

Solvit & EU Pilot: Alternative Dispute Resolution in the EU

EU Law 2230 / 3145
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Complexity of non-compliance

Lack of {

- Factors influencing non-compliance:
 - Clarity of EU measure
 - Sufficient expertise and resources in MS
 - Internal decision-making processes in MS
- Non-application rather than non-implementation?
 - *AB v Home Office*
 - More support from Commission between adoption of a Directive and the deadline for transposition , rather than more punishment
 - Better design of directives

Reforms in the Single Market Plan - 'arms length' enforcement

- Goals: a) Support MS b) ^{create} non-judicial tools of dispute resolution c) encourage co-administration and co-accountability _(work together)
- **New governance tools: SOLVIT and EU Pilot**
 - 'co-administration' - delegation to MS; oversight and control by Commission
 - **SOLVIT**: cross border issues; **misapplication** of internal market rules. SOLVIT + ' if change to national law needed. *Means: co-operation between national authorities.*
 - **EU Pilot**: non-compliance problems that would normally be dealt with under Art 258 TFEU. Focuses on **non-conformity** of national law with EU legislation. *Means: communication between MS and Commission*
_{national authority}

'governance' networks

'rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence.'

(White Paper on Governance COM (2001) 428)

⇒ the EC
promote more effective compliance
with EU law

- Are governance networks an effective alternative to a strong EU regulator?
 - Removes inefficiencies of 'command and control'?
 - More flexible; innovative; reflective; interactive?
 - Less effective oversight?

EU Pilot

- Commission initiative
- Focus: non transposition of EU law
- Objectives
 - ‘early warning mechanism’
 - pre Art 258 procedures
 - Increase speed of process

— Avoid Art 258

— https://webgate.ec.europa.eu/pilotms/index.cfm?method=login.show&logged_out=true

• Goals:

- ‘..cases should, in principle, be dealt with within 20 weeks, EU Pilot dialogue facilitates speedy resolution of problems for the benefit of citizens and businesses and achieving compliance with EU law obligations.’

EU/ MS Co-administration in EU Pilot

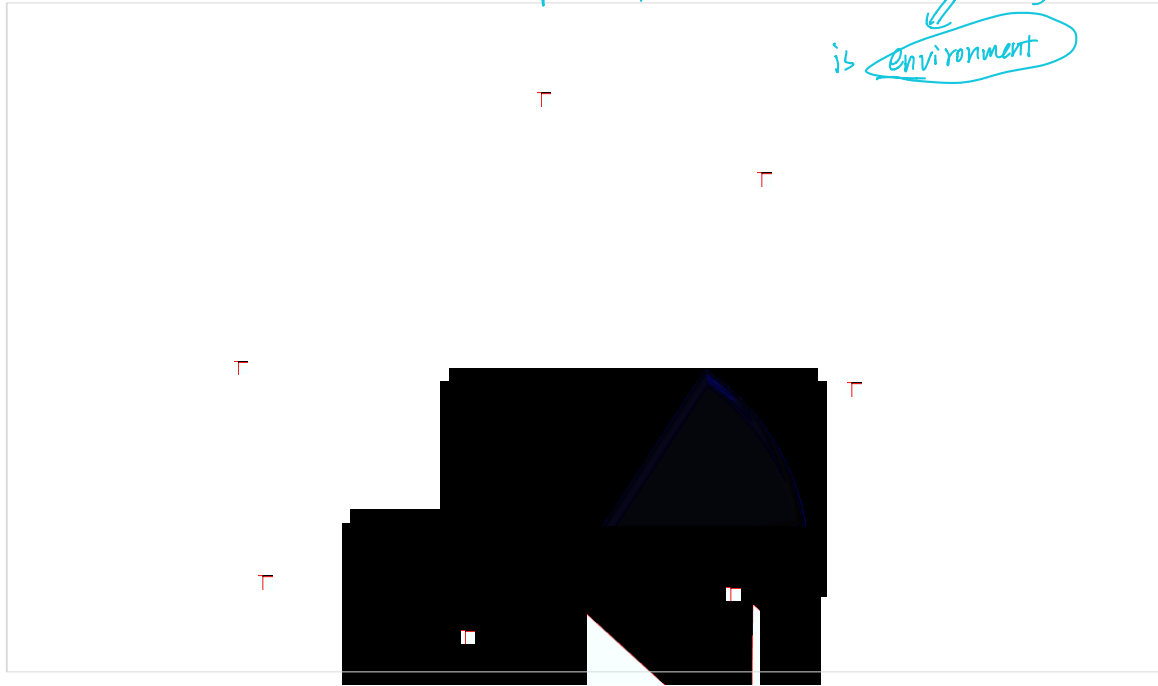
- Commission oversight – monitors functioning, develops application, solves operational problems; *retains^{full} responsibility for all EU Pilot actions*
- Confidential electronic communication between the DGs and MS authorities
- Rules protecting the identity of complainants apply; access to Commission documents on EU Pilot is governed by Regulation 1049/2001

EU PILOT Procedure – EU/ MS

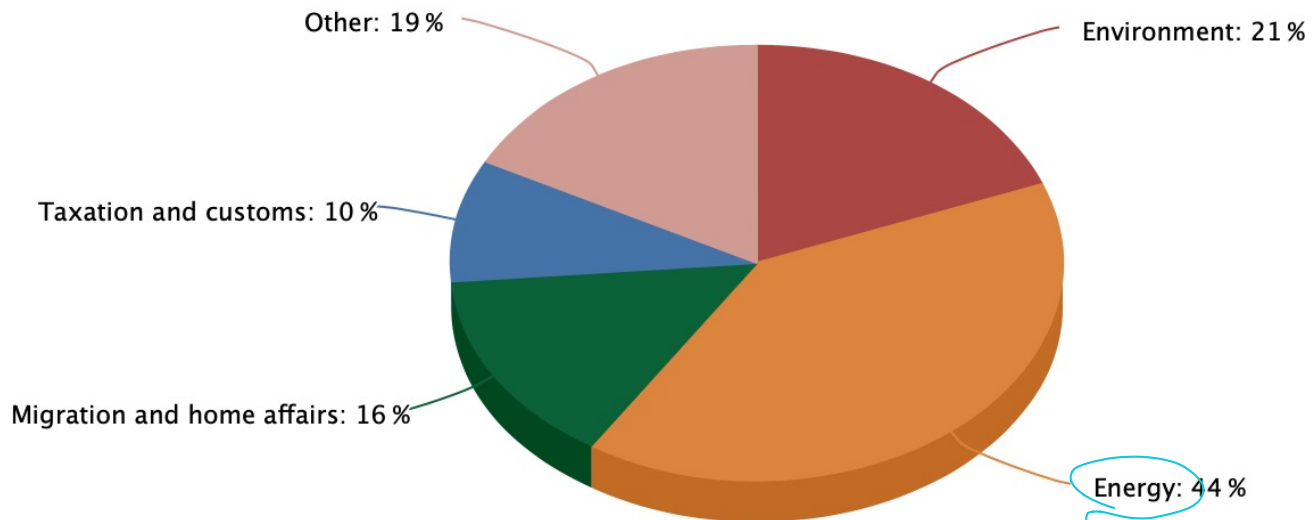
- Commission DG receives, records and determines suitability of complaint (on line database)
- Commission DG determines use NOT the member state - EU Pilot activated when MS input required
- Complaint returned to MS authority (Central Contact Point);
 - CCP can reject
 - 10 week deadline to respond to complainant (ave: 67 days)
- Commission may launch Art 258 TFEU procedure

EU Pilot files opened in 2016 : main policy areas

is environment



EU Pilot files opened in 2018



Data on usage 2013 - 2016

quite a few number of files under EU pilot
still going through the Art 258 TFEU procedure

- http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/eu_pilot/index_en.htm
- 2016: 790 new files; 630 closed (72% success)
 - **233 to Art 258 TFEU proceedings**
- 2014: 1208 new files (75% success)
 - **325 to Art 258 TFEU procedure**
- 2013:
 - **396 to Art 258 TFEU procedure (70.22% success)**
 - only two Art 258 TFEU procedures launched *without* EU Pilot

SOLVIT

Co-administration by MS

Used by individuals,
organisations and MEPs



Law needs
clarification

Cross border problems arising due
to *poor application* of EU law in MS

SOLVIT CENTERS

BG	Ефективно разрешаване на проблеми в Европа	HU	Hatékony problémakezelés Európában
ES	Resolución eficaz de problemas en Europa	MT	Soluzzjoni effettiva ta' problemi fl-Ewropa
CS	Effektivní řešení problémů v Evropě	NL	Effectieve oplossing van problemen in Europa
DA	Effektiv problemløsning i Europa	PL	Skuteczne rozwiązywanie problemów w Europie
DE	Effiziente Problemlösung in Europa	PT	Resolução eficaz de problemas na Europa
ET	Tõhus probleemilahendus Euroopas	RO	Rezolvarea eficientă a problemelor în Europa
EL	Αποτελεσματική επίλυση προβλημάτων στην Ευρώπη	SK	Effektívne riešenie problémov v Európe
EN	Effective problem solving in Europe	SL	Učinkovito reševanje problemov v Evropi
FR	Résolution efficace des problèmes en Europe	FI	Tehokas ongelmaratkaisu Euroopassa
GA	Fadhb-réiteach éifeachtach san Eoraip	SV	Effektiv problemlösning i Europa
IT	Risoluzione efficace di problemi in Europa	IS	Skilvirk lausn vandamála á innri markaðinum
LV	Efektīva problēmu risināšana Eiropā	NO	Effektiv problemløsning i Europa
LT	Efektyvus problemų sprendimas Europoje		

Typical issues for SOLVIT

- Cross border discrimination:
 - Recognition of professional qualifications
 - goods and services eg. financial services and taxation
 - freedom of establishment
 - social security issues
 - entry and residence rights

SOLVIT

- Austrian company prevented from marketing wood preservative in Hungary because it had no representative in that country contrary to local rules (2 days)
- VAT refund for a Portuguese company supplying retail goods to shops in Poland (2 weeks)
- Benefits re-instated to a Hungarian woman in Belgium, who had been refused these after giving birth to two children in Belgium (9 weeks)
- NB: 'Solvit+' for more complex issues eg. Hungarian prohibition of wine in bottles larger than 2 litres
 - a UK company unable to sell beer in 50-litre kegs.
 - Hungarian Ministry admitted that the ban contravened EU law and CJ rulings - the Hungarian measure was changed (14 months)

MS/ MS Co-administration of SOLVIT

- Non-legal procedure
- Electronic system: managed through the SOLVIT database
- MS Level : 'home SOLVIT centre' (centre in the applicant's country of origin) steers complaint with 'lead centre' (MS where problem occurred); **the lead centre** deals with the authority in question
- Time frames
 - Home centre 1st response – within 7 days
 - Home centre case submission = within 30 days
 - Acceptance or rejection by centre = 7 days
 - Lead centre resolution = within 70 days
- http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/solvit/index_en.htm

Evaluation of SOLVIT - 2011

- **Efficiency:** caseload and case handling times
- **Awareness:** limited knowledge
- **Co-operation:** disagreements between SOLVIT centres
- **Authority:** competence and resource issues
- **Longevity** of solution: role of law?
- **Satisfaction:** 33% dissatisfied, 32% satisfied with outcome

Value of 'governance' networks

- EU Pilot and SOLVIT = to what extent do they:
 - Incorporate transparency
 - Promote participation
 - Remove inefficiencies of 'command and control'
 - Provide a response that is more flexible; innovative; reflective; interactive
 - Develop integration in the single market
 - Protect the rights of citizens
 - 'Make peoples lives easier'? Is there 'a Europe of law and justice'?