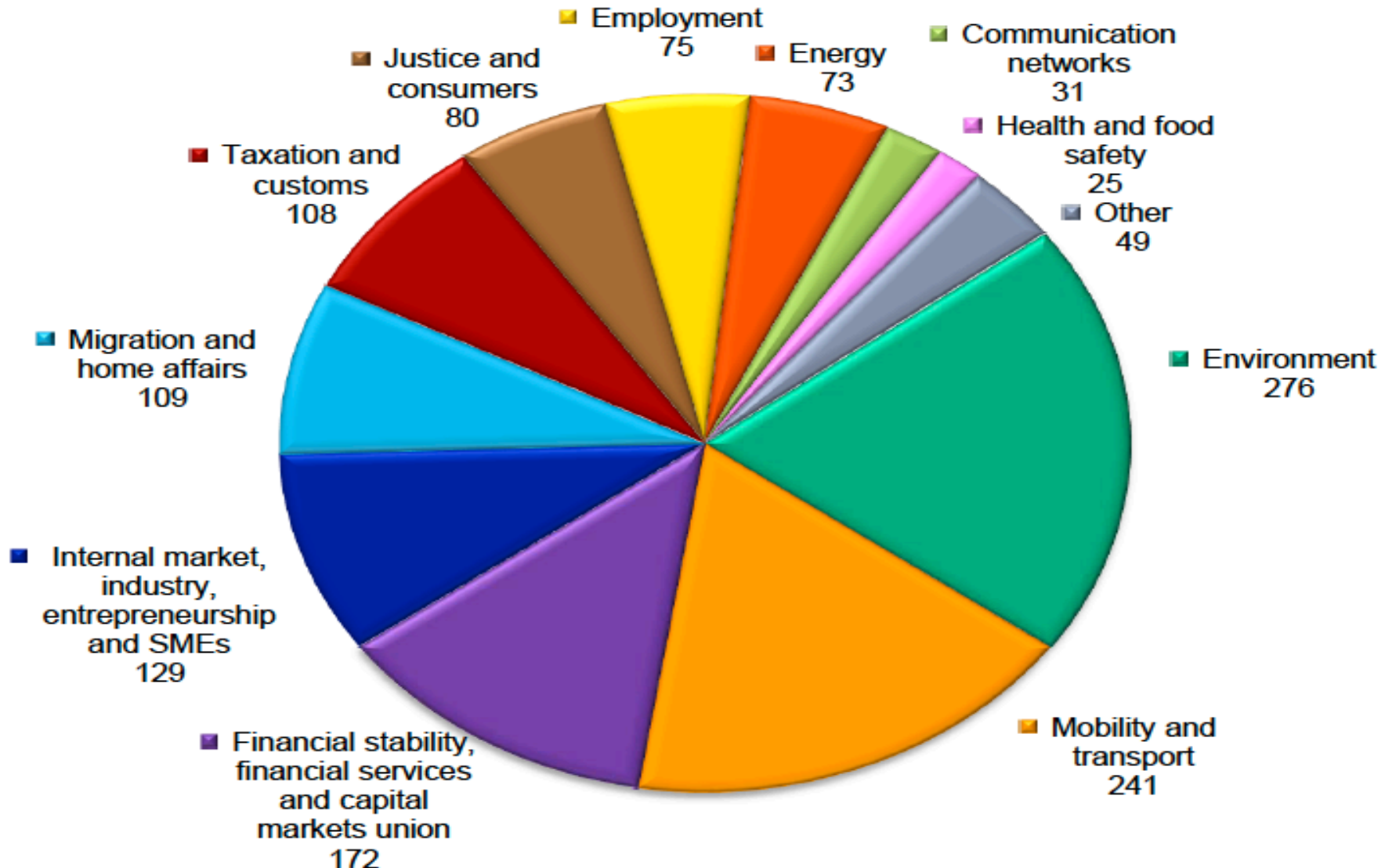
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New infringement cases opened in 2015: main policy areas



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Infringement cases open at end-2015: policy areas



Application of EU environmental Law

New late transposition infringement cases opened in 2015:
main policy areas

