

POLICY BRIEF SERIES

EU LITIGATION PRACTICE:

How does the EU protect EU values in Court?

RIGHTS
DEMOCRACY

RECLAIM

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Executive summary

This document reviews four internal European Commission guidelines on infringement proceedings: *Prioritisation Guidelines*, *Monitoring Guidelines*, *EU Pilot Guidelines* and the *Sanctions Methodology*. These frameworks guide officials on which EU law violations to prioritise, how to manage complaints, when to use diplomatic versus legal action, and how to calculate financial sanctions.





Our analysis shows these guidelines fail to prioritise serious breaches of the Charter of Fundamental Rights of the EU (CFREU or the Charter) and Article 2 TEU values, such as democracy, non-discrimination and the rule of law. We propose changes to ensure stronger enforcement against such violations.

Key Recommendations:

- 1. Make Article 2 TEU Values a Priority:** Amend the guidelines to prioritise serious breaches of CFREU rights and Article 2 TEU values.
- 2. Focus on Ignored Court Rulings:** Initiate cases against Member States that defy CJEU rulings, particularly on CFREU rights and Article 2 TEU values.
- 3. Act Faster on Complaints:** Speed up handling of complaints and shorten pre-litigation procedures to deliver justice more quickly.
- 4. Request Interim Measures:** Ensure interim measures are systematically requested to prevent prolonged violations of Article 2 TEU values.
- 5. Address Systemic Violations:** Revise the guidelines to target patterns of interconnected breaches through systemic infringement proceedings.

Methodological note

This document examines three key internal European Commission guidelines that shape the enforcement of EU law, specifically:

-  **Guidelines on the Prioritisation of Infringements (2016):** This document explains which EU law violations Commission officials should prioritise and which to drop.
-  **Internal Guidelines "Monitoring the Application of EU law" (2017):** This document builds on the "*Prioritisation Guidelines*" and provides officials with clear step-by-step instructions for managing infringements. It covers everything from processing complaints and deciding which cases to pursue or drop, to using internal IT systems for record-keeping and getting approval from senior management for key decisions.
-  **EU Pilot: Guidelines for Commission Services (2020):** This document outlines how and when diplomacy should replace legal action to address EU law violations.
-  **Methodology for the Calculation of Financial Sanctions in Infringements (2022):** This document explains the criteria used by the Commission to propose sanctions to the CJEU for Member States' ignoring Court judgments.

Scope of the review

Not all of the reviewed documents were publicly available: we obtained access to some through Freedom of Information requests. The guidelines are now available on RECLAIM website [[here](#)] for public reference. While every effort has been made to provide an accurate assessment, it is possible that additional internal guidance or practices exist that are not accessible to RECLAIM.

If you are not familiar with how infringement procedures work, we suggest checking out Section 2 of this document for a refresher. If you already know the basics, feel free to dive straight into our analysis.

Context

In the past decades, there has been a substantial decline in the number of infringement cases opened by the European Commission for the incorrect implementation of EU law¹.

Illiberal governments have seized this opportunity to attack the values on which the Union is based. The European Commission, as Guardian of the Treaties, has the duty to defend Art. 2 TEU values like the rule of law or human rights when under attack.

RECLAIM is advocating for the amendment of the existing infringement guidelines to effectively uphold those values. The Member States have repeatedly pledged to support the European Commission when carrying out this task².

Shortcomings in Commission policy & suggested solutions

In this section we pinpoint the gaps in the guidelines that weaken the EU's ability to safeguard Art. 2 TEU values and CFREU rights and propose solutions to address them. We also propose adapting the guidelines to better confront systemic challenges and ensure the protection of rights and values across all Member States.

1.1. Article 2 TEU values are not a Commission's EU law enforcement priority



Problem #1: The European Commission does not include Article 2 TEU values or of CFREU rights as part of its enforcement priorities

The European Commission's enforcement guidelines prioritise a very narrow subset of rule of law violations, such as laws that prevent judges from asking questions to the EU Court of Justice or foreclose the possibility of seeking national remedies for EU rights violations³. This approach fails to protect other critical Article 2 TEU values, like democracy, equality, and the rights of minorities, which are increasingly under attack.

¹ R. Daniel Kelemen and Tommaso Pavone '[Forbearance and Enforcement at the European Commission: A Response to von der Leyen](#)' (31 May 2022).

² Diplomatic statement '[Declaration of fourteen European Member States on the protection of LGBTIQ persons in the European Union](#)' (17 May 2021); Diplomatic statement '[Declaration on the continued advancement of the human rights of LGBTIQ persons in Europe](#)' (17 May 2024); European Council [June 2024 Conclusions, Annex: Strategic Agenda 2024-2029](#) (27 June 2024).

³ The guidance argues that the Commission will focus its efforts in "*persistent or systemic failures on the part of Member States to implement and correctly apply EU law*". Those failures are then fleshed out in a list of eight EU law enforcement priorities. These include: (1) non-communicated or (2) late transposition of directives, (3) non-compliance with CJEU's judgments in infringement proceedings, (4) damage to the EU's financial interests, (5) violations of EU exclusive powers, (6) rules that impede preliminary references to the CJEU, (7) rules that prevent national courts from acknowledging the primacy of EU law and (8) national rules that foreclose redress for breaches of EU law – See Internal Guidelines "[Monitoring the application of EU law](#)" (18 July 2017) Ref. Ares(2024)8245496, p 8.

Initially tailored to address specific issues during Poland's rule of law crisis⁴, this limited focus is now outdated. Threats have broadened: from attacks on vulnerable communities to censorship of opposition and the silencing of civil society, European democracies face unprecedented challenges.



Solution #1: Make CFREU and Article 2 TEU Violations an EU Law Enforcement Priority for Infringements

The European Commission already publicly champions Article 2 TEU values—democracy, equality, and the rights of minorities⁵. Now this rhetoric needs to be translated into tangible action.

With planned revisions of its guidelines between December 2025 and December 2027, following the European Court of Auditors (ECA) and EP recommendations⁶, the Commission has an unprecedented opportunity to align its guidelines with the expressed political priorities of its leadership.

RECLAIM suggests that the revised guidelines recognise and actively enforce all Article 2 TEU values by amending the Internal Guidelines "Monitoring the application of EU law" as follows:


⁴Before 2017 EU values were not listed at all. European Commission Communication "A Europe of Results – Applying Community Law" (5 September 2007) COM(2007) 502 final, p 9.

⁵ European Council June 2024 Conclusions and its Annex "Strategic Agenda 2024-2029"; Europe's Choice: Political Guidelines for the Next European Commission 2024-2029.

⁶ European Commission "[Replies to the European Court of Auditors Special Report 'Enforcing EU Law'](#)" (11 December 2024), p 5.

**Table 1. Proposed Amendment to the Internal Guidelines
"Monitoring the Application of EU Law"**

<p>Include as an enforcement priority:</p> <ul style="list-style-type: none"> • Member State laws and administrative practices that seriously violate CFREU rights and/or Art. 2 TEU values. <p>Introduce the following non-exhaustive criteria to determine if a case meets the threshold of a "serious violation of CFREU rights and/or Art. 2 TEU values" for opening an infringement procedure:⁷</p> <ul style="list-style-type: none"> • Intensity with which the fundamental rights are restricted • Number of fundamental rights affected • The context within which the law is applied and its effects • Whether the law is being replicated in another Member State. <p>Use these possible indicators to assess if a breach is particularly serious:⁸</p> <ul style="list-style-type: none"> • ECtHR and CJEU's case-law • Reports from FRA / Council of Europe / international organisations • Rule of law reports • Other EU instruments and procedures (e.g. Art. 7 TEU, Conditionality Regulation, European semester, etc.). • Well-motivated complaints from leading human rights NGOs.
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 **Problem #2: The European Commission Relies Too Heavily on the Proper Functioning of National Courts**

The European Commission's current guidance instructs its officials to not open infringement procedures if there is a preliminary reference pending on the same breach of EU law⁹. This assumes that once a preliminary ruling is delivered, courts and public authorities in all Member States consistently uphold the primacy of EU law and reliably enforce them.

⁷ To detect whether a case breaches the values of Article 2 TEU, the Commission could assess the scope of the breach (that is, the number of fundamental rights breached), its intensity (how severe the breaches of fundamental rights are) and its effects on society (how widespread and damaging to the fabric of society the measure or practice under examination is). The Commission used this strategy in the case [C-769/22 Commission v Hungary \(Values of the Union\)](#).

⁸ Most of these indicators have been taken from those used by the Commission when assessing breaches of fundamental rights for the purposes of EU funding conditionality. See Commission's Internal Checklist on the Fulfilment of the Horizontal Enabling Condition on the Effective Application and Implementation of the Charter of Fundamental Rights (Ref. Ares(2022)1180131), p 1.

⁹ According to the guidelines, the European Commission does not open infringements when there are preliminary references pending and the opening of such infringements would not accelerate the resolution of the EU law violation. See Internal Guidelines "Monitoring the application of EU law" (18 July 2017) Ref. [Ares\(2024\)8245496](#), p 20.

Unfortunately, a recent study covering 17 Member States revealed that, on average, only 50% of CJEU rulings on Article 2 TEU matters, including preliminary references, are fully complied with¹⁰. In Bulgaria, this percentage drops to 16.8%.

Making matters worse, when the Commission opts not to open an infringement procedure, it also forfeits the possibility of requesting sanctions under Article 260 TFEU and to directly hold the Member State accountable through penalties. Without these financial penalties, Member States can continue to disregard EU law with little consequence. In these situations, affected populations are left without real protection, stuck in a system where their rights exist on paper but not in practice.

~~ A real-life example: LGBTIQ+ preliminary references

The CJEU delivered seminal judgments on LGBTIQ+ rights, like Coman (in 2018, on the recognition of same-sex marriages for the purposes of the free movement of citizens) or Pancharevo (in 2021, on the recognition of birth certificates with same-sex parents). However, many Member States, including Romania and Bulgaria, the addressees of those decisions, have still not complied with the said judgments. Yet the European Commission has not opened infringement proceedings on the matter, and the rights recognised by the Court have not reached all EU citizens.



Solution #2: Prioritise Non-Compliance with CJEU Preliminary Rulings on CFREU and Article 2 TEU Values' Complaints

The Commission should treat cases of non-compliance with CJEU preliminary rulings as clear priorities for opening infringement procedures. While the Commission cannot monitor the implementation of every preliminary ruling, NGOs' complaints can serve as a critical tool to identify systemic failures to comply with CJEU rulings. Importantly, ignoring preliminary rulings inherently reveals rule of law problems in a Member State, which the Commission has already recognised as an enforcement priority¹¹.

To underscore the relevance of such cases, the Internal Guidelines "*Monitoring the Application of EU Law*" should be amended to explicitly prioritise them.

**Table 2. Proposed Amendment to the Internal Guidelines
"Monitoring the Application of EU Law" (cont.)**

Include as an enforcement priority:

- Complaints that are well-documented and concern national laws, administrative practices, or judicial decisions that conflict with a CJEU judgment delivered in a preliminary reference related to CFREU rights and Article 2 TEU values.

¹⁰ Democracy Reporting International, European Implementation Network (EIN), *Justice Delayed, Justice Denied: The State of Rule of Law in EU Member States*, 2024 Edition.

¹¹ See European Council June 2024 Conclusions and its Annex "Strategic Agenda 2024-2029"; Europe's Choice: Political Guidelines for the Next European Commission 2024-2029, pp 23-24.

1.2. Commission's guidance and practice are too slow



Problem #3: Infringement Proceedings Take Too Long to be Able to Deliver Justice

In the best-case scenario, infringement cases take up to six years from complaint to judgment—half of that time spent in prolonged dialogue with the Member State under investigation. In reality, delays are common, as the Commission often misses its own self-imposed deadlines¹², making the process even longer¹³.

Post-judgment, the pathway to justice remains uncertain. The Commission sets an 18-month deadline for Member States to comply with CJEU rulings, but in half of the cases, it grants even more time¹⁴. If after this extended period of grace, the Member State still refuse to rectify, the Commission must start another court case to impose sanctions, adding up to two more years¹⁵.

This fragmented process leaves victims waiting almost a decade for remedies —six years for the initial judgment, up to two years of grace, and another two years for sanctions proceedings. Such lengths are unacceptable for cases of serious violations of CFREU rights or Article 2 TEU values, which cause real-life misery to thousands of citizens.

Yet, the Commission's guidelines fail to address the key ways to speed up the process and protect victims. They provide no clear instructions on when to request interim measures, shorten pre-litigation procedures, or push the Court for faster rulings. These changes are urgently needed.

~~ A real-life example: Orbán's attacks on academic freedom and LGBTIQ+ rights.

When Hungary attacked academic freedom, the Commission launched an infringement and referred the country to the CJEU. However, by the time the judgement was delivered, the Central European University had already left the country¹⁶. Similarly, when Hungary attacked LGBTIQ+ rights, the Commission challenged the law. However, as it has not

¹² The Commission sets a one-year deadline to investigate complaints and self-initiated cases before issuing a formal notice to the Member State under investigation. It then allows up to three more years for negotiations with the Member State before deciding whether to file a lawsuit. Once the lawsuit is filed, the Court takes 20.8 months on average to deliver a ruling. Calculations based on European Court of Auditors "[Special Report 28/2024: Enforcing EU law](#)" (17 December 2024), p 34; Annual Report 2023: Statistics concerning the judicial activity of the Court of Justice (available [here](#)), p 22; Internal Guidelines "[Monitoring the application of EU law](#)" (18 July 2017) Ref. [Ares\(2024\)8245496](#), p 48.

¹³ Most delays occur before the Commission even opens an infringement case. According to [its 2023 Annual Report on the application of EU law](#), the Commission took an average of 69 weeks to process complaints in 2023—well beyond the intended one-year timeline. In 2022, the Commission spent an average of 112 weeks in the pre-infringement dialogue phase (i.e., the EU Pilot stage), taking twice as long as its self-imposed one-year limit.

¹⁴ European Court of Auditors "[Special Report 28/2024: Enforcing EU law](#)" (17 December 2024), p 37.

¹⁵ That time includes 4 months for the pre-infringement phase and the 20.8 months that, on average, the European Court of Justice takes to decide on direct actions. See Statistics concerning the judicial activity of the Court of Justice (available [here](#)).

¹⁶ The Guardian "[Dark day for freedom: Soros-affiliated university quits Hungary](#)" (3 December 2018).

requested interim measures¹⁷, the law has already been applied for more than three and a half years, and censorship is widespread¹⁸.

In the administrative phase:



Solution #3A: The Commission Should Fast-Track Well-Motivated CFREU Complaints

The guidelines must be amended to instruct officials to fast-track well-motivated complaints about serious violations of CFREU rights and Article 2 TEU values. To prevent unnecessary delays, the Commission should clearly instruct officials to resolve these complaints (by closing them or initiating an infringement procedure) within 6 months instead of the standard 12-month timeline. They should also keep complainants informed – something that, according to the European Court of Auditors, the Commission often fails to do.¹⁹



Solution #3B: The Commission Should Skip Diplomatic Dialogue in Cases Involving Serious Breaches of CFREU and Article 2 TEU

Delays in the handling of infringement cases are often linked to lengthy diplomatic exchanges between the Commission and the Member States.²⁰ Many of those take place in the dialogue that precedes the opening of a formal infringement.

According to the Commission's guidance, serious CFREU and Art. 2 TEU violations should always justify skipping EU Pilot procedures – a formalised form of diplomatic dialogue that takes place through a specific Commission software.²¹

However, there is no guidance on when and for how long to engage in the informal exchange of letters. To avoid unnecessary delays, the Commission should update its guidelines to explicitly prohibit engaging in the exchange of letters in cases of serious CFREU and Art. 2 TEU violations



Solution #3C: The Commission Should Shorten Pre-Litigation Phases in Cases Involving Serious Breaches of CFREU and Article 2 TEU

Right now, the Commission gives Member States two months to explain their actions at each stage of the pre-litigation phase—two months after the letter of formal notice and another two after the reasoned opinion. Add to this the Commission's own lengthy review process and monthly decision cycles, and cases drag on.

For serious and deliberate violations of CFREU rights or Article 2 TEU values, the guidelines should cut these deadlines to one month—or even two weeks. This

¹⁷ Action brought on 19 December 2022 in [Case C-769/22 European Commission v Hungary](#).

¹⁸ Hátter Society 'The Anti-LGBTQI Law of Hungary in Action: A Combination of State- and Self-Enforcement' (November 2024), pp 28-29.

¹⁹ European Court of Auditors "[Special Report 28/2024: Enforcing EU law](#)" (17 December 2024), pp 27-28.

²⁰ *Ibid*, p 46.

²¹ According to the EU Pilot Guidelines, there are four type of cases where EU Pilot should be avoided: (1) high political priorities, (2) the Member State made its position on the matter clear, (3) the Commission already has detailed and clear information on matter and (4) urgent cases. See European Commission "EU Pilot: Guidelines for the Commission services" (July 2020) Ref. Ares(2020)4741094, p 4.

approach aligns with CJEU case law, which allows for shorter deadlines “where there is an urgent need to remedy an infringement or where the Member State is fully aware of the Commission’s views long before the procedure starts”.²²

In the judicial phase:



Solution #3D: The Commission Should Request Interim Measures in Cases Involving CFREU Rights and Article 2 TEU Values

The guidelines do not explain when officials should request interim measures from the CJEU. Interim measures are urgent, temporary orders issued by the CJEU to suspend the implementation of laws or practices that may cause irreparable harm while a case is being decided.

The Commission should amend its guidelines to ensure that for cases involving CFREU rights and Article 2 TEU values, it systematically requests interim measures to prevent violations from continuing for years until a final judgment is delivered.



Solution #3E: The Commission Should Request Expedited Procedures for Cases Involving Serious Breaches of CFREU and Article 2 TEU.

The guidelines need to spell out when to request faster judicial proceedings for serious breaches of CFREU rights and Article 2 TEU values. Right now, they leave officials guessing about when to take this important step.²³



Solution #3F: The Commission Should Shorten the Leniency Period it Gives to Member States to Comply with Court Judgments

The Commission gives Member States between 8 to 18 months to comply with CJEU judgments delivered in infringement proceedings before referring them back to the Court for sanctions under Art. 260 TFEU.²⁴ This period is clearly excessive for cases of breaches of Art. 2 TEU values or CFREU rights, where Member States were already forewarned about the gravity of their actions during the pre-litigation and litigation procedures. Hence, the Commission should reduce the time for compliance with judgments delivered in infringement proceedings to 6 to 10 months.

²² Case C-66/18 Commission v Hungary (CEU) [2020] ECLI:EU:C:2020:792, paras 47, 50.

²³ Provided for in Article 133 and subsequent of the European Court of Justice Rules of Procedure.

²⁴ Internal Guidelines “Monitoring the application of EU law” (18 July 2017) Ref. Ares(2024)8245496, p 49.

**Table 3. Proposed Amendment to the Internal Guidelines
"Monitoring the Application of EU Law" (bis2)**

Introduce guidance on requesting interim measures during the litigation phase:

- Specify that for cases involving very serious CFREU and Article 2 TEU violations, interim measures to suspend the violating law or practice until a judgment is delivered will be systematically requested.

Introduce guidance on requesting expedited litigation procedures:

- Specify that for cases involving very serious CFREU and Article 2 TEU violations, the Commission should systematically request expedited procedures to CJEU

Introduce guidance on when to shorten pre-litigation complaints:

- Specify that for cases involving very serious CFREU and Article 2 TEU violations, Member State reply to times and Commission assessment timelines should be reduced to one month or two weeks.

Introduce guidance on which complaints should be fast-tracked:

- Specify that for well-motivated complaints involving very serious CFREU and Article 2 TEU violations, the investigation period should be reduced from 12 to 6 months.

Modify the guidance on the period to refer Member States back to Court under Article 260 TFEU:

- Specify that for cases involving very serious CFREU and Article 2 TEU violations, the period for Member States to comply with judgments delivered on infringement proceedings should be reduced to 6 to 10 months.

Introduce guidance to skip diplomatic dialogue:

- Specify that for cases involving very serious CFREU and Article 2 TEU violations, EU Pilot and exchange of letters should be skipped.

1.3. Sanctions lack deterrent power, and enforcement is too narrow



Problem #4: Sanctions Are Too Low and infrequent

The sanctions the Commission requests the Court to impose upon Member States when they do not comply with judgments are too infrequent and low to make them rectify.

The numbers speak for themselves. Sanctions are infrequent: according to ECA, the Court of Justice has imposed them in 47 cases since 1982, barely 1.5 cases per year²⁵. And they are low: out of the 16 infringements with ongoing sanctions, in 13 of them the Member States had been paying for more than 3 years, and in 6 cases for more than 8 years, raising concerns about their deterrence.²⁶



Solution #4: Reform Sanctions Calculation Methodology to Make Them Heavier

The European Commission has already agreed to review its sanctions methodology by December 2026.²⁷ In RECLAIM's view, the Commission should reinforce, among other things, the weight of the coefficient for seriousness. As violations of fundamental rights are already considered "particularly serious" by the Commission,²⁸ strengthening this coefficient would increase the price tag of egregious rights violations.



Problem #5: Commission Guidelines Fail to Tackle Systemic Patterns of Violations

The current guidelines focus on addressing individual violations of EU law but lack a framework for addressing systemic patterns of interconnected breaches. This approach is insufficient to confront Member States where deliberate, coordinated violations of CFREU rights and Article 2 TEU values are part of an overarching strategy to erode democracy, the rule of law, and fundamental rights.

~~ A real-life example: forcing Hungarian judges into retirement

In 2011 Hungarian judges were forced into retirement after a law retroactively lowered their retirement age. The Commission brought Hungary to the Court on the basis of a breach of the EU directive that prohibited age discrimination in employment and won the case.²⁹ This pyrrhic victory allowed the illegally retired judges to either be reinstated in lower court positions or to obtain financial compensation. Most judges opted for the latter.

²⁵ European Court of Auditors "[Special Report 28/2024: Enforcing EU law](#)" (17 December 2024), pp 39-40.

²⁶ Ibid, pp 39-40 and 46.

²⁷ European Commission "[Replies to the European Court of Auditors Special Report 'Enforcing EU Law'](#)" (11 December 2024), p 5.

²⁸ European Commission Communication "[Financial sanctions in infringement proceedings](#)" (4 January 2023) 2023/C 2/01, point 3.2.1.1.

²⁹ Case [C-286/12 Commission v. Hungary](#) ECLI:EU:C:2012:687.

However, the broader issues of the attacks on judicial independence were left unaddressed.³⁰



Solution #5: Develop Guidance as to When to Initiate Systemic Infringements

The Commission should revise its internal guidelines to explicitly provide for the possibility of initiation of “systemic” infringement proceedings. This would allow Commission officials to bundle multiple interrelated violations into one single, comprehensive case.³¹ In addition, systemic infringements capture better the severity of the breach of EU law and justify higher sanctions at the CJEU than individualised infringements and, thus, provide greater deterrence.

In the abovementioned case of the Hungarian judges, systemic infringement actions would have enabled the Commission to tackle patterns of attacks on judicial independence that collectively undermined the rule of law – one of Article 2 TEU values – ensuring that such deliberate and structural attack was addressed effectively.

To achieve this, the guidelines should include a clear framework for assessing systemic breaches. This framework should guide officials in evaluating the cumulative impact of multiple violations, even if individual breaches seem minor or isolated, and determining when to opt for systemic infringement proceedings.

³⁰ Bárd P., Pech L., [‘How to Build and Consolidate a Partly Free Pseudo Democracy by Constitutional Means in Three Steps: The “Hungarian Model”’](#) (2019) RECONNECT Working Paper No 4, 2019, 18-19.

³¹ Scheppele K. et al, [EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union](#), 2020.

Next steps

To effectively protect fundamental rights and EU values, the European Commission should:

- **Close the existing fundamental rights gaps in infringement policy:** when reviewing its policies on infringements to comply with ECA's recommendations, the European Commission should also use that exercise to address the shortcomings identified in terms of CFREU and Art. 2 TEU values protection in this policy paper and update its internal guidelines.
- **Revise the Methodology for the Calculation of Financial Sanctions in Infringements.** As recalled by ECA, sanctions should offer more deterrence to prevent violations of EU law.
- **Develop an Article 2 TEU and CFREU litigation roadmap.** There are many cases of national legislation breaching EU values and fundamental rights that the Commission still needs to address. As a result of the update of its infringement policies, it should come up with a roadmap to challenge those measures.
- **Link infringements with other instruments for the protection of EU values.** The Commission should ensure that the case law delivered on infringements on Art. 2 TEU values serves as conditions in EU funding conditionality and as triggers of Art. 7 TEU procedures.
- **Restore civil servant autonomy in building infringements.** Civil servants used to enjoy higher autonomy to build infringement cases before the Barroso Commission, but that was substantially reduced for political reasons.³² That autonomy needs to be restored to ensure the effective application of EU law.

³² R. Daniel Kelemen and Tomaso Pavone, '[Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union](#)' (21 December 2021), pp 23-24.

Annex I: Infringements' Flowchart: Steps, Duration & Governance

The European Commission is the EU institution in charge of ensuring that the Member States respect EU law. One of the Commission's main tools for this purpose is infringement proceedings, which can culminate with the Commission referring a Member State to the European Court of Justice (*see next page*).

Phase 1: Investigations and informal dialogue

Infringement proceedings are initiated with an investigation over the breach of EU law, which can be the result of a complaint by a citizen or an organisation or of the Commission's own initiative. Once a breach is detected but prior to opening a formal infringement, the Commission may engage in an informal dialogue with the Member State. Both the investigations of breaches of EU law and the informal dialogue fall within the remit of the Commission services, under the scrutiny of the relevant Commissioner and in cooperation with the responsible Vice-president.

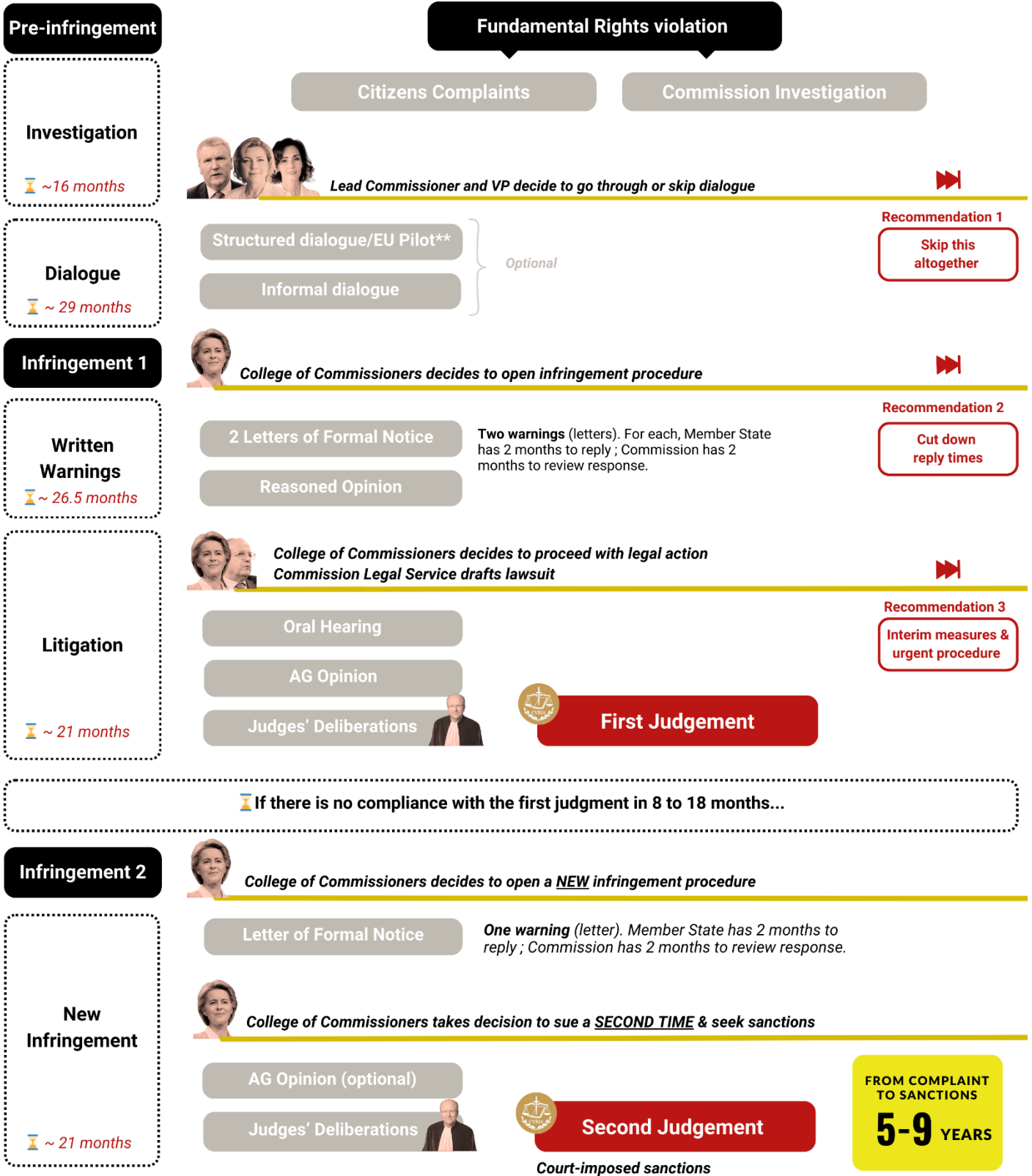
Phase 2: Pre-litigation and litigation

Once the Commission decides to launch formal infringement proceedings, the decisions are taken by the College of Commissioners. The proceedings begin with a pre-litigation phase, where the Commission sends a letter of formal notice identifying the breach of EU law. Member States usually are provided 2 months to answer it, although that time can be modified if urgency or complexity of the case so require. If the Commission is not satisfied with the answer, it then sends a reasoned opinion, asking the Member State to modify its conduct and comply with EU law within a prescribed time (usually, also 2 months). If the Member State fails to do so, then the Commission will refer the violation of EU law to the European Court of Justice. The Commission can ask the Court, through interim measures, to suspend the national measure or conduct which is suspected to be in breach of EU law until a judgment is delivered.

Phase 3 Referral of a Member State back to the Court for sanctions

Once the judgment is delivered, it is binding on the Member State. If it refuses to comply, the Commission can bring it back to the European Court of Justice for it to impose a lump sum and/or a periodic penalty payment. The Commission provides 8-18 months to Member States to comply with judgments before referring them back to the Court.

Commission's EU law violations Litigation Practice



Annex II: One-pager with Identified Problems and Suggested Solutions

In the past couple of decades, the Commission has greatly decreased the number of infringements launched, which illiberal governments have exploited to disregard Art. 2 TEU values like the rule of law or fundamental rights. As the Commission prepares to revise its infringement guidelines, RECLAIM seizes this opportunity to propose key reforms.

