



30 YEARS OF EU SINGLE MARKET:

*Time to remove
the obstacles
to social-ecological
transformation*



Corporate
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Observatory



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Corporate Europe Observatory (CEO) is a research and campaign group working to expose and challenge the disproportionate influence that corporations and their lobbyists exert over EU policy-making. CEO works in close alliance with public interest groups and social movements in and outside of Europe to develop alternatives to the dominance of corporate power.

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1. EXECUTIVE SUMMARY

This year marks the 30th anniversary of the creation of the European Union's Single Market. Today, Single Market legislation touches on almost every aspect of our daily lives, and it is hard to imagine life before an integrated European market. Yet most Europeans are unaware of the inner workings of the Single Market, and its performance in the areas of social and environmental progress is less than transparent.

In recognition of this 30th anniversary, we have gone behind the scenes to investigate the role of Single Market legislation and its enforcement. We have discovered that the modus operandi of the Single Market clearly prioritises economic over social and environmental concerns. We will see how Single Market rules favour business interests by restricting social and environmental policies and regulations proposed by national, regional and local governments.

In particular, this report will show how companies, lobbyists and industry associations actively use three specific enforcement mechanisms related to the Single Market to undermine progressive legislation at the national and municipal levels. These mechanisms are the Commission's complaint mechanism, the notification procedure in the field of technical regulations (TRIS), and the services notification procedure. In combination, these enforcement mechanisms offer ample opportunities for companies to persuade the Commission to investigate national legislation for potential breaches of EU law. The end result is the bogging down of the much-needed social and ecological transition in Europe.

For this report, we have gathered several cases that show how powerful companies and industry lobbies have attempted to prevent or roll back progressive legislation that might harm their profits. These cases include the obstruction of social housing measures, public healthcare initiatives and consumer protection legislation regarding harmful substances; they also involve restrictions on short-distance flights and gambling. In almost all cases, the business sector has either been able to push for further liberalisation, or to stop, delay or weaken progressive legislation. Another recent and worrying development is that the Commission has increasingly been shifting investigations into these matters into an informal, even less transparent sphere.

The cases we have collected represent only the tip of the iceberg. A recent inquiry by a member of the European Parliament revealed that the Commission receives on average about 400 business complaints each year. This report is the first to delve into the details of some of these inquiries and the damage they cause. However, a severe lack of transparency in the EU system prevents us from assessing the scale of the number of complaints that result in full-blown infringement procedures or the withdrawal of climate or social protection measures at an early, informal stage.

Our analysis clearly shows that the Single Market enforcement system is far from a paper tiger; the implications for people and the planet are enormous. If Europe is to protect public services and take the climate crisis seriously, it will need to turn its back on neoliberalism and take steps to modernise Single Market governance so that the national and local measures needed for a just ecological transition are safeguarded.

Today, unfortunately, the EU is headed in the opposite direction. Under the slogan of 'completing the Single Market', new proposals by the Commission and corporate lobby groups aim to push further than the existing (and already highly problematic) rules and to strengthen enforcement mechanisms. Our recommendations call for a recalibration of how Single Market rules apply to public services, climate protection measures and various other policy fields. To enable a democratic process and an open debate around a new approach, the Commission must start to proactively inform the public about the complaints and government measures that are currently under investigation. In addition, democratic space at the local level must be strengthened to ensure that social and environmental initiatives are no longer hampered at EU level.

2. INTRODUCTION

After three decades of integration, the European Single Market appears to be doing quite well. There are certainly some historic achievements, including the ability of citizens to cross borders without passports and the right to work in other European countries. And in terms of overall economic indicators, the figures are impressive; today, the EU is home to 23 million companies, and raked in a colossal turnover of €14,522 billion in 2021.

Nonetheless, the European Commission and large parts of European industry are not yet satisfied. For years, they have been demanding more freedoms: specifically, fewer regulatory barriers¹ and obstacles to trade². In their eyes, 'completing' the Single Market remains the most important task ahead.

The anniversary of the Single Market has also catalysed critical reflection and less glowing reviews. Frank Ey of the Vienna Chamber of Workers and Employees, for example, calls for a "paradigm shift" in the governance of the Single Market to overcome social dumping and wage depression in the EU³. Anna Cavazzini, Green MEP and chair of the Parliament's Committee on Internal Market and Consumer Protection (IMCO), remarked that in the EU: "Wealth is still unequally distributed across regions and between individuals. We've witnessed the weakening of social protection due to competitiveness. National welfare systems have been put under pressure and we have seen waves of privatisation of public services. The Single Market improved the lives of many Europeans. But now, on the advent of its 30th birthday, it needs to show responsibility."⁴

For years, 'completing the Single Market' has been the catchphrase used to undermine democratic space for the much-needed new rules and regulations that will protect people and the environment. And so, the big question remains: how can the Single Market take leadership in solving the current cost of living crisis, address climate change, and ensure environmental protection when it is mainly concerned with creating a profitable business environment?

THE HISTORY OF THE SINGLE MARKET IN A NUTSHELL

Since its inception in 1957, establishing a common market was one of the main goals of the European Community. However, due to the neoliberal turn taken by the European Community in the late 1980s, today's Single Market differs significantly from the original plans.

Influenced by powerful industry groups, the Commission adopted a new 'negative' approach to European integration, prohibiting state restrictions that might harm imported goods, services or investors. In the 1990s and 2000s, the Commission liberalised numerous sectors (railways, electricity and postal services) and eased cross-border market entry conditions to foster transnational competition.

In 2004, Commissioner Frits Bolkestein proposed the Services Directive (also known as the Bolkestein Directive), which aimed for the sweeping liberalisation of services. Due to mass protests by civil society, NGOs and trade unions, however, the proposal was downsized to include exemptions for some public services.⁵ Nonetheless, the Commission and the EU's Court of Justice still continue to expand the scope of the Services Directive and undermine its public service exemptions. The Commission does this via infringement procedures, 'detailed opinions' and other steps against any rules and regulations it considers – in a maximalist neoliberal interpretation – to violate the Services Directive.

The Commission's new Public Service Obligation guidelines are a recent example of the continued push for 'liberalisation' that is endangering public services. These guidelines would force governments with well-functioning public railway systems, like Austria, to use competitive tendering instead of simply leaving this to their public railway companies. This could lead to the privatisation of railways and undermine the crucial role that public railways play in the climate transition. In comparison to profit-oriented private operators, public railway companies are far better equipped to pursue ambitious climate goals that require a comprehensive, long-term investment programme, such as enabling the shift from car use to far less polluting means of public transport. Furthermore, whereas private operators are uninterested in less profitable railway lines, public railway companies can ensure that citizens have access to railway services regardless of where they live.

As they parrot the corporate mantra of ‘completing the Single Market’ as the path to wealth and prosperity for all, many politicians seem unaware of – or prefer to ignore – the considerable downsides and risks this route poses to various social and environmental protection schemes. Likewise, corporate lobby groups like the European Roundtable for Industry (ERT) present many of their demands as a simple matter of removing problematic ‘regulatory barriers’ in the Single Market or preventing new ones from emerging. In their view, a far stronger EU enforcement system is needed to remove such ‘obstacles’.

This industry view tends to ignore the fact that there is already a comprehensive, tightly knit enforcement system for the EU’s Single Market in place.⁶ Although EU citizens ostensibly have access to this system, most are not even aware that it exists. Ultimately, it is European companies, industry lobbies and law firms that profit the most from procedures that allow them to engage with the Commission and spark action against unwanted legislation at the national, regional and municipal levels. This system includes various channels such as the European Commission’s complaints handling system CHAP, the EU Pilot mechanism, the notification procedures via the Technical Regulations Information System (TRIS), the services notification procedure, and in some cases the SOLVIT ‘problem solving’ service.

This enforcement system is by no means impotent. For example, industry complaints to the European Commission can turn into so-called ‘infringement procedures’ through which the Commission can initiate legal challenges to national legislation that, in its view, contravenes Union law. However, it is important to note that ‘legislative conflicts’ are increasingly resolved via informal pre-infringement ‘dialogues’. In practice, the public has no way of knowing what is happening during this pre-infringement stage.

The Commission also uses the infringement procedure to force Member States to comply with EU environmental protection directives and the maintenance of principles of the rule of law. Furthermore, NGOs also sometimes urge the Commission to initiate infringement procedures as a way of ensuring better climate protection.⁷ However, a very significant – and likely far larger – number of infringement and pre-infringement procedures are sparked by corporate complaints about alleged failures to comply with Single Market legislation. A recent inquiry revealed that the Commis-

sion receives, on average, about 400 industry complaints each year.⁸ This indicates how important the complaint channel is for corporate interests wanting to bring forth concerns about national legislation in the context of the Single Market. But just how many of these 400 complaints turn into Commission investigations and how many spark legislative change at a pre-infringement state remains a secret.

In this report, we investigate how industry representatives use the various Single Market enforcement mechanisms to go against disliked legislation at the national, regional and local levels. We especially focus on how Single Market rules and the underlying enforcement system pose a concrete obstacle to progressive social and environmental initiatives. This topic is far from simple to investigate as there is an extreme lack of transparency around the Single Market enforcement system. There is no meaningful publicly available information about ongoing investigations, nor about the complaints that triggered such actions. This very regrettable lack of transparency means that

access to documents requests are currently the only way to pursue the public right to know about EU decision making in this realm, and also that is far from easy.

The next section will set the stage for our investigations by introducing the three main Single Market enforcement mechanisms covered in this report. The case studies in Section 4 explore how industry interests have set in motion European Commission efforts to scrap or weaken progressive legislation in the areas of social housing, health insurance, consumer protection and climate protection policies. In some cases, this has led to severe delays in the adoption of important legislation, as seen in the ban on the chemical compound Bisphenol A. In others, it has resulted in the weakening of policy proposals, such as with the recent French ban on short-distance flights. These tactics are often part of a broader corporate lobbying strategy that includes, for example, pushing for the withdrawal of legislative proposals like sugar taxes.

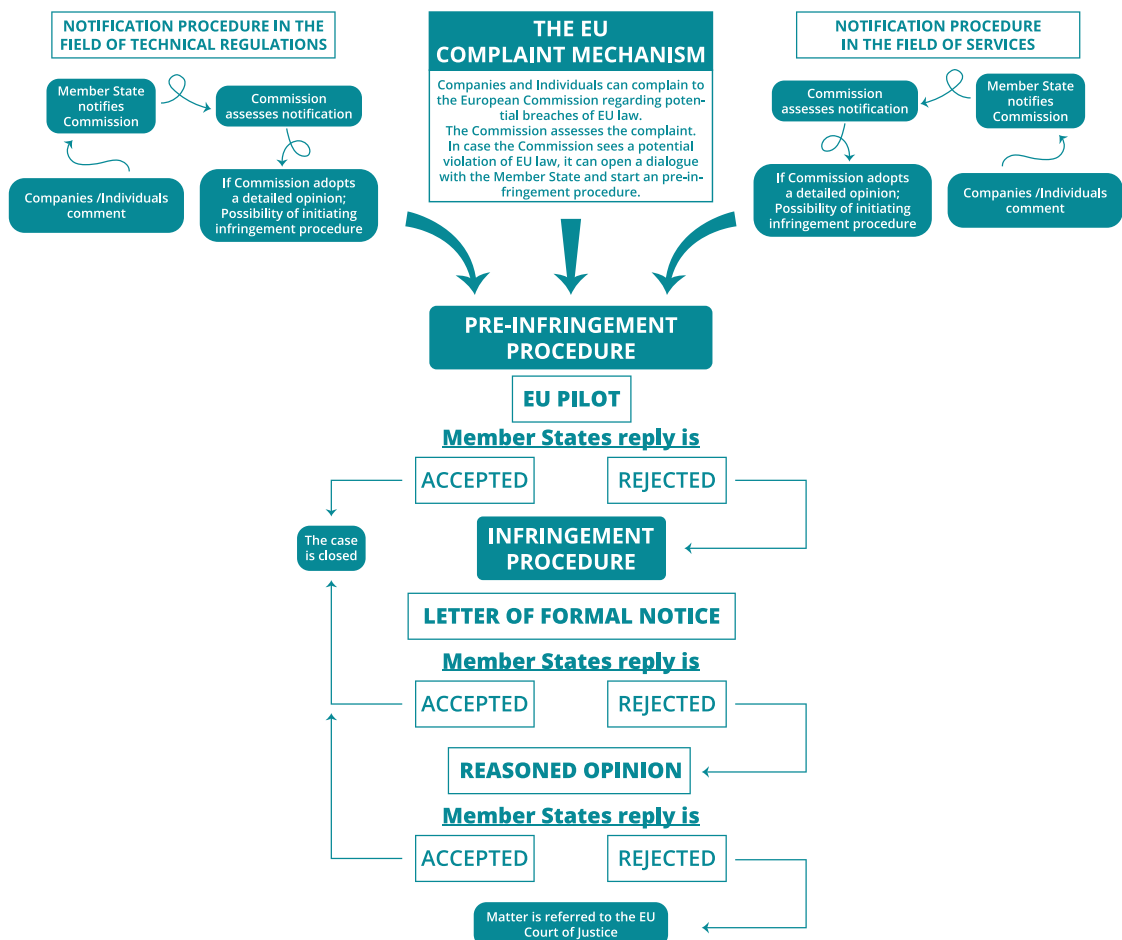
3. THE ROAD TO INFRINGEMENT: COMPLAINTS, COMMENTS AND INFRINGEMENT PROCEDURES

The Commission is often referred to as the 'guardian of the Treaty', and among its duties is to ensure that Member States apply EU law correctly.⁹ In an infringement procedure, the Commission will start an investigation into a specific Member State law, and in case of continuous non-compliance will refer matters to the Court of Justice. In general, there are four causes for the initiation of an EU infringement procedure:

- (1) When national laws are not in line with the requirements of EU directives.
- (2) In the case of violation of treaties, regulations or decisions.
- (3) In the case of the incorrect application of EU law by national authorities.
- (4) In the case that the timely notification to the Commission of measures to turn a directive into national law does not happen.¹⁰

In this report, we deal primarily with cases in which Member State laws presumably violate EU treaties or specific secondary legislation. In its efforts to expand the Single Market, the Commission has established various mechanisms through which individuals or companies can oblige the Commission to investigate whether national or municipal regulations breach Single Market legislation. In this report, we will zoom in on the three mechanisms most often used by corporations and their lobby groups:

- (1) The Commission's complaint mechanism.
- (2) The notification procedure in the field of technical regulations (TRIS).
- (3) The services notification procedure (see diagram below).



FILING A COMPLAINT WITH THE COMMISSION

The majority of the cases in the following section focus on the most direct approach for building pressure at the European level: filing a complaint with the European Commission. Companies and individuals can file a complaint with the Commission *via a standard online form* or by mail.

After the complaint has been logged in a new database called THEMIS,¹¹ the Commission's first step is to assess whether or not it is indeed related to EU legislation in one way or another. This is important because the Commission can only become involved when "it is about a breach of Union law by authorities in an EU country".¹² In the end, only a small percentage of the thousands of complaints the Commission receives each year turn into infringement procedures. If the Commission sees a potential violation of EU law, the next step is to open a dialogue with the relevant Member State. In case the issue is still not resolved, the Commission has the option of initiating a

so-called EU Pilot procedure¹³ in which the Member State is invited to justify its action by explaining why the regulation in question (e.g., on public services) is in line with EU law.

It is important to note that all these steps are taken at an informal, pre-infringement stage, and the public has no access to information about these proceedings. The Commission only publishes a press release when it launches a full-blown infringement procedure. This lack of transparency makes it almost impossible to assess how frequently Single Market compliance shapes national or municipal legislation before the process becomes official.


The Commission will only open an official infringement procedure by sending a formal notice to the Member State in question if the policy conflict is not resolved at this informal stage. Subsequently, if the Member State or municipality accepts that its legislation is in breach of EU law and agrees to drop it, the Commission will close the case. Otherwise, the Commission launches the second step of the infringement procedure by sending a 'reasoned opinion' (a formal request to comply with EU law). If the Member State still does not comply, the Commission refers the case to the European Court of Justice. Infringement procedures may also result in financial sanctions for the involved Member States.

In addition to the Commission's complaint mechanism, two other channels exist for individuals and companies to challenge national legislation. We will first look at the notification procedure in the field of technical regulations.

GETTING TECHNICAL: THE NOTIFICATION PROCEDURE FOR TECHNICAL REGULATIONS

Although this notification procedure was established in 1983, it took its current form in 2015 with the adoption of the Single Market Transparency Directive 2015/1535. It obliges Member States to notify the Commission of any so-called 'technical regulations'¹⁴ for products and information society services (online services including e-commerce) before they are adopted. These regulations could for example include laws regarding online tobacco advertisement or bans on specific pesticides that could be interpreted as interfering with the Single Market's freedom to provide goods.

After a Member State has given notification, the Commission publishes any draft technical regulations in its *Technical Regulation Information System (TRIS)*, the main database used by Member States and the Commission in this procedure. The Commission and the other Member States then have three months to submit comments or detailed opinions. Companies and lobby groups are welcome to engage at this point. In fact, the Commission encourages these actors to stay on top of national regulations via the TRIS website: "In your business success is very important. In order to achieve it you try to detect obstacles before they have any negative effects. The same principle applies in the internal market for the technical barriers. [...] [TRIS] helps you to be informed about new draft technical regulations and allows you to participate in the 2015/1535 procedure."¹⁵


EN English

TRIS - European Commission

TRIS
About the 2015/1535 ▾
The 2015/1535 and You ▾
Search the database
FAQ
Contact ▾

Home > Prevention of technical barriers to trade > Prevention of technical barriers to trade

Prevention of technical barriers to trade

"Don't let barriers stop your success".

In your business success is very important. In order to achieve it you try to detect obstacles before they have any negative effects. The same principle applies in the internal market for the technical barriers.

TIGHTENING THE SCREW: NOTIFICATIONS IN THE FIELD OF SERVICES

The Services Directive requires Member States to notify the European Commission of any national laws or regulations that could create barriers to the freedom of establishment and the cross-border provision of services. These might include for example licensing requirements for certain professions. It is thus more specific than the technical regulation notification procedure. And while new technical regulations must be notified in a draft form, under the Services Directive Member States can also notify measures that have already been adopted. In 2020, the Commission set up a specific website for services notifications, similar in concept to the TRIS site.

In fact, the Commission originally had greater ambitions in terms of services sector rulemaking in countries across Europe. In 2017, backed by corporate lobby groups, it proposed a *Services Notification Procedure Directive*, arguing that the EU Services Directive needed stronger enforcement. The masterplan was that all public authorities (including cities) planning to introduce new rules for the services sector would first have to notify the Commission. After a three-month waiting period, the Commission would either give the green light or object to the new rules. However, the Commission's power grab *was foiled and it was forced to withdraw this plan in 2020*.¹⁶

This scheme would have been far more extensive than the notification procedure for technical regulations, which so far only applies to Member States. The Commission's initiative sparked a strong campaign that involved urban activist groups, trade unions and mayors and city councillors from around Europe. They claimed that the directive would undermine the democratic space used by cities to regulate the local services economy in the public interest. These included for example rules to control Airbnb, or to safeguard affordable housing, or to guide urban planning, or to govern public services. Eventually, the Austrian and French Senates, the German Parliament and mayors of cities including Amsterdam and Barcelona objected to the directive, and it was subsequently withdrawn.¹⁷

Any contributions to each case are published on the TRIS website, offering assurance to companies and lobbyists that their comments and positions on draft legislation are taken into account in Commission decisions. An examination of some of the corporate contributions to individual Member State legislation clarifies that industry often aims to push the Commission towards adopting so-called 'detailed opinions', which are a requirement for the Commission to initiate an informal dialogue or infringement investigation. Corporate objections via TRIS are a virtually unknown form of lobbying, allowing industry players to silently target Member State legislation they dislike.

To get an overall picture of the volume of legislative reviews, we took a close look at all notifications in the field of technical regulations between 2019 and 2022. Within this three-year period, the European Commission registered a total of 2532 TRIS cases. Unfortunately, the Commission does not provide a statistical overview of how often companies comment on these notifications. Nor do we know how often TRIS notifications lead to infringement cases or other actions. What we can verify is that in 413 of the more than 2500 notifications, Member State governments or the Commission itself submitted a detailed opinion. As explained above, this is the requirement for the Commission to initiate an investigation and subsequent infringement procedures.

CITIES OPPOSE THE SERVICES NOTIFICATION PROCEDURE DIRECTIVE

It is no coincidence that progressive cities were at the forefront of the campaign against the Services Notification Procedure Directive. The previous decades of neoliberal policies and legislation codified in the EU's legal framework meant that these cities had already faced obstacles to the implementation of many key priorities. These hurdles ranged from restrictions to the regulation of platform companies like Airbnb to austerity measures originating at EU level, and curbs via the EU's Single Market law in areas including public procurement and state aid law.

An example is Barcelona's policies to replace the privatised energy supply with publicly controlled renewable energy. The goal of these policies is to supply both municipal buildings and citizens with locally generated, affordable renewable energy. However, an EU directive limits the share of the energy that can be sold to private customers to a maximum of 20 per cent of the turnover. Based on this limit, [BarcelonaEnergia is restricted to serving 20,000 households](#) in its first phase.

Another example is the difficulties that European cities encounter when trying to use their spending power – via public tendering – to promote social justice and environmental goals. This proves far from simple in a context of neoliberal EU procurement directives that were designed to promote a single market for public procurement, where contracts would go to the bidder with the lowest price. These directives favour large multinational companies at the expense of local companies, and have also contributed to social dumping and other problems. While EU legislation has improved, numerous obstacles remain for ambitious municipalist procurement policies. In order to make way for values-based municipal procurement, the EU's Procurement Directive must eliminate its neoliberal bias. [In the meantime, cities are developing new approaches to circumvent these obstacles.](#)

Following this defeat, the Commission's DG GROW went ahead with their plan B: creating a website where all government notifications regarding services are published and inviting 'stakeholders' (in practice: corporate lobby groups) to comment on potential Single Market violations. In the run-up to the launch of this website, the Commission told the retail industry lobby group EuroCommerce that 'stakeholders' were "[invited to provide comments](#)"¹⁸ on the laws and regulations posted on the website.

In turn, the Commission acts on comments and complaints, as it did for example when a lobby group complained about limits to mass tourism set by the Spanish island of Formentera (see Section 4.6). Since its launch in 2020, Hungary and Sweden have set the record for posting the most new rules and regulations on the services notification website, with 124 and 100 respectively, followed by Croatia (78) and France (54). The website for services notifications is certainly the least transparent complaints channel through which the business sector can influence the Commission. Contrary to the TRIS system, the Commission publishes neither the comments it receives nor its own responses to the notifications.

THE POWER OF INFORMAL DIALOGUE

Industry representatives frequently use these three powerful channels to counter unwanted legislation at the national and sub-national levels. Yet recent trends in the launching of official infringement procedures present a puzzle, as showcased by the Commission's annual reports on this topic. Although EU jurisdiction has become increasingly important at the national level in recent decades, the number of official EU infringement procedures has dropped sharply. In 2011, the Commission opened 1775 infringement procedures.¹⁹ Ten years later, in 2021, it opened less than half as many new proceedings, with a total of 874.^{20, 21}

Rather than indicating better compliance by Member States, this development is related to a change in strategy by the Commission. The Commission had already previously announced its aim to increase the use of 'dialogue' to resolve policy conflicts with Member States at the informal pre-infringement stage, and the Von der Leyen Commission recently reconfirmed this stance. And it seems that the Commission is standing by its words; while the number of infringement procedures has dropped, the opening of new so-called EU Pilot cases, which are part of the informal, pre-infringement stage, increased from 110 in 2018 to 246 in 2021.

In parallel, the number of overall complaints to the European Commission has increased from 3850 in 2018 to 4276 in 2021. As explained earlier, the Commission must assess all these complaints and evaluate if they indeed require investigations. Without fundamental legislative adaptation, it seems unreasonable to assume that the Commission would suddenly reject complaints with such greater frequency. While the pre-infringement 'dialogue' tactic might speed up administrative procedures, it makes Commission actions even more non-transparent.

Thus, the Commission's statement that it in fact resolves 90% of conflicts by 'dialogue' is misleading, as it suggests that this happens in an open and transparent manner. The political scientists Daniel Kelemen and Tommaso Pavone²² rightly note that:

In fact, the Commission's new approach to 'settling' these cases is an opaque political process that may not necessarily result in the Member State coming into legal compliance. Since complainants – and even the Commission's own Legal Service – are excluded from the Commission's pre-infringement dialogues with member states via EU Pilot, the Commission's decision to close a file and declare it "settled" hinges almost exclusively upon the information supplied by the member state.²³

As the frequency of informal pre-infringement dialogues has strongly escalated in recent years, it is of paramount importance that the Commission establishes rules to improve transparency and accountability mechanisms.

So how do companies, industry lobbies and law firms use the three mechanisms in practice? And how does the Commission engage with Member States during the investigations? The following section will describe key cases we came across during our research, all of which deal with national or local policy initiatives with climate, social or consumer protection goals. The outcome is not always a clear-cut win for industry, but often results in some form of compromise. And in almost all the cases we examined, the business sector was able to delay, weaken or completely halt progressive regulations via the three enforcement mechanisms.

4. OBSTRUCTING ENVIRONMENTAL, SOCIAL AND CONSUMER PROTECTION: THE ENFORCEMENT MECHANISMS IN ACTION

4.1 INVESTORS VERSUS SOCIAL HOUSING IN THE NETHERLANDS AND SWEDEN

Private investors and property owners have used Single Market complaint procedures to undermine the provision of affordable homes by public housing associations in both the Netherlands and Sweden.

The Netherlands has a long tradition of public housing. In the period after the Second World War, not-for-profit housing associations were important in the provision of affordable homes to Dutch society, and public investment enabled the construction of new homes. In the 1970s, housing associations extended their activities to cover the general public. *In the 1990s, the government stopped most of subsidies to the housing associations,*²⁴ forcing them to compete on the market with private housing providers.

A further blow to public housing came in 2007, when the Dutch Association of Institutional Property Investors (IVBN) filed a complaint with the European Commission. IVBN argued that housing associations had an unfair advantage, and that the government support they received constituted illegal state aid. In particular, IVBN attacked state guarantees that decreased borrowing costs for housing associations, as well as the support offered to housing associations from the central housing fund and the

fact that municipalities sold land to these associations below market price. Ultimately, the European Commission concluded that the housing associations were receiving an unfair competitive advantage on all three points and that the provision of public housing to non-low-income households should be handled by the market. The case was eventually taken up by the European Court of Justice, which backed the Commission's point of view.

The Netherlands embraced the decision, and further curtailed the role of housing associations through a Ministerial Decree in 2011 and the Dutch Housing Act of 2015. In the words of Professor Judith Clifton from the University of Cantabria, "The Dutch government was forced to re-design its historical model of housing provision away from a broad concept of social housing to a narrower income cap approach [...] In effect, social housing in the Netherlands can now only be destined for the most vulnerable groups."²⁵

Today, Dutch housing associations indeed focus mainly on providing social housing for low-income groups. Subsequently, the share of privately rented and privately owned homes has increased, and the accompanying gentrification of cities such as Amsterdam has made housing unaffordable for large parts of the population.

Sweden had faced a similar situation a few years earlier. Since the 1940s, the country has relied on municipal housing companies as vital tools for promoting affordable living and mitigating segregation. Yet in 2002, *Fastighetsägarna Sverige*, an advocacy group for Swedish property owners, submitted a complaint to the European Commission arguing that the government's financial support to municipal housing associations constituted illegal state aid. Three years later, the European Property Federation (EPF) renewed the complaint and included the allegation that local governments had also breached state aid regulations. As a result, the European Commission launched an investigation into Sweden's support for public housing.

The Swedish government saw two options for keeping its public housing policies alive. The first was to try to gain recognition for the country's housing policy and housing associations as a 'service of general economic interest' by the European Commission. The second proposal was to "remove all forms of state aid, meaning that public housing companies would have to operate on the same terms as private housing companies". The Swedish Parliament ultimately decided that the first proposal was unrealistic, thus choosing to eliminate state aid for public housing and requiring local governments to run their companies on market terms.²⁶

As these two cases show, private investors and property owners have used Single Market complaint procedures to undermine the provision of affordable housing by public housing associations and to expand their business models. In both the Dutch and Swedish cases, the European Commission sided with private sector housing interests and imposed a neoliberal interpretation of EU state aid rules on both governments. In 2020, the Green rapporteur for an affordable housing report produced by the European Parliament, *Kim van Sparrentak*, concluded that "European state aid rules should be changed to specifically allow states to increase investment in the delivery of social housing".²⁷ In light of rising costs for housing in many European capitals and urban areas, this is an issue which urgently needs to be tackled.

4.2 DUTCH MULTINATIONALS SUCCESSFULLY CHALLENGE SLOVAK RESTRICTIONS ON HEALTHCARE PROFITS

In Slovakia, attempts to implement progressive healthcare policies and to oblige private companies to reinvest profits into the healthcare system were thwarted by claims of Single Market violations by multinational insurance companies.

Although the area of healthcare belongs mostly to Member States, the European Commission has in recent years attempted to *incorporate it more directly into the Single Market as a service*.²⁸ Together with the EU's austerity policies after the financial crisis, liberalisation as well as privatisation reform in many countries has led to a *downsizing of the public health system*.²⁹

In Eastern Europe, many healthcare systems became privatised after the fall of communism. Back in 1996, Slovakia opened its public healthcare sector to several private companies. A major push for liberalisation occurred in 2004, and multinational companies also became interested in the country's healthcare market. Through company nesting, 25 per cent of the healthcare sector ultimately fell into the hands of foreign investors, mostly from the Netherlands. The construction was as follows: the two largest private Slovakian health insurance companies, *Dôvera and Apollo*,³⁰ were owned by the Dutch company HICEE, which was in turn owned by the private equity firm PENTA International Investment Group. The third biggest healthcare provider, Union, was held by the Dutch company Eureko.

NURSING HOMES AND THE BOLKESTEIN DIRECTIVE

*Other core functions of the welfare state have also been challenged on the grounds of Single Market legislation. Technically, health and social services are exempt from the Services Directive. However, these exemptions are full of loopholes. **The Belgian association of private nursing homes, Femarbel**,³¹ filed a lawsuit against an ordinance by the city of Brussels that tied admission to nursing homes to various conditions, including regulations for cost accounting and mandatory staff ratios. The case was brought before the Belgian Constitutional Court, which subsequently asked the European Court of Justice (ECJ) to clarify whether the work of nursing staff in day and night care facilities fell under the Bolkestein Directive's exceptions for health and social services.*

In its 2013 ruling, the ECJ argued that nursing activities are only covered by two exceptions: a) if the main focus of the activity is on improving the health of nursing home residents, and b) if the private nursing homes have been commissioned by state action to provide care services. The Belgian Constitutional Court subsequently ruled that the nursing activities in question did not meet either of these requirements and were therefore open to market competition. This case exemplifies how the Court of Justice helps to dismantle services of general interest by incorporating them into Single Market legislation.

All of this was shaken up after a left-wing populist party, Smer-SD, won the 2006 parliamentary elections. The new coalition set itself the goal of ending the neoliberal policies of the previous Dzurinda government, and the new prime minister, Robert Fico, spurred a U-turn in health policy. Criticising previous privatisation efforts, *Fico stated* that “[t]he point was to allow someone, mainly foreign firms, to access public resources and gradually carve off huge profits from these resources. People are now required to pay money for insurance premiums to the insurers and it is absolutely unacceptable to us to allow someone to keep part of this money.” Subsequently, the government introduced a new law that banned dividend payouts to the company’s shareholders in the healthcare sector. While it did not prohibit private actors within the sector, it committed them to reinvesting all profits into the healthcare system.

In the following period, the Slovak government’s healthcare system was pressured from all sides. In addition to an unsuccessful complaint by HICEE about alleged illegal state aid paid by the Slovak government to the main public healthcare provider, the Commission received a complaint by Eureka^{32, 33} regarding the country’s 2008 *profit ban*. As our freedom of information request shows, Eureka hired the US law firm White & Case to file the complaint. The law firm, which has been involved in multiple Investor-State Dispute Settlement (ISDS) cases, argued that the Slovak regulation infringed the “freedom of capital movements and the freedom of establishment”.³⁴ *Eureka also complained to the Commission regarding a Slovak rule that required insurers that exit the market to transfer their clients, without charge, to another insurer.*³⁵ And as the icing on the cake, Eureka’s main shareholder, the Dutch Achmea company, opened an ISDS case against the left-wing Slovak government in 2008 (see box below).

Regarding the profit ban complaint, the Commission’s Single Market unit opened an investigation and initiated a dialogue with the Slovakian government. *In 2009, they sent a formal notice to the government* (largely following the argumentation of the Eureka complaint),³⁶ signalling the opening of an official infringement case. The Commission spokesperson, *Oliver Drewes, stated* “it seems that the imposition of an absolute prohibition on privately-owned public health insurance providers from using their profits other than for the provision of public health care in the Slovak Republic constitutes an unjustified restriction on the freedom of capital movements”.

Dear Secretary-General,

Please find enclosed a complaint alleging a serious breach of Community law by the Slovak Republic in the health insurance sector. [REDACTED] request that this complaint

2. The fact that [REDACTED] are seeking to resolve their dispute with the Slovak authorities using all available legal avenues (obtaining the support of Slovak Members of Parliament to file a complaint with the Slovak constitutional court, arbitration under the Netherlands-Slovak Republic Bilateral Investment Treaty (“BIT”) and the complaint procedure under Article 226 EC) in no way affects the companies’ willingness to work with the Slovak authorities and the Commission to find a practical solution in conformity with the fundamental principles of EC law. The action requested of the Commission is therefore intended to be in support of [REDACTED] own efforts and concentrates exclusively on breaches by the Slovak Republic of Community law.¹

ISDS CASE ACHMEA VS. SLOVAKIA

Investor-State Dispute Settlement (ISDS) give companies the right to sue states for money over policies that they argue lead to lost future profits. In 2008, the two Dutch companies HICEE and Achmea sued the Slovak Republic for arbitration, claiming the country had violated the 1992 bilateral investment treaty between the Netherlands and Slovakia. Achmea, which was a shareholder of the smaller healthcare operator Union in Slovakia, demanded some €100 million in compensation for investments made prior to the 2004 de-privatisation reform. Ultimately, a Luxembourg court ruled that €29.5 million in assets owned by the Slovak Republic could be seized from accounts in Western Europe.

A 2018 ECJ ruling concluded that the Dutch-Slovak agreement on the protection of investments was incompatible with EU law.³⁷ This affected the European Union as a whole, and EU Member States also agreed to terminate their bilateral investment treaties (BITs). The European Commission and some Member States, including Germany, were keen to replace these BITs with an intra-EU ISDS system.³⁸ Due to opposition from civil society, the Commission was eventually forced to give up on these plans.

Negotiations between the Commission and the Slovak government continued for another two years. However, after a conservative-neoliberal coalition took office in 2010, the new government scrapped the progressive healthcare act and again allowed private health insurers to distribute profits made from mandatory health insurance³⁹ to their shareholders. The only change was that companies now needed to make sure they held a reserve of 20 per cent paid-up registered capital. This change of legislation led the Commission to close the infringement procedure in December 2011.

Once more, this case illustrates how businesses – or in this case Dutch multinationals – can rely on Single Market legislation to fight against progressive policy initiatives that aim at protecting core areas of the social security system from profit-making interests. We see how the Single Market enforcement system delimits the democratic space of elected politicians and hinders them from carrying out the mandate of the electorate.

4.3 BINGO! THE LIBERALISATION OF GAMBLING MARKETS ACROSS THE EU

In 2015, the Gauselmann Group commissioned the law firm Alber & Geiger to challenge gambling regulations in several EU countries. According to the law firm's own website, it successfully invoked multiple infringement proceedings.

Gambling addiction is a serious problem, as it can push individuals quickly into bankruptcy. A recent study from the UK suggests that rates of gambling addiction are nine times higher than stated by the gambling industry.⁴⁰ In many European countries, gambling has been strictly regulated and is administered by state-owned monopolies such as Danske Spil in Denmark.⁴¹ In the case of Danske Spil, the money raised was donated to charity.

As part of its efforts to liberalise the service sector within the European Union, the Commission initiated a series of infringement procedures in 2006 against protective gambling regulations in six Member States. In the case of the Netherlands, for

instance, the Commission questioned the use of gambling revenues for public causes as well as the Dutch government's view that gambling revenues should not be used for private profit. Although this liberalisation push clearly served the interests of private companies that raked in profits from gambling, it did not help to protect people from gambling addictions.

In 2015, the German gambling giant Gauselmann Group – which enjoyed revenues of €2.6 billion in 2020 – commissioned the lobbying law firm Alber & Geiger to challenge “a number of threatening gambling regulations [...]”⁴², as reported on the lobby group's website. In the otherwise rather secretive world of lobbying, their online strategy description provides a unique account of the tactics applied by the law firm. Besides lobbying the national governments, another key ingredient was pushing the European Commission to launch infringement proceedings. To that end, Alber & Geiger met in 2015 with DG JUST to talk about the Czech legal framework for gambling and with DG GROW on the topic of German

LOBBYFACTS: ALBER & GEIGER



DECLARED LOBBY CLIENTS

	Client Name	Amount
2015	Gauselmann Group	200,000€ - 299,000€
2017	Gauselmann Group	600,000€ - 699,000€

gambling legislation. Our freedom of information requests show that the lobbying powerhouse had also already met with the previous Commission to discuss gambling legislation.⁴³

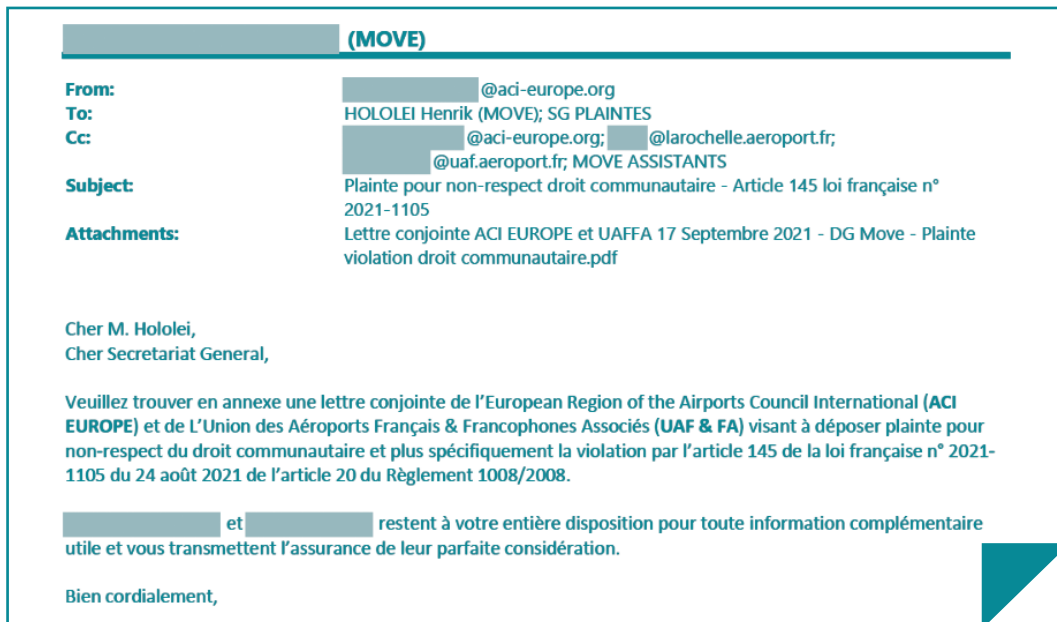
According to Alber & Geiger, success was not long in coming. In December 2015, the firm published its strategy for achieving the gambling bans in the 'Wins' section of its website: "Ultimately, we managed to convince the European Commission to act. Its omission to launch infringement proceedings had been rebuked. Alber & Geiger was able to safeguard fundamental liberties and freedoms by bringing EU instruments into a new field and challenging archaic but powerful structures."⁴⁴

Big money passes hands in these corporate victories. In 2015, Alber & Geiger reported receiving between €200,000 and €299,000 from the Gauselmann Group;⁴⁵ this amount increased to €600,000 in 2017.⁴⁶

This case exemplifies, once again, that evoking infringement procedures is a key strategy for industry representatives, allowing them to surf on liberalisation waves and roll out business activities into areas that were previously protected from market interests.

LIBERALISING GAMBLING LEGISLATION IN ROMANIA

Alber & Geiger was also active in challenging Romanian gambling legislation. On behalf of Stanleybet, a private sports betting operator, the law firm lobbied the Commission to challenge "the post-Communist Romanian sports law infrastructure"⁴⁷ in order to open up markets for the company. According to the law firm: "Thanks to our efforts, the EU Commission forced the Romanian state to comply with these very recent extensions to EU competence. Stanleybet now has a lucrative and successful operation in Romania, which benefits consumers."⁴⁸



4.4 AVIATION LOBBY SPARKS COMMISSION ACTION AGAINST NATIONAL CLIMATE MEASURES IN FRANCE AND THE NETHERLANDS

Behind a veil of secrecy, corporate lobby groups are actively using the EU system to pre-empt new climate policy measures emerging at the national level. The French government's ban on short-distance domestic flights and Dutch attempts to curtail the overall number of flights have both provoked complaints by aviation lobby groups to the European Commission. The outcome has been the restriction or slowing down of these urgently needed measures.

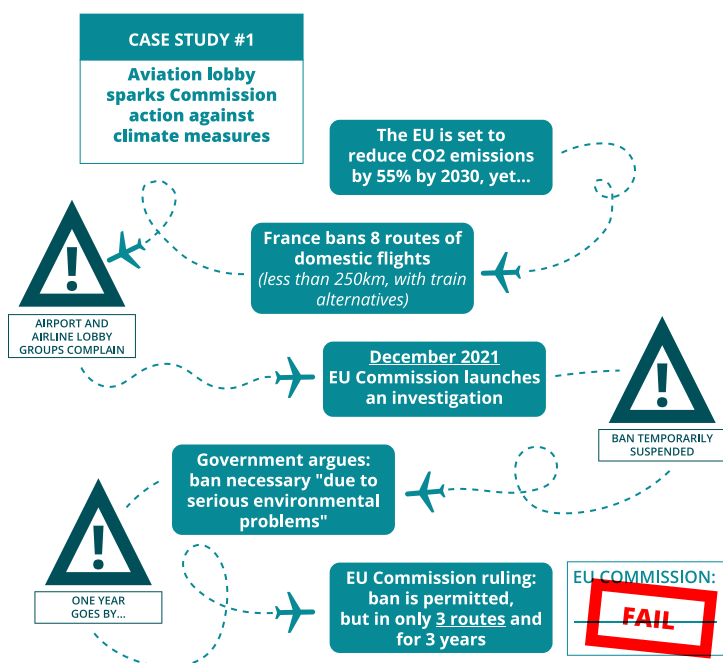
Almost a quarter of Europe's greenhouse gas emissions come from transportation, and the aviation industry is one of the fastest-growing sources of emissions.⁴⁹ With its Green Deal and the Fit for 55 green transition package, the EU has set out to reduce CO2 emissions by 55% by 2030. Consequently, due to the sector's importance in fighting the climate crisis, the Commission aims to reduce transport emissions by 90% by 2050. However, as the following examples show, the Commission has at the same time been a helpful stepping stone for industry in the obstruction of concrete national plans to reduce air traffic.

French ban on short-haul flights struggles to take off

A recent example is the complaint submitted by French and EU-level airport and airline lobby groups against the French government's ban on domestic flights of less than 250 kilometres (trips that can be easily done by train). The ban was the product of the Citizens' Convention for Climate, an unprecedented assembly of citizens convened to participate in climate policymaking, and was part of the French Climate and Resilience law adopted in July 2021 (Article 145). The Citizens' Convention for Climate had initially proposed scrapping plane journeys where train journeys of under four hours are available.

The ban was not gladly received by the airport lobby. Media reports show that Union des Aéroports Français & Francophones Associés (UAF& FA) and the Airports Council International Europe (ACI Europe) *claimed* that the ban violated "the freedom to provide services". In their complaints to the European Commission, the lobby groups argued that the ban "would be ineffective and disproportionate to the intended objective, that it would discriminate between air carriers and that its duration would not be limited in time".

In December 2021, the European Commission launched an investigation of the French law.⁵⁰ During the investigation, the French



ban was temporarily suspended pending the Commission's verdict on whether it should be considered "proportionate" and "non-discriminatory". The French government reacted defensively, informing the Commission that the ban was necessary "due to serious environmental problems", specifically climate change.

After almost a year of investigation and several clarifications and adjustments by the French government, the Commission decided that the ban was permitted,⁵¹ but only in a more restricted format and limited to three years. Instead of the original eight routes, only three will be banned (between Paris-Orly and Bordeaux, Nantes and Lyon). France is to send the Commission "an assessment of the Measure 24 months after its entry into force", and the Commission's decision indicates that the bans are unlikely to be re-approved after the first three years. As justification for terminating the measure, the Commission claims that its Fit for 55 package, which could expand the EU Emissions Trading System (ETS) to the aviation sector and end the tax exemption for jet fuels, would "effectively contribute to the decarbonisation of the air transport sector to a such extent" that the French ban "should no longer be needed".

The verdict on the French ban was an important indication of whether the Commission's interpretation of Single Market law will ultimately restrict or enable

much-needed climate transition initiatives. While it was not the worst-case outcome, it was also far from the clear and resounding endorsement of national-level climate measures that the current situation calls for.

Sources that followed the case point out that the Commission's decision was the result of "protracted haggling" between the transport department (DG MOVE) and the climate action directorate (DG CLIMA). Whereas DG MOVE opposed the French ban, DG CLIMA was in favour. In the end, the Commission's decision was a compromise between these two positions.

Despite its limitations, Greenpeace *cautiously welcomed the decision*,⁵² calling it a "step in the right direction undermined by [the] decision to limit the ban to three years", and pointing out that "in practice what this means is the Commission is saying that measures to tackle the climate emergency should be put up for review and exposed to challenge every three years, instead of being reinforced and held up as the example to follow". To ensure that such climate-saving aviation measures can no longer be contested, Greenpeace also called for a change to the Air Services Regulation: "This year-long challenge of the French ban shows this provision should be revised to ensure all EU governments can ban short-haul flights without fear of protracted challenges by the aviation lobby."

Public left in the dark

This case provides a clear example of how non-transparent the Commission is in practice. Much of the information presented above comes from the text of the Commission's decision, which was published in the Official Journal of the EU. However, during the nearly 12 months it took to reach the decision, there was no information available anywhere on the Commission's websites, neither about the corporate complaints that sparked the examination nor about the investigation itself.

Although CEO submitted several freedom of information requests to overcome this void, we hit a wall of secrecy. After four months of waiting in vain for documents to be released, *we submitted an appeal* referring to the clear public interest in transparency on these matters. From that point onwards, the Commission used delaying tactics. The Ombudsman next opened an investigation, and gave the Commission a deadline of 23 February to respond to CEO. Three months later, the Commission

finally released three documents they had received from the airport lobbies (ACI Europe and UAF & FA). These included a detailed complaint in which the lobby groups "jointly request the European Commission to declare Article 145 of the Climate and Resilience Act incompatible with Community law and to order France to repeal it as soon as possible". Access to other relevant documents, including all of the Commission's replies to the lobby groups, was refused.⁵³

Dutch plans for fewer flights hit turbulence

Other Member States have also taken climate protection measures to lighten the very heavy carbon footprint of the airline industry. For example, the Dutch government intends to reduce flights at Amsterdam's Schiphol airport by 20 percent, both as a noise and air pollution reduction strategy and as part of its climate policy. With over 25 million passengers in 2022, Schiphol is the second-largest airport in Europe. Predictably, the aviation industry is up in arms against the measure, and the *International Air Transport Association* (IATA) has announced plans for legal action. Willie Walsh, IATA's Director General, stated: "The government has even refused to engage in meaningful consultations and made flight reductions the goal, rather than working with industry to meet noise and emissions reduction goals."⁵⁴

Dear [REDACTED]

We are looking forward to our dinner with Henrik on 15 November. We believe it will be an excellent opportunity for [REDACTED] (DL [REDACTED]) and Henrik to connect, since their last meeting was prior to the pandemic. We look forward to sharing with Henrik an update on Delta's commercial and operational outlook. [REDACTED] could also share her perspective on the outcome of the U.S. midterm congressional elections, which will take place on 8 November. In addition, we would welcome the opportunity to discuss the follow other topics with Henrik.

- Dutch government decision to reduce significantly and permanently the cap on operations at Schiphol Airport.
- Sustainability – outcome of the 42nd ICAO Assembly and what to expect going forward in terms of regulation and policy in the EU, particularly on SAF and EU ETS.
- EU Aviation Regulatory Policy Agenda – We would be interested to hear from Henrik about the Commission's priorities and work plan for 2023.

A Dutch court is currently investigating the legality of the measure. However, Director-General of DG MOVE, Henrik Hololei, told Dutch media that it was not up to the Dutch government to decide if the measure was legal but rather the Commission's job to judge whether it is compatible with EU law.⁵⁵ The Commission is currently awaiting more information from the Dutch government before it judges whether or not the measure fulfils the so-called 'balanced approach'⁵⁶ for noise management around EU airports and can be allowed.

DG MOVE's Director-General Hololei has long cultivated close ties with the aviation industry. In addition to meetings with KLM Royal Dutch Airlines and Airlines for America on the Schiphol airport measure, he also discussed the issue with Delta Air Lines on [15 November 2022 over dinner](#).⁵⁷ In March of 2023, Hololei resigned from his post after internal investigations revealed that he had flown business class for free on Qatar Airways while negotiating the open skies deal with Qatar.

Pricier flight tickets in Austria under investigation

France and the Netherlands were not the only countries to face headwinds from the European Commission regarding their plans to reduce aviation emissions. In late 2020, much to the dislike of the aviation industry, the Austrian government introduced a minimum price for air tickets that would increase the cost of flying. In an interview, Ryanair CEO Michael O'Leary stated that the measure was against EU law. The Austrian government soon faced opposition by the European Commission, which questioned the measure's compatibility with EU legislation. As a spokesman said, the EU supports the "greening of air transport", but only in a way that is "compatible with the rules of the internal market".⁵⁸ Unfortunately, CEO's attempts to gain clarity about the extent to the aviation industry has approached the [Commission on this matter](#)⁵⁹ were futile.

PORTUGUESE PRIVATE WATER ASSOCIATION FILES BASELESS COMPLAINT

Even though corporate complaints are sometimes a long shot, they nonetheless serve the goal of influencing the European Commission. [Documents released via a FOI request](#) show that in July 2021, the Association of Portuguese Companies in the Environmental Sector (AEPESA) filed a complaint with the European Commission's DG GROW, "requesting a review of the current situation of the water sector in Portugal". The complaint is surprising, as water services were explicitly excluded from both the EU's Services Directive and from the 2012 Concessions Directive after strong protests from trade unions and NGOs, who recognised that their inclusion would result in water services being offered for EU-wide tendering and would generate a wave of privatisations.

AEPESA's complaint alleges that the Portuguese government has discriminated against private water corporations, and that it has "limited market access for private companies" and violated the "freedom to provide services". The lobby group is upset about "the blocking or even reversal of water systems management concessions to private companies", a reference to the remunicipalisation of water services in cities including Mafra, Paredes, Fafe, and Setúbal. All of this, AEPESA claims, "undermines the integrity of the European internal market". The city of Mafra remunicipalised its water services after the Beijing Water Group (Be Water), the Chinese company that controlled the city's water for 22 years, decided to increase tariffs by 25 per cent. A study found that the municipality could in fact decrease prices by 5 per cent if water services were brought back into public hands.⁶⁰

Although the documents released via the FOI request do not include the official reaction to AEPESA's complaint, well-informed sources confirmed that the Commission opted not to start a pre-infringement procedure. In addition to hoping in vain for the launching of an infringement case, the AEPESA complaint also seems to have been aimed at influencing DG GROW's review – ten years after the adoption of the Concessions Directive – of whether water should remain excluded from Single Market rules. AEPESA met with DG GROW to discuss their complaint in January 2022, and in a follow-up letter argued that "the situation in Portugal is a good illustration of the disadvantages of such an exclusion". At the time of writing, the Commission's review was still ongoing.

4.5 FRENCH BAN ON SINGLE-USE PLASTICS TRIGGERS INDUSTRY AND COMMISSION ROADBLOCKS

France's 2020 plans for a comprehensive ban on single-use plastics sent the packaging lobby into a frenzy and has sparked the launching of an infringement procedure by the Commission. Other European countries face similar challenges when passing laws to protect their people and environments.

Products made from plastic are a major threat to the vitality of ecosystems and wildlife around the world. Our seas are full of microplastics, which inflict serious harm on the ocean environment and aquatic life. Single-use plastic packaging is a particularly strong driver of this environmental pollution. In 2021, the European Commission adopted the Single-Use Plastics Directive, which prohibits the sale of disposable plastic plates, cutlery and straws in the EU.

However, previous attempts by Member States to independently prohibit environmentally damaging products have been frustrated by relentless pressure from industry associations. The following example of the French ban on single-use plastics illustrates that companies do not always choose to go the route of a formal complaint to eliminate distasteful national laws. The notification procedure on technical regulations is yet another tool that can be used to spark Commission action.

Pioneering French plastic plans thwarted by industry groups

In 2016, France was the first European Member State to ban the use of plastic cutlery, cups and plates. The measure was part of the country's Energy Transition for Green Growth Act, which aims to mitigate climate change. As expected, corporations did not embrace the French measure. Although industry representatives publicly threatened to complain to the European Commission, they ultimately did not proceed. In 2020, however, corporate threats turned into coordinated action when France informed the Commission under the notification procedure of plans for a more comprehensive [*ban on single-use plastic \(2020/401/F\)*](#) and a circular economy act to improve the [*recycling efforts of French citizens \(2020/410/F\)*](#). With the recycling measure, France intended to introduce a 'Triman' logo on products to remind consumers of their obligation to recycle.

The Commission received numerous negative opinions from industry associations about the French attempts to reduce plastics. In total, 15 organisations forwarded detailed, critical remarks on the single-use plastic measure to the Commission, and some 30 industry groups commented on the waste reduction initiative.⁶¹

Based on these findings, we submit the following requests to the Commission:

- We request the Commission to adopt a detailed opinion concluding that the notified Draft Implementing Decree may create barriers to the free movement of goods and violates EU secondary legislation. By extending the standstill period by six months following the TRIS notification in accordance with Article 6(2) of the TRIS Directive (*i.e.*, three months following the end of the three-month standstill period), this detailed opinion would provide France with the opportunity to explain how it intends to address the issues identified above.

Industry objections to the French single-use plastic notification

The activities of EUROPEN (the European Organisation for Packaging and the Environment) and FoodDrinkEurope are particularly noteworthy. As CEO's freedom of information requests have revealed, these lobbying heavyweights hired the law firm [Van Bael & Bellis](#) to draft two legal memoranda on the claimed incompatibility of the French [single-use plastic ban](#) and its [waste reduction initiative](#) with Single Market law. In addition, EUROPEN wrote to several Commissioners and [Commission President Ursula von der Leyen](#) to point out its perspective on breaches of Single Market regulation. In its legal assessment, Van Bael & Bellis found an infringement of the freedom to provide goods in both cases. The law firm asked the Commission to adopt a detailed opinion in the notification procedure, a step towards opening a dialogue between the Member State and the Commission, and a possible infringement procedure.⁶² This possibility became a reality in February 2023, when the European Commission sent a letter of formal [notice to France demanding an explanation of the introduction of the Triman labelling](#). At the time of writing, the Commission's inquiry was ongoing and the outcome of the infringement procedure still remains to be seen.

Since the 2016 French initiative to ban single-use plastics, countries including Greece, Portugal, Slovenia and Spain have also announced plans to introduce [tighter regulations on plastic waste](#). Like France, Spain faced industry opposition with its draft Law on Waste and Contaminated Soils within the notification procedure for technical regulations; a joint industry statement from more than 50 companies and industry associations warned the Commission that the law could "infringe [upon] the principle of free movement of goods".⁶³ Once again, the industry association EUROPEN, together with soft drink giant UNESDA and bottled water company EFBW, commissioned Van Bael & Bellis to assess the draft law. And once again, the law firm "request[ed] the Commission to adopt a detailed opinion".⁶⁴

And it is not only progressive initiatives at the national level – such as the reduction of plastics, CO2 emissions or other environmentally harmful products and activities – that galvanise industry opposition. Even local measures are at risk, as shown in the following case study of the small Spanish island of Formentera, which was suddenly bombarded with opposition by the international tourist industry after restricting holiday home rentals for social and environmental reasons.

4.6 AIRBNB LOBBY GROUP INCITES COMMISSION BULLYING OF SPANISH ISLAND FORMENTERA

In 2020, the European Holiday Home Association complained to the Commission about new rules introduced by the Formentera Island Council to curb holiday home rentals for social and environmental reasons.

In February 2020, the European Holiday Home Association (EHHA) and its German member group used the European Commission's [new website for notifications](#) on national-level services sector regulations to submit a complaint. The Commission had previously invited companies to use the platform and make comments on draft legislation.

UBER'S INFRINGEMENT CRUSADE

Uber has been criticised for [exploitative business practices](#)⁶⁵ and aggressive moves against local taxi companies. When the tech giant started facing legal obstacles and political opposition around 2014, it put the pedal to the metal. In 2015, Uber submitted three complaints – against Germany, Spain and France – to the European Commission. These countries had introduced authorisation schemes for the ride-hailing company in order to defend their taxi sectors against social dumping.

As later became apparent in the [Uber Files](#) – the 2022 leak of an impressive number of the company's internal lobbying documents that revealed the belligerent lobby tactics of the company to gain access to the European market⁶⁶ – it was actually the European Commission itself that had at least partially encouraged the company to lodge these complaints. According to the newspaper *Le Monde*, Uber's top lobbyist, Mark MacGann, [updated his colleagues](#) after a meeting with then European Commissioner Elżbieta Bienkowska: "Excellent meeting with Bienkowska and [her Chief of Staff, Fabrice] Comptour. They are counting on us for the Article 49 complaint [infringement of European competition law]."⁶⁷

Further correspondence from the Uber files suggests that the Commission encouraged Uber to file at least three complaints against different countries (but advised no more than four in order to keep their workload manageable). Ultimately, Uber's complaints failed to develop into successful infringement cases, among other reasons due to the ECJ ruling that the company had to be categorised as a transport company and must thus comply with authorisation schemes.⁶⁸

From: EHHA [REDACTED] <info@viramoconsulting.com>

Sent: Monday, February 10, 2020 11:43 AM

To: [REDACTED] (GROW) <[REDACTED]>

Cc: [REDACTED] (GROW) <[REDACTED]>

Subject: EHHA letter on Spanish notification

Dear [REDACTED],

On behalf of the European Holiday Home Association (EHHA), we would like to draw your attention to the Services Directive notification (IMI report No 92633.1) on "[Draft Regulation No 1/2019 of the Formentera Island Council regulating the marketing of tourist accommodation in residential dwellings](#)" (Proyecto de Reglamento 1/2019 del Consell Insular de Formentera por el cual se desarrolla la actividad de comercialización de estancias turísticas en Viviendas) as notified by Spain on 11 November 2019.

Please find attached the EHHA's letter.

We remain open at your disposal should you have any questions.

Sincerely,

Mob. +32 [REDACTED]

www.ehha.eu

CASE STUDY #2

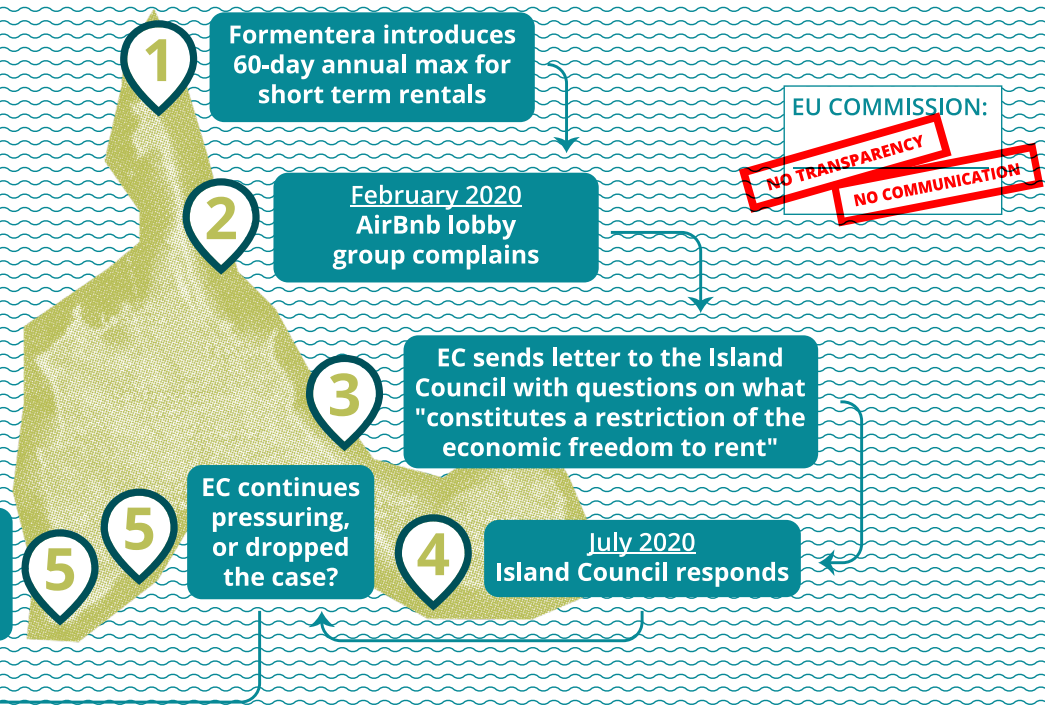
AirBnb incites Commission bullying of Spanish Island

Formentera

Population: 12,000
 Tourists: 3,100,000*
 Drinking water: scarce
 % income allocated to housing costs for locals: 82%

*Number of visitors for Ibiza and Formentera, in 2018. data from www.ibizapreservation.org

December 2022
 Commissioner Breton gives vague answer, leaving the public in the dark



Freedom of information requests show that this lobby group (a mouthpiece of Airbnb) *targeted the new restrictions on holiday home rentals*⁶⁹ planned by the tiny Spanish island of Formentera in order to protect its 12,000 inhabitants. The measures, which included a 60-day annual maximum for the short-term rental of primary residences, were intended to decrease fossil fuel use, tackle critical shortages in drinking water, and reduce the island's fast-growing volume of household waste. These issues have all been exacerbated by mass tourism, which has a huge impact on the island's environment and people. The booming demand for tourist accommodation has also left locals without affordable housing options.

Nonetheless, EHHA complained that the protective measures imposed "discriminatory, unjustified, unproportionate and unsuitable measures to short term rentals in the Balearic Islands". The Commission immediately sent a *letter to the Island Council of Formentera*⁷⁰ with a long list of critical questions, demanding "justification and proportionality" around what they argued "constitutes a restriction to the economic freedom to rent". In July 2020, the Island Council sent its *16-page legal response*.⁷¹ Due to the Commission's lack of transparency on the matter, the outcome of this case remains unclear. In December 2022, Commissioner Breton (Internal Market) re-

sponded to a written question by MEP Martin Schirdewan asking how the Commission had replied to Formentera's 16-page response. Breton responded with a general remark that "[t]he Commission is analysing such restrictions on short term rentals laid down in local, regional and national legislation in Spain and will address them in a consistent manner".⁷² He also mentioned that the Commission had recently launched a proposal for new rules in the short-term accommodation rental segment. But he failed to answer the actual question about the Commission's response. Did they continue pressuring Formentera to change the rules, or did they drop the case? The Commission's uncommunicative and non-transparent approach leaves the public in the dark. There is no way to know the extent of the holiday lobby's engagement with the EU around national social and environmental regulations that they perceive as threats to their business model. Back in 2016, EHHA complained to the Commission about short-term rental rules introduced by Barcelona, Berlin, Paris and Brussels, claiming that they were *in breach of Single Market regulations*.⁷³ This complaint, and the Commission's actions towards these cities sparked by the lobby association, are also virtually impossible to track due to the Commission's secrecy.⁷⁴

4.7 BITTER CORPORATE RESPONSE TO SUGAR TAXES IN ESTONIA AND FINLAND

National attempts to implement health measures by taxing unhealthy sugar products have left a bitter taste in corporate mouths. In the case of Finland, the Finnish Food and Drink Industries' Federation and the European Natural Soy and Plant-Based Foods Association went after the country's confectionery tax. And Estonia's sugar tax was the subject of a complaint to the EU's Directorate-General of Competition by the Union of European Beverages Associations (UNESDA).

Obesity is one of the most widespread diseases in Europe, and it has spread extremely rapidly in recent years. As a result, many European Member States are attempting to introduce taxes on food products with high sugar percentages. In 2011, the Finnish government imposed a tax of 95 cents per kilo on sweets and ice cream with the goal of protecting consumers from unhealthy sugar-based products. The government aimed to raise more than €100 million annually with this so-called 'confectionary tax'.

The Finnish Association of Biscuits and Confectionery Industries lobbied against this tax from the very start.⁷⁵ But it was ultimately two other trade associations that filed complaints with the European Union against the Finnish confectionary tax. The Finnish Food and Drink Industries' Federation (ETL)⁷⁶ – which *spent €550,000 on EU lobbying in 2019* – argued that the tax discriminates against certain products while exempting similar competing products and categories. The ETL relied on an assessment by the Finnish Competition and Consumer Authority claiming that the tax was problematic. In the other complaint, the European Plant-based Foods Association (ENSA) argued that the tax put plant-based products at a competitive disadvantage to dairy products. ENSA's complaint also mentioned that it found the customs tariff codes illogical and discriminatory. Both complaints claimed that the tax led to the distortion of competition.⁷⁷

The European Commission approached the Finnish government in 2015 and subsequently opened an investigation. In this case, the importance for industry of the informal stage of infringement proceedings is crystal clear. As the website FoodNavigator Europe wrote: “In informal proceedings, the Commission indicated that the current form of a tax [was] incompatible with state aid rules.”⁷⁸ Eventually, in 2017, the Finnish Cabinet Committee on Economic Policy decided to abandon its sugar tax.

The Estonian government was faced with a similar situation. Estonia has one of the highest rates of obesity among EU countries, with 21% of people over the age of 18 suffering from the disease.⁷⁹ In 2017, the country stepped up its fight against obesity by introducing a tax on sugary beverages. The law’s intention was to make sweetened and less healthy drinks more expensive in order to reduce overall consumption. Once again, however, a backlash came from the soft drink industry, which sniffed out a huge threat to sales and profits.

The Estonian Food Industry Association hired the law firm Sorainen to handle the case, and the lawyers determined that the policy was in contradiction with key Single Market legislation.⁸⁰ Following this opinion, the Union of European Beverages Associations (UNESDA) forwarded a complaint to the European Commission, claiming that the policy constituted illegal state aid and would provide a competitive advantage to competing products.⁸¹

However, a lobby action rarely happens in isolation: not only did the Estonian Food Industry Association organise an international discussion with industry representatives about the sugar tax, but they also hired the public relations firm Meta Advisory to oppose it.⁸² On their website, the PR firm claims that they helped in “avoiding [..] excise duties on soft drinks”.⁸³ Whether it was due to the lobby pressure or the potential contradiction with EU law, the Estonian president eventually vetoed the tax and it was never implemented.

The present complaint, brought by PlasticsEurope, concerns French Law n° 2012-1442 of 24 December 2012, banning the manufacture, import, export and placing on the market of all packaging, containers and utensils intended to come into contact with food, that contain Bisphenol A (“BPA”), (“the French BPA Law”). Under the law, as from 1 January 2013, all BPA-based packaging, containers and utensils which are intended to come into contact with food for babies and infants up 3 years of age are banned. All other BPA-based packaging, containers and utensils, will be banned from 1 January 2015.

4.8 THE LABORIOUS ROUTE TO BANNING BISPHENOL A

The industry association Plastics Europe complained to the European Commission’s DG GROWTH in 2013 about the French government’s ban on Bisphenol A, a chemical that has serious negative effects on human health. Although growing evidence about the health risks associated with the chemical ultimately led to EU-wide restrictions, the industry lobby continued to erect obstacles so they could continue business-as-usual.

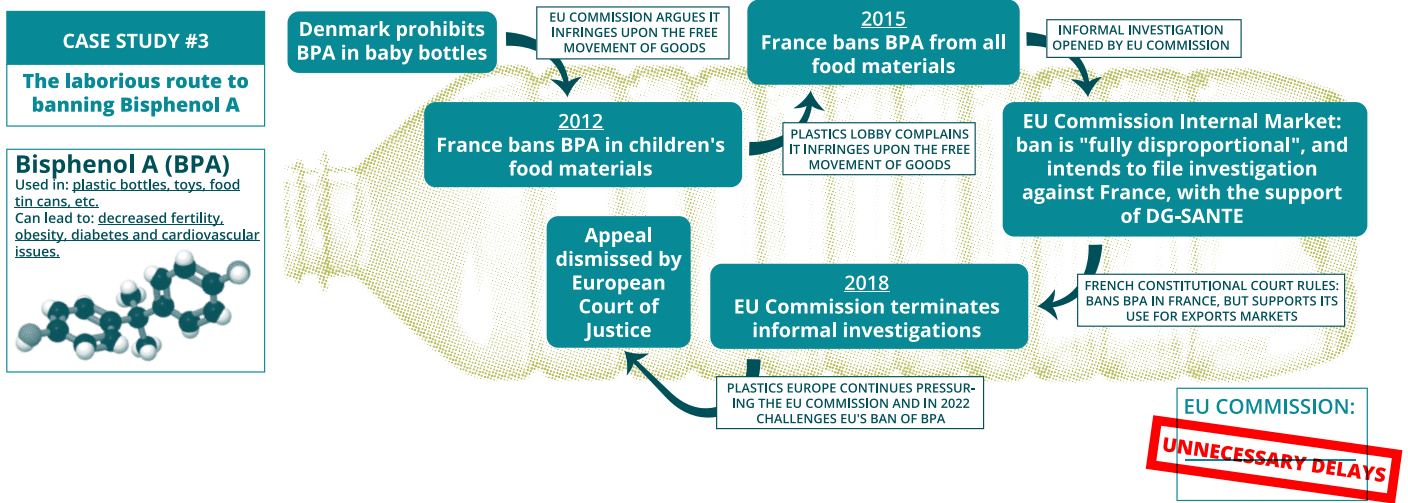
Bisphenol A (BPA) is a chemical compound that was widely used in many everyday products in the past, such as plastic bottles, toys and as a sealant for tin food cans. Since 2010, however, scientific studies have increasingly pointed to the chemical’s harmful properties: an increased concentration in the blood can potentially lead to various problems including decreased fertility, obesity, diabetes and cardiovascular issues.

Denmark was the first European Member State to take the step to prohibit the use of Bisphenol A in baby bottles. In response, the European Commission countered that the proposed measure infringed upon the free movement of goods.⁸⁴ However, in further negotiations Denmark convinced the Commission to implement a stronger restriction on the use of BPA in baby bottles in Europe, and the Commission adopted Directive [2011/8/EU](#) in 2011.

France followed Denmark’s approach in 2012, with a broader ban on Bisphenol A in food materials that come into contact with children. In 2015, France extended its ban to prohibiting BPA usage in all food contact materials.⁸⁵ However, the industry was not ready to give in so easily.

Back in March 2013, the industry association Plastics Europe had already complained to the European Commission about the French BPA ban,⁸⁶ arguing that it infringed on the principle of the free movement of goods.⁸⁷ According to the EU Transparency Register, Plastics Europe employs 32 part-time lobbyists and spent between €3 and €4 million on lobbying in 2021.⁸⁸ The complaint led to the opening of an EU Pilot procedure, which is part of the informal stage of an infringement procedure. It also triggered an internal dispute within the European Commission about the French ban; while the Commission’s Internal Market department regarded the ban as “*fully disproportionate*” and intended to file an infringement procedure against France, the Directorate-General for Health and Food Safety (DG SANTE) supported the measure.

In the end, the French constitutional court that took the matter further gave a paradoxical ruling. While it upheld the ban on BPA food contact materials in France, it supported the use of BPA in food contact materials for export markets “to protect the competitiveness of French businesses [...]”.⁸⁹



CEO's freedom of information requests have uncovered evidence that Plastics Europe continued its efforts to challenge the French ban and that the Commission also continued its investigations. In 2017, Plastics Europe urged the Commission to take legal action once again, arguing: "A total ban on only the import and placing on the market (and not the manufacture and export to other Member States), of BPA-based food contact materials, cannot pursue any coherent public health objective".⁹⁰

Despite pressure from the plastics industry, the Commission terminated its informal investigations in 2018.⁹⁰ Since that time, the scientific evidence about the negative

health effects of BPA has only been increasing.⁹⁰ In early 2022, Plastics Europe challenged the EU's ban of BPA; the appeal was dismissed by the European Court of Justice.⁹⁰ After the European Chemicals Agency determined that BPA is a "substance of very high concern" for wildlife, the Commission announced its intentions to place broad restrictions on the use of the chemical.⁹⁰

In retrospect, although the corporate lobby's goals were not achieved, the Commission's industry-prompted challenging of national-level restrictions on this toxic chemical clearly caused unnecessary and possibly dangerous delays.

TOBACCO TACTICS

Tobacco lobbyists and pro-vaping groups also make use of the infringement route to protect their sales by asserting that public health regulations in a particular Member State violate competition rules, or that they pose a threat to the EU Single Market as products are subject to different regulations between countries and cannot move freely. In 2019, the Greek vaping associations filed two official complaints via the notification procedure to make this argument, prompting the Commission to intervene against the Greek government. Although the complaints were ultimately dismissed by the Commission, this is yet another example of how industry lobby groups have the resources to challenge any legislation that potentially impedes their quest for profits.

In a similar attempt, the American Tobacco Association attempted to intervene in the Danish TRIS procedure on health-promoting measures in tobacco legislation in 2022. In this case, the tobacco lobby group ultimately sued Denmark in front of a Danish court, a clear reminder of the multi-level lobbying approach that international industry associations are in the position to take.

You can read more on Big Tobacco's lobbying techniques [in this report by CEO](#).

5. KEY LESSONS AND RECOMMENDATIONS

The cases featured in this report represent merely the tip of the iceberg. We came across many more examples in which the Commission appears to have acted on its own – without the help of industry – to challenge progressive legislation. The nature and consequences of these actions ultimately remains unknown, as the lack of transparency on the part of the Commission prevents us from knowing whether industry might have played a role. To cite just a few examples: based on Single Market legislation, the Commission blocked initiatives promoting regionally produced food in Sweden,⁹⁵ Bulgaria⁹⁵ and Romania.⁹⁵ Recent measures to curb energy price increases in Germany⁹⁵ and Poland also faced obstacles due to the Commission's interpretation of Union law. Plans for the financing of solar panels in the Danish municipality of Sorø were hampered because they were seen as a potential distortion to competition,⁹⁵ as was a Swedish initiative to mark the country of origin of petroleum.⁹⁵

In summary, we can draw the following conclusions from our investigations:

1. THE COMMISSION OFFERS A POWERFUL SET OF TOOLS FOR CORPORATIONS

The Commission's complaint mechanism, the services notification procedure and the technical regulations notification procedure offer a very powerful tool set for companies and industry associations hoping to prevent the introduction of unwanted national-level legislation, or to roll back existing laws. The case studies in this report have highlighted numerous examples of how industry interests galvanise the European Commission into initiating investigations, which in turn often evolve into infringement procedures.

This sometimes leads to the scrapping of existing national legislation (e.g., on social housing, health insurance or gambling). In other cases, planned new progressive measures are weakened (e.g., in the case of the short-haul flight ban) or severely delayed as a result of the Commission's interventions on behalf of industry (e.g., the ban on Bisphenol A). Industry complaints – or threats of complaints – are often part of a broader lobbying strategy and add to the pressure on national governments to withdraw legislative proposals (e.g., for sugar taxes). So far, this phenomenon of the pushback of powerful corporations against social and environmental protection measures has only obtained minor attention. Yet it is a core obstacle that civil society organisations, progressive politicians and trade unions must remain alert to.

2. THE COMMISSION INVITES COMPANIES TO COMMENT AND COMPLAIN

The expansion and deepening of the Single Market remains a core project of the European Commission. As shown by the example on gambling legislation, the Commission has regularly embarked on infringement cases with the goal of expanding or consolidating the 'liberalisation' process, despite serious concerns and downsides. The Commission's positive attitude towards liberalisation, deregulation and privatisation is also reflected in its active encouragement of industry representatives to engage in public consultation processes on the Single Market, to file complaints, and to provide comments on draft national legislation.

In 2019, CEO exposed information showing that the Commission had almost exclusively consulted actors from the corporate sector regarding its plans to drastically expand the Bolkestein Services Directive. Through documents obtained via freedom of information requests, we could see that the

Commission actively *approached industry associations such as BusinessEurope and EuroCommerce* to comment on the draft legislation.

The leaked Uber Files reveal an even more direct collaboration. After a meeting with the Commission, Uber's top lobbyist cheerfully wrote to his colleagues that the Commission was counting on them to file complaints against the Member States that had recently put restrictions on Uber services and had even offered advice about the ideal number of complaints with the view of keeping their workload manageable. These cases exemplify the bias upheld by the Commission when it comes to interpreting Single Market legislation regarding services. Despite widespread public critique of platforms like Airbnb and Uber, it is apparent that industry and pro-market forces within the European Commission form powerful alliances with these companies to challenge regulations.

3. SINGLE MARKET COMPLAINTS HAVE A CHILLING EFFECT

The power granted to corporations through the availability of enforcement mechanisms can make governments refrain from pushing for more radical social, environmental and climate protections. This act of dissuading public authorities from exercising their lawful and natural rights by spawning the fear of legal repercussions is known as a ‘chilling effect’. In particular, the threat of possible long-term legal proceedings that tie up resources and personnel for years can have a chilling effect, and may stop governments or municipalities from even attempting to introduce new social or ecological regulations. Plastic Europe’s threats to file a complaint with the Commission to challenge France’s ban on single-use plastic provides a disturbing example.

In the context of the Single Market, municipalities may feel especially powerless when faced with powerful corporations that hound the Commission to take legal action. Our case study of the small Island Council of Formentera, which was forced to justify its legislation on short-term rentals to curb environmental pollution and excessive rent increases, exemplifies the power asymmetry between the actors at play.

A recent report by the Danish Enhedslisten¹⁰¹ party provides a detailed analysis of how the chilling effect can restrict political action. Enhedslisten asked various ministerial departments for concrete legal assessments and interpretations of existing EU rules on the policy initiatives they proposed. They collected 100 examples where EU Single Market legislation prevented ministerial policy ambitions from turning into reality: from improved animal welfare to tackling alcohol and gambling addictions, and from improving occupational health and safety to introducing measures for climate and environmental protection.

The enforcement of Single Market legislation should neither limit the democratic space available to public authorities nor lead to ‘self-censorship’ based on the anticipation that the Commission could launch infringement procedures sparked by corporate complaints.

4. TURF WARS DETERMINE THE COMMISSION'S POSITION

The success of industry complaints regarding a particular piece of legislation also depends on the position of the Commission and its various departments on the measure in question. It is important to note that within the Commission there are ongoing power struggles between the different Directorate-Generals about how to interpret and enforce Single Market legislation. The French bans on short-distance flights and Bisphenol A exemplify how different DG agendas can significantly shape the success or failure of climate or consumer protection measures. Whereas the Commission's DG MOVE opposed the French short-haul flight ban, DG CLIMA endorsed it. Eventually, a compromise was reached to ban fewer inland flight routes than originally proposed and to re-evaluate the legislation every three years. In terms of the Bisphenol A ban, while DG GROW was keen to launch a full-blown infringement process, it was ultimately the health concerns raised by the Directorate-General for Health and Food Safety (DG SANTE) that led to the end of the Commission's investigations.

In turn, this means for example that the ability to pursue climate-friendly policies hinges on the political balance of power between Commission departments and the concrete priorities set by the European Commission for its term of office. The current Von der Leyen Commission's explicit focus on climate protection – and the relatively strong position this gives DG CLIMA – has likely prevented even stronger intervention against national-level climate protection measures in the name of the Single Market. However, this might all change starting in 2024 when a new Commission takes office.

5. LACK OF TRANSPARENCY PREVENTS ACCOUNTABILITY

In this report we have attempted to assess how companies and industry associations make use of the Single Market enforcement system to oppose progressive social and climate protection measures, as well as to gauge how successful they are with this strategy. We have often faced serious hurdles in our investigations due to the lack of transparency demonstrated by the Commission.

For this report alone, we filed nearly 40 freedom of information requests to obtain information about who lodged a complaint or about the outcome of an investigation. We repeatedly failed to obtain the requested information, either because *cases were still ongoing* or because the Commission argued that releasing information “would risk jeopardising the willingness of the Member State to cooperate [...] even after the definitive closure of the case”.¹⁰² In terms of the Commission’s investigation of the French ban on short-haul flights, we were even forced to involve the European Ombudsman to enforce our right to information. More than nine months after submitting the first FOI request, the European Commission finally released three documents related to the complaint against the French short-distance flight ban; access to several other documents was rejected. This very restrictive approach to transparency makes public scrutiny of how the European Commission uses its Single Market enforcement powers impossible.

While a *database for infringement cases exists*, it does not include complaints, formal notifications or outcomes. Furthermore, everything that happens in the pre-infringement phase remains invisible. With regard to the newly established platform for services notifications, although the Commission collects comments from stakeholders it does not publish them. Only in the TRIS procedure are comments made public, and the Commission only recently started to publish its detailed opinions on the TRIS website.

This lack of transparency complicates any assessment of how the Commission operates within the Single Market enforcement system, or how the business sector influences the Commission via this system. In essence, citizens are effectively shut out of important affairs that relate to core functions of their welfare states. The Commission’s bureaucratic procedures prevent open debate; they are based on exchanges between a few actors, very often business groups. This makes it nearly impossible to hold Commission officials accountable, especially when interventions happen at an informal pre-infringement level.

6. THINGS MIGHT GET WORSE: TIGHTENING THE SCREWS ON THE SINGLE MARKET ENFORCEMENT SYSTEM

Since 2021, industry associations including BusinessEurope, EuroCommerce and the European Roundtable for Industry (ERT) have campaigned for the stronger enforcement of Single Market legislation. In December 2021, [the ERT launched a campaign](#) to eliminate what they refer to as ‘regulatory barriers’, which are in many cases entirely legitimate laws and policies.¹⁰³ In June 2022, these [lobby groups](#) demanded that the EU remove “all barriers to cross-border business operations and intra-EU investments, forming a fully-fledged Single Market for all economic activities”¹⁰³ and highlighted deregulation of the services sector as a main priority. The ERT has established very close cooperation with Commission President Von der Leyen, as it has done with her predecessors, attending frequent meetings to discuss issues like energy supply,¹⁰³ industrial policy (in particular a wish for subsidies to match those offered by the US government’s Inflation Reduction Act), and Single Market reforms.¹⁰³ Following the Russian invasion of Ukraine, the ERT pressed for an urgent Single Market “battle-plan for removing the many remaining intra-EU barriers” in a [presentation to Von der Leyen](#).

The European Commission parroted many of these industry demands during its 30-year Single Market anniversary celebrations. Its [communication on ‘The Single Market at 30’](#), launched in mid-March, announced a whole range of new initiatives geared towards “enforcing existing Single Market rules and removing Member State-level barriers, in particular barriers to the cross-border provision of services [...]”. Amongst others, these included:

Expanding the 2020 Proportionality Test Directive: this directive currently only applies to regulated professional services, but the Commission intends to build this tool into the Services Directive notification system, thereby forcing governments to provide far more elaborate justification for all new regulations around services (“to ensure that new regulations which they introduce are justified and proportionate”). This is a new attempt by the Commission to reintroduce measures that were proposed in 2017 in the Services Notification Procedure Directive; this plan was defeated in 2020 after civil society, cities and trade unions sounded the alarm.

Introducing the single notification

window: There are currently several notification tools located within different pieces of Single Market legislation; this instrument would create a single entry point for all notifications. Although this may sound like a simpler approach, the initiative calls for critical scrutiny as the notification window could transform the lighter model that currently exists for services notifications into the much stricter notification and approval system that is required for national-level rules for product standards.

Setting up Single Market offices: the Commission's *communication on 'The Single Market at 30'* proposes *setting up new* Single Market Offices, one in each Member State, specifically to "address Single Market barriers". They would be staffed with senior leadership and provided with appropriate resources "to proactively raise issues and propose solutions within the national decision-making system".

This would anchor the enforcement system within the Member State's administration. This proposal could potentially create new obstacles at an early stage of national and sub-national decision-making processes, and could be particularly problematic for progressive city-level measures that could be interpreted as being at odds with Single Market rules.

Getting rid of gold-plating: The Commission has announced its intention to abolish 'gold-plating': the transposition and implementation of EU directives by governments using standards that exceed the minimum required level. The prevention of gold-plating is a longstanding demand of BusinessEurope and other corporate lobby groups.

The Commission also published a [Communication on competitiveness](#) in March 2023, which included a call to strengthen the so-called 'Better Regulation' initiative. This agenda is strongly focused on avoiding regulatory 'burdens' for business. Having already embraced a so-called 'one-in, one-out' approach to new EU level regulations, the Von der Leyen Commission also hereby added a competitiveness check and "[a methodology for assessing the cumulative impact of policies and a more innovation-friendly approach to regulation](#)".

Together, these Commission initiatives will create new obstacles for progressive rules on both the EU and national levels: in short, a double whammy for Europe's social-ecological transformation. The European Trade Union Conference (ETUC) heavily criticised the reforms as a [Single Market deregulation plan](#) that "puts the EU on course for a race to the bottom", taking us even further away from a social Europe.

THE 'BETTER REGULATION' INITIATIVE

The Commission's 'Better Regulation' approach was designed in cooperation with industry associations such as BusinessEurope, and corporate lobbies hold it in high esteem. For anyone who is concerned about the environment, workers' rights or public health, this agenda is cause for concern; it is used to weaken or abolish current EU level rules as well as to significantly hamper or even halt the introduction of new ones. Behind its positive-sounding façade there lurks a deregulation agenda to remove or dilute rules (laws, regulations and implementing acts) and other policy tools that companies perceive as impediments to doing business. This approach includes the annual scrapping of rules under REFIT, the European Commission's Regulatory Fitness and Performance programme, as well as the implementation of policy changes that throw major obstacles in the way of new social and environmental regulations.

The Regulatory Scrutiny Board (RSB), an independent body within the Commission, helps to 'improve' regulations by closely examining all proposed EU legislation initiatives and their accompanying impact assessments. It has a de facto veto power, and frequently intervenes to weaken proposed rules. In 2022, for example, the RSB gave a second 'red card' to the Commission's draft proposals for global corporate accountability rules for EU companies.

For a more detailed analysis of the Better Regulation initiative, read our assessment.

SINGLE MARKET REFORM – IS THERE MORE TO COME?

In addition to the new measures announced in March, further tightening of Single Market enforcement mechanisms may also be in the pipeline. In a [July 2022 speech](#), European Commissioner McGuinness announced that a 'toolbox for investment protection and facilitation' to better safeguard investor rights within the EU was underway. This was in response to the Commission's failure to establish an EU-wide Investor-State Dispute Settlement (ISDS), a highly controversial system of international arbitration tribunals in which foreign companies can sue nation-states if their legislation restricts investors' profit expectations. As a consolation prize, Commissioner McGuinness proposed that existing Single Market enforcement mechanisms could be instead be given "an investment protection dimension".¹⁰⁷

Perhaps the most worrying announcement in Commissioner McGuinness' speech was the plan to give the European Semester an investment protection dimension. The European Semester is a central part of the EU's fiscal discipline rules (the economic governance system) within which the Commission holds very strong enforcement powers. Established in 2011, it was one of the main tools the Troika used during the European sovereign debt crisis to force Member States into austerity politics. Non-compliance has harsh consequences: for example, the reduction of EU funds. McGuinness' proposal is in line with demands by corporate lobby groups such as the European Roundtable for Industry (ERT) that the European Semester be used to force public authorities to address "[the obstacles for companies which they need to remove](#)". Fortunately, this plan was not mentioned in the Commission's March 2023 Communication. Any further steps in this direction should be prevented, as the proposal would boost corporate privileges and undermine governments' much-needed regulatory space.

7. THE IMPORTANCE OF RESISTANCE AND FRONT-RUNNERS

The situation is by no means hopeless. The history of political battles over the Single Market also includes victories won by strong civil society alliances. Protests against the adoption of the original Bolkestein Directive resulted in a weakened directive. And the latest attempt to extend the Services Directive was prevented by a broad alliance of mayors, NGOs and trade unions in 2020.

It is crucially important that governments are empowered to become front-runners in initiating policy changes that can subsequently be harmonised at EU level. Denmark's persistent research on the negative health effects of Bisphenol A eventually – though regrettably after many years of delay – led to steps being taken to ban the harmful substance at the European level. France's battles against single-use plastics have become a blueprint for countries such

as Spain that also want to surpass lacklustre European efforts to ban plastic products. Making social and environmental progress at EU level may also involve learning from the setbacks and defeats of other Member States. After several countries, including Estonia and Finland, failed to introduce taxes on sugary products, Ireland managed to introduce a sugar tax by skilfully involving the Commission in the drafting of the country's directive.¹⁰⁸

The bottom line is clear: the way in which the Commission and industry are subverting democratic policies by using Single Market rules to delay and weaken initiatives taken by public authorities is unacceptable. Given the magnitude of the social and ecological transition required to cope with the looming climate crisis, the EU's only option is to ensure environmental health and social protection as its top priorities.

8. THE SINGLE MARKET MUST NOT THWART THE SOCIAL AND ECOLOGICAL TRANSITION

National governments and cities are often at the forefront of social and ecological transformation, developing innovative policies to tackle climate change and other major challenges. Examples range from the French government's ban on short-distance flights that can easily be replaced by train travel to the Dutch government's intention to cut back Schiphol airport flights and the Spanish island of Formentera's wish to protect people and the environment from unsustainable mass tourism.

Cities have played a crucial role in responding to the new challenges emerging from today's platform economy. During the period when the Commission viewed Airbnb, Uber and other platform companies as purely benign players in the new digital economy, cities started to lead the way in regulating the harmful real-world impacts of these companies, such as Airbnb's disastrous impact on the affordability of housing in cities across Europe.

Our research shows that corporations and their lobby groups are actively using the Single Market enforcement system to snuff out new social and environmental policy measures emerging at the national level. New mechanisms are needed to shield national and local governments from these corporate attempts to pre-empt progressive policy initiatives. Preserving policy space is essential for promoting leadership and innovation, for addressing emerging social and ecological challenges, and for protecting fundamental democratic rights from being hollowed out. We need to transform the Single Market so it is no longer an obstacle to essential climate and social protection initiatives.

6. CONCLUSION

It is crucial that the Single Market and its enforcement system undergo a metamorphosis with the goal of protecting the democratic space of public authorities and supporting Europe's ecological and social transition. To create an environment that enables these ambitious transition initiatives, changes will need to be made in directives related to services, state aid, public procurement and other Single Market legislation introduced during the peak neoliberal years.

As this transformation will take time, there is an urgent need for short-term measures in the interim to facilitate governments, regions, and cities in making quick headway. One such measure could be a 'just transition' exemption, which would guarantee that initiatives promoting a socially just climate and environment transition would not be challenged under Single Market enforcement rules. Public services and collective labour law should also be more comprehensively exempt from challenges.

Moreover, there is a strong need to make the infringement and informal pre-infringement procedures more transparent, including the role of corporate complaints. There are several steps the Commission should take to increase transparency regarding the Single Market enforcement mechanisms. First, it should set up a public information system for the registration of complaints, informal pre-infringement investigations, and infringement procedures. Improved transparency around ongoing cases is crucial for enabling public scrutiny and for creating accountability about the Commission's use of its powers in this field. In particular, the increasing tendency of the Commission to engage in the informal enforcement of the Single Market begs for much greater transparency.

Improved transparency should include the proactive publishing of key documents concerning investigations, including letters of formal notice, reasoned opinions, and decisions in infringement and pre-infringement procedures. These steps will make it much easier for European citizens to assess the Commission's measures against specific Member States or municipal governments. Moreover, the European Parliament should receive a regular update about the impact of infringement cases at all stages so that it can effectively hold the European Commission accountable for its approach.

Today, as we mark 30 years of the Single Market, it is high time for the EU to take a radically different kind of leadership: one that revitalises democracy and hastens the social-ecological transformation in Europe.

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