



EU monitoring of tax legislations of the Member States

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Control of the application of EU law and state aid

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This presentation expresses the personal views of the author and should not be interpreted as the official position of the Commission.



Procedures and Mechanism

Setting the scene



EU law and national tax systems

EU law influences national tax legislation in two ways:

- **Positive integration:**

- Harmonisation = What MS must do
- Co-ordination = What MS could do

- **Negative integration**

- Case-law of the Court of Justice = What MS cannot do



EU monitoring of MSs' direct tax legislations is **twofolded**

I) Procedures: Member States' legal obligations are reviewed through:

A) Infringement procedures

B) Preliminary rulings of the Court of Justice EU

II) Mechanism: co-ordination of the national economic policies

**Country-specific recommendations (CSR)
adopted by the Council**



I) Procedures: legal review

WHAT rules need to be complied with?



I) Legal review

When Member States implement direct tax measures, they need to take account of their obligations under the EU law provisions, such as:

- **Fundamental freedoms (TFEU)**
- **Secondary EU law (directives)**
- State aid rules



I) Legal review

CJEU: "Member State are free to design their tax systems.....as long as"

...non-discriminatory/ non-restrictive measures are applied to comparable tax situations: internal tax situation versus tax situation presenting a cross-border element



I) Legal review

If a tax situation presents a cross-border element, either of the following States must abstain from applying discriminatory tax measures:

- **State of residence**
- **State of source**



I) Legal review: 2 means

- A) *Infringement procedures initiated by the Commission*

- B) *CJEU's rulings upon referral from a national judge*



I) Legal review

Main points of the legal reasoning followed by the Court in its assessment:

- **Applicable freedom**
- **Comparability of the tax situations**
- **Restriction**
- **Justification**
 - Necessity
 - Proportionality



I) Legal review: 2 means

A) Infringement procedures initiated by the Commission (Article 258 TFEU)

B) CJEU's rulings after a referral by a national judge (Article 267 TFEU)

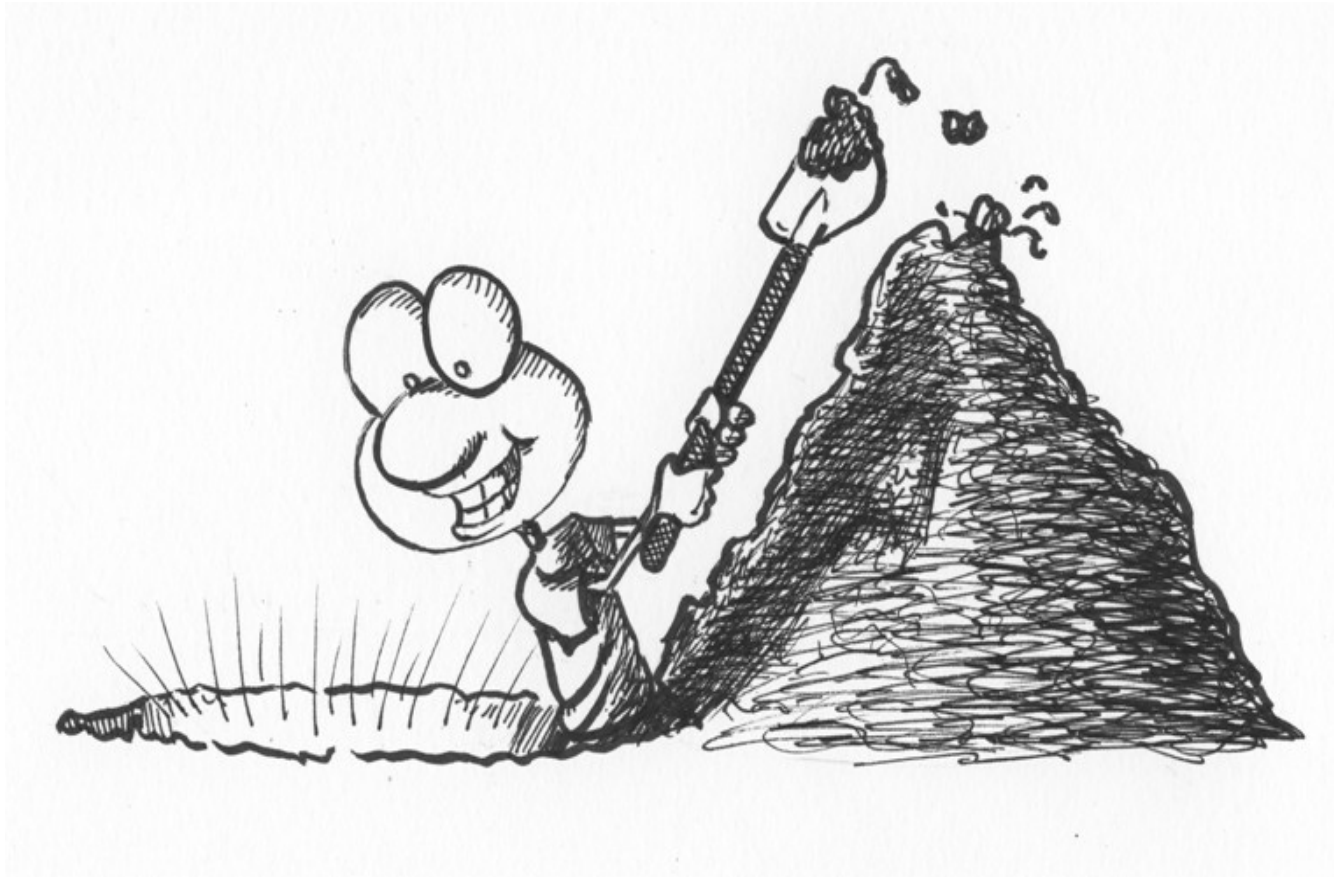


I-A) Infringement procedures

Infringement procedures initiated by the Commission under Art 258 TFEU aim at ensuring compliance with EU law provisions:

- **Mainly fundamental freedoms, as...**
- **Limited harmonisation in direct tax area (only few directives....)**

I-A) Infringement procedure: ?





I-A) Sources

- *Complaints:*

http://ec.europa.eu/eu_law/your_rights/your_rights_forms_en.htm

- *Requests for information*
- *Petitions*
- *MEP questions*

- *Own research*



I-A) Stages

- *Preliminary contacts with the MS (EU Pilot)*
- *Letter of formal notice (LFN)*
- *Reasoned opinion (RO)*
- *Referral to CJEU*
- *Closure (at any stage..)....*



I-A) Sanctions?

Infringement procedures – (if the CJEU ruling declares the incompatibility of the national tax rule with EU law) – Member State is obliged to amend its law to put it into conformity with EU law

If not, then

Article 260 TFEU infringement procedure against the State for not complying with a judgment - penalties and fines apply.



I-A) Commission's policy

General objectives:

- **Compliance by the MS with the obligations arising from primary and secondary EU law**
- **Ensuring that infringement actions both support and complement ongoing Commission policy**



I-A) Commission's policy (1)

Aspects influencing policy:

- **Limited harmonisation**
 - Treaty based litigation
- **Development of the case law drives**
 - the number of complaints received, and
 - the number of infringement procedures



I-A) Commission's policy (2)

Priorities:

- **Clear and serious infringements**
 - Complaints
 - The "*Why Only Us?*" question
- **Support for policy initiatives**
 - Own-initiative cases
 - The "*It's not only You.*" response
- **Adapting priorities at a time of economic crisis?**
 - No
 - Citizens First



I-A) Current priorities

Analysis of the MSs' direct tax legislations:

Inheritance taxation: [IP/11/1551](#)

2011 - ongoing

Cross-border workers taxation: [IP/12/340](#)

2012 - ongoing

Mobile persons taxation: [IP/14/31](#)

2014 - ongoing



I-A) What is the measure of success?

- *Cases closed after Member State change their legislation*
- *Cases become public in more detail only as from the reasoned opinion stage*
- *Relatively few cases are referred to the Court*



I-A) Cases closed

2012: 68 cases were closed out of which:

35 formal infringement procedures (NIF stage)

33 infringement cases (EU Pilot stage)

2013: 47 cases were closed out of which:

39 formal infringement procedures (NIF stage)

8 infringement cases (EU Pilot stage)

...due to compliance by Member States.



I-A) Transparency ?

- *Summary information published monthly
(as from LFN and all the way until the closure)*
http://ec.europa.eu/eu_law/infringements/infringements_decisions_en.htm
- *Press-release/MEMO
(when reasoned opinion or referral is decided):*
<http://europa.eu/rapid/search.htm>
- *Access to documents:*
http://ec.europa.eu/transparency/access_documents/index_en.htm



I-A) Limitations

CJEU ruling is an interpretation of existing national provisions,

which

only defines what legislation a Member State cannot maintain,

therefore it may lead to

asymmetric solutions given by Member States.



I) Legal review: 2 means

A) Infringement procedures initiated by the Commission

B) CJEU's rulings after a referral by a national judge (art 267 TFEU)



I-B) Preliminary rulings

Interpretation of

- **Treaties and secondary EU law**

Referring courts of MS

- **Any court or tribunal *may* refer**
- **Courts of last instance *must* refer**
(‘against whose decisions there is no judicial remedy under national law’)

Role of the Commission

- **submits written observations**
- **pleads at hearings**



I-B) Preliminary rulings

CJEU rules after a reference for a preliminary ruling sent by a national judge

CJEU rules by interpreting the EU law provisions in relation to the national direct tax provision...

The national judge will follow the guidelines given by the CJ in order to apply and solve the case in front of him...



I) Comparison of the effects of the CJEU's judgements

Preliminary rulings

- *Abstract interpretation*
- *Concerns a specific individual or company*
- *Binding interpretation*

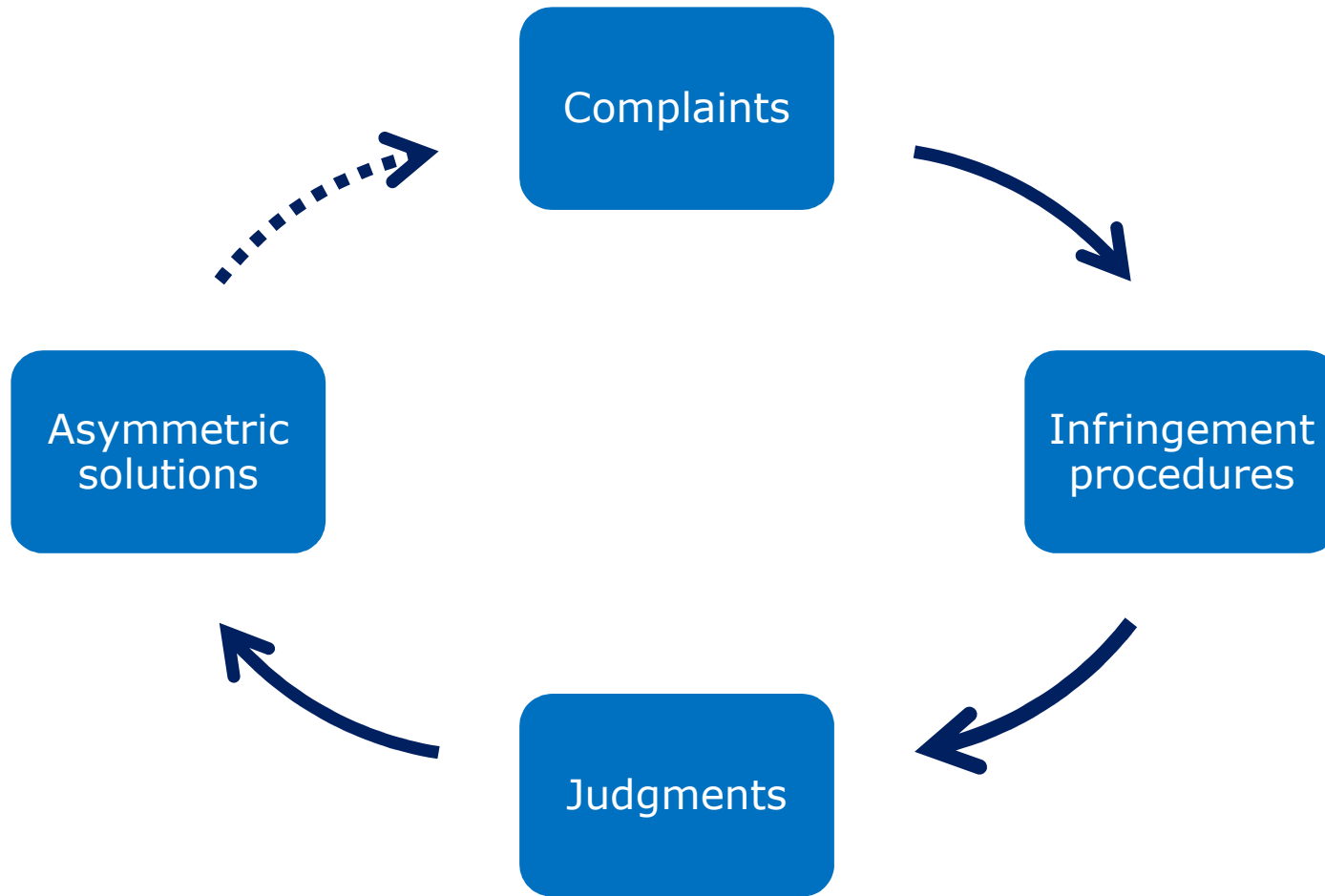
Infringement rulings

- *Concrete appreciation*
- *Concerns the authorities of the MS*
- *Binding result*



I) Final remarks

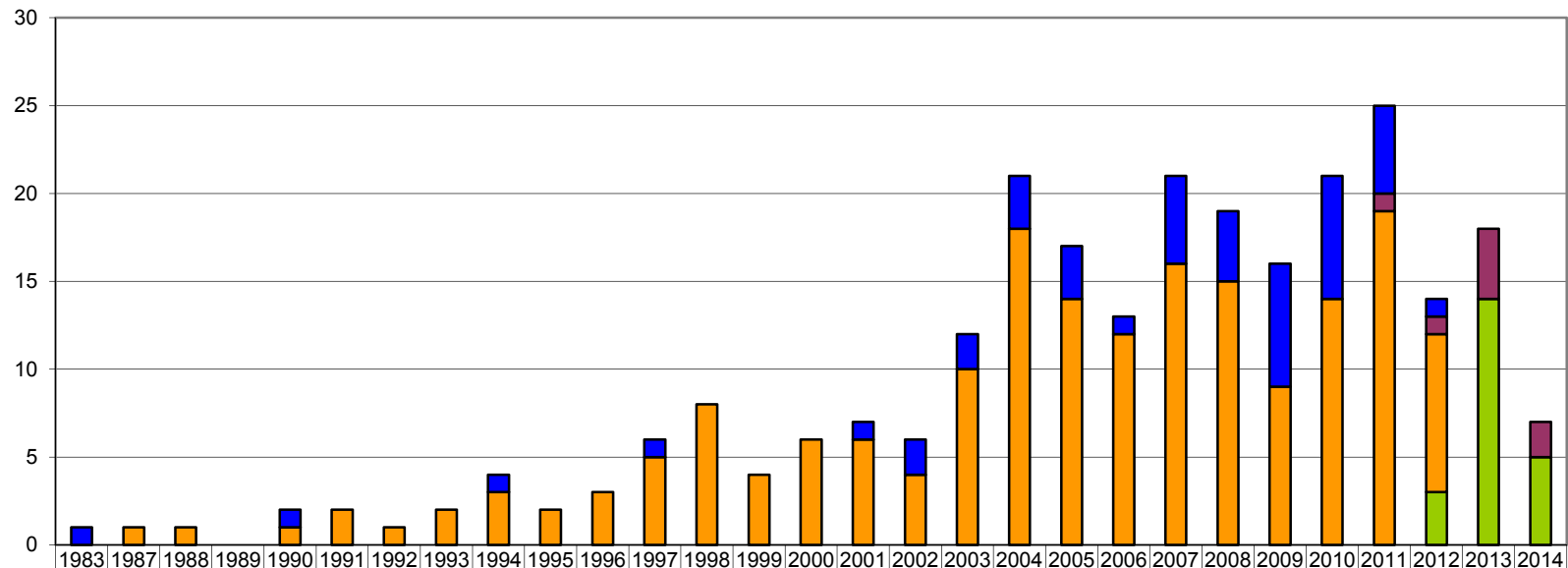
- *Negative harmonisation is the norm in EU direct taxation*
- *Infringement procedures have asymmetric effect*
- *A high number of complaints which feed the cycle further*





I) Direct tax cases decided/pending (by year of reference to the Court)

@ 16.05.2014

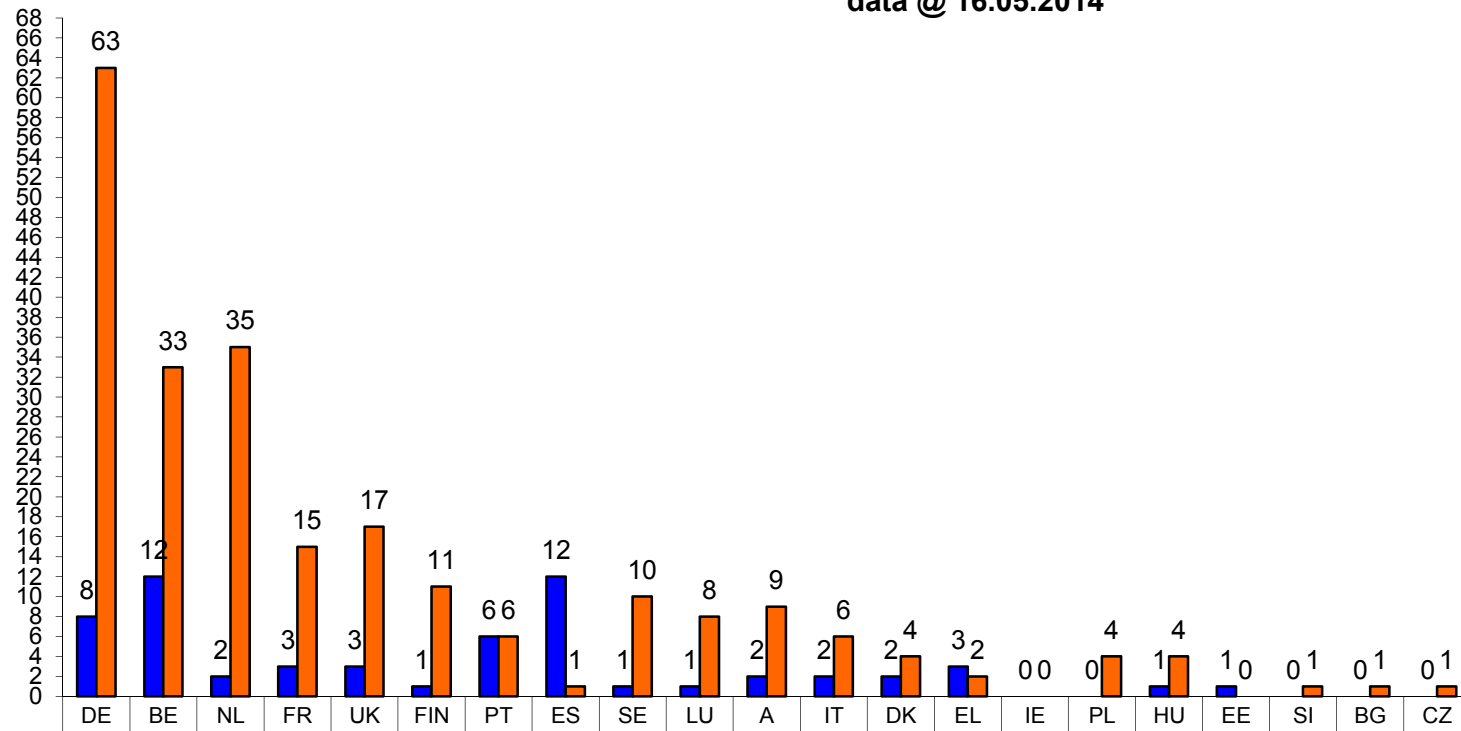


	1983	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
■ Decided: Art. 258 TFUE	1	0	0	0	1	0	0	0	1	0	0	1	0	0	0	1	2	2	3	3	1	5	4	7	7	5	1	0	0
■ Pending: Art. 258 TFUE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	4	2
■ Decided: Art. 267 TFUE	0	1	1	0	1	2	1	2	3	2	3	5	8	4	6	6	4	10	18	14	12	16	15	9	14	19	9	0	0
■ Pending: Art. 267 TFUE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	14	5	



I) Direct tax cases decided/pending: by MS

Number of cases in direct taxation area decided by or pending before the CJEU (by MS)
data @ 16.05.2014

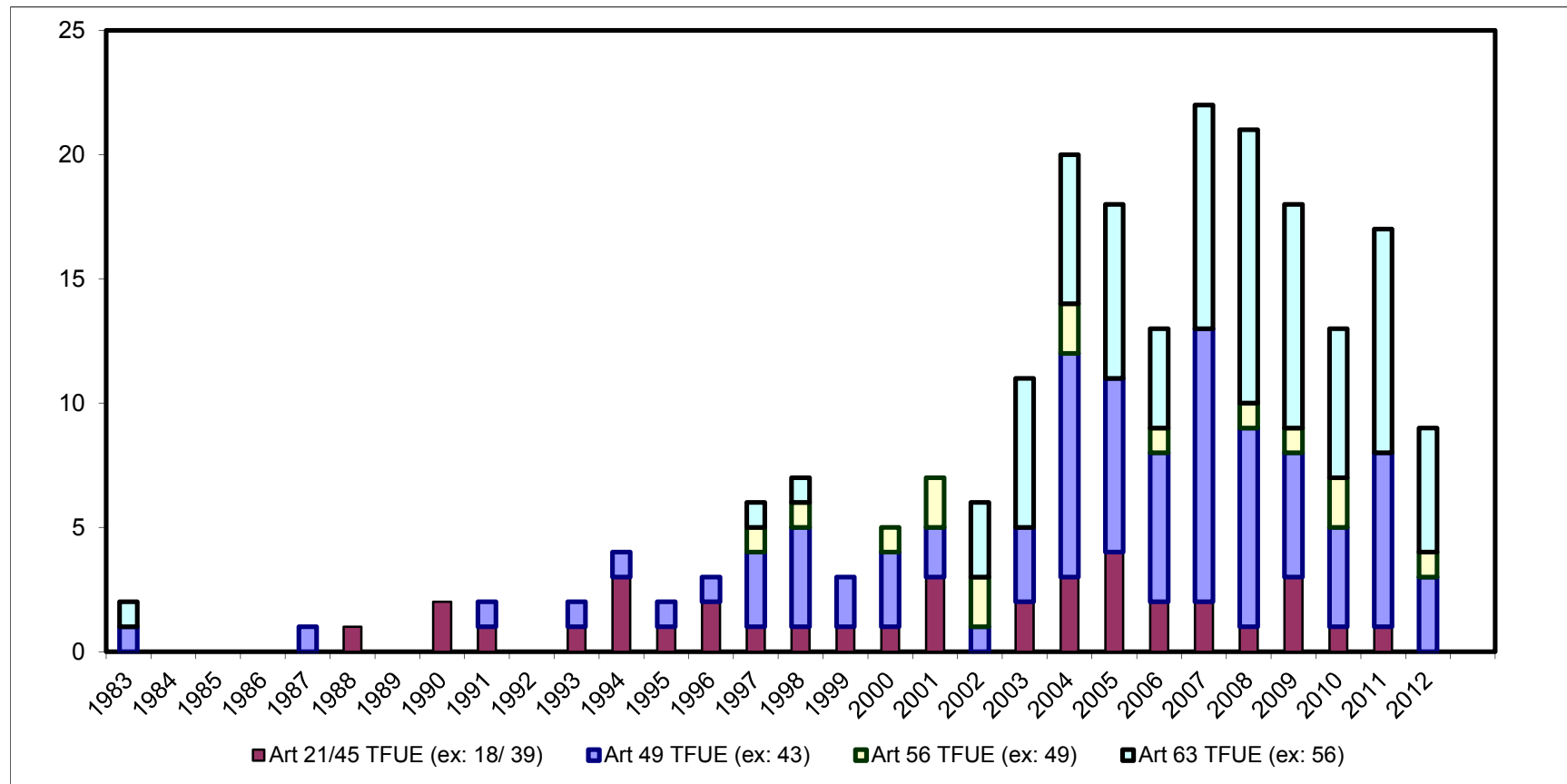


■ Cases (Art. 258 TFEU)	8	12	2	3	3	1	6	12	1	1	2	2	2	3	0	0	1	1	0	0	0
■ Cases (Art. 267 TFEU)	63	33	35	15	17	11	6	1	10	8	9	6	4	2	0	4	4	0	1	1	1



I) Direct tax cases: decided as per legal base

data @ 16.05.2014





END OF PART ONE



EU monitoring of MSs' direct tax legislations is **twofolded**

I) Procedures: MSs' legal obligations

II) Mechanism: co-ordination of the national economic policies

Country-specific recommendations (CSRs)



II) Policy coordination through CSRs

Every year,

on the basis of the Commission's proposal,

*the **Council adopts***

country-specific recommendations (CSRs).



II) Legal base for CSRs' adoption

TFEU – article 121(2) and 148(4)

Regulation (EC) 1466/97 on strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies

Regulation (EU) 1176/2011 on the prevention and correction of macroeconomic imbalances



II) Policy coordination

*What is the **European Semester**?*

A) Europe 2020 Strategy (and its targets)

B) Macro-economic targets (Stability and Growth Pact - SGP)

Assessment of CSRs year-1

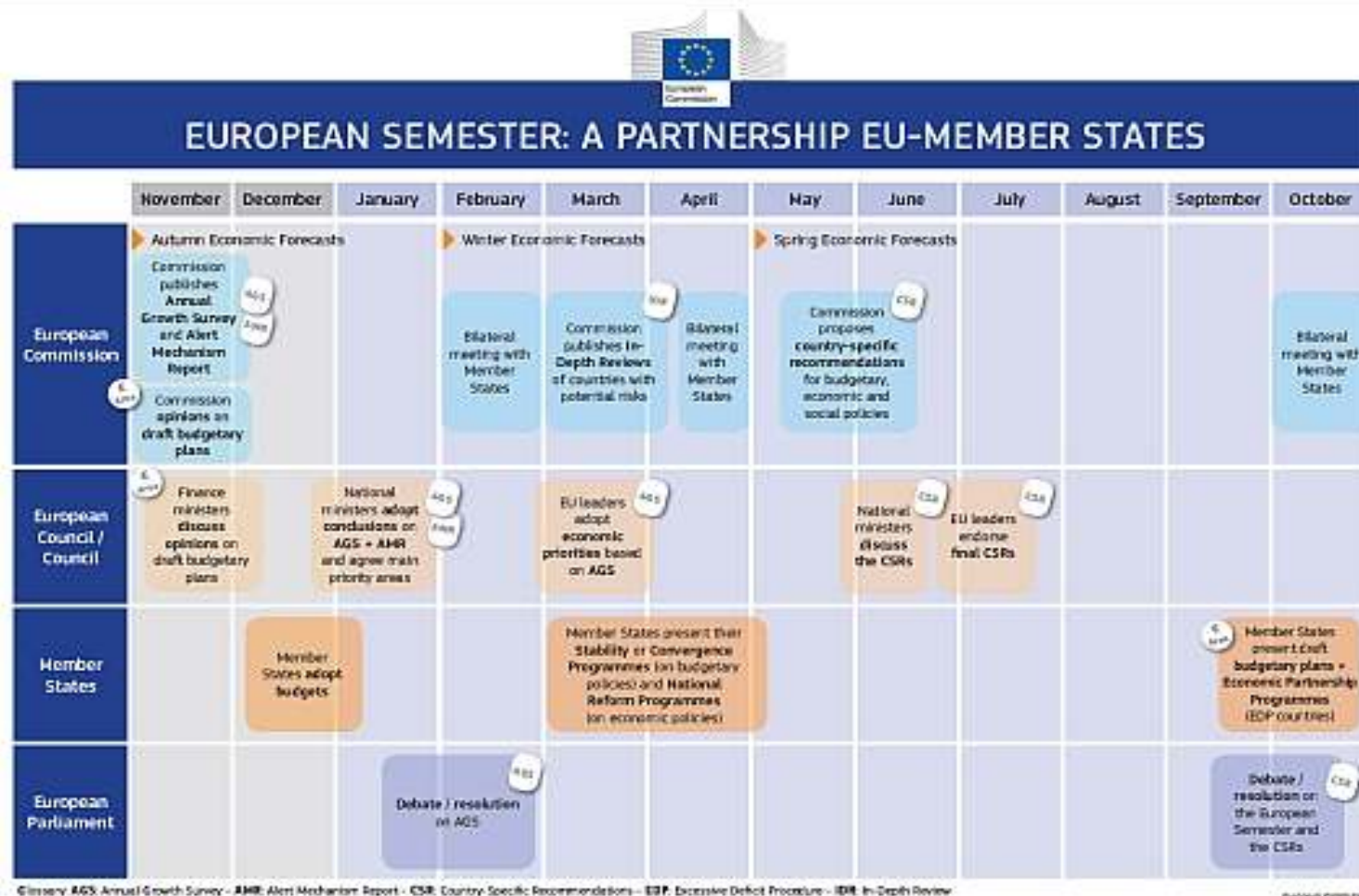


II) European Semester

- *To ensure that the Europe 2020 strategy delivers, a strong and effective system of economic governance has been set up to coordinate policy actions between the EU and national levels.*
- *The Europe 2020 strategy is implemented and monitored in the context of the European Semester, the yearly cycle of coordination of economic and budgetary policies.*



II) European Semester - timeline





II) European Semester: documents

- *October – November: Communication from the Commission called Annual Growth Survey (AGS).*
- *May/June: Staff Working Documents (SWDs)*
- *May/June: Country-specific recommendations*



II) European Semester 2014: **documents**

2014 Annual Growth Survey identified as priorities:

- 1. Pursuing differentiated, growth-friendly fiscal consolidation*
- 2. Restoring lending to the economy*
- 3. Promoting growth and competitiveness for today and tomorrow*
- 4. Tackling unemployment and the social consequences of the crisis*
- 5. Modernising public administration.*



II) ES: 2 main deliverables

Commission

- *SWD – Staff working document*
 - *Stock taking of the reforms/measures adopted in the past months since the previous CSRs*
 - *Identification of new/outstanding challenges which will feed into new CSRs*
- *CSRs – Country-specific recommendations*

Council

- *Formal adoption of the CSRs*



II) ES: Modus Operandi

*European Semester is **NOT** a*



street



II) ES: Modus Operandi

- *Task-forces (country teams)*
- *Bilateral meetings*
- *In-depth sessions*
- *Fact finding missions*
- *Reporting from Member States*



II) Policy coordination

We know now what European Semester is,

but

what does the European Semester monitor?



II) Policy coordination

A) Europe 2020 Strategy (and its targets)

B) Macro-economic targets (Stability and Growth Pact) (SGP)

Assessment of CSRs year-1



II) Policy coordination

A) Europe 2020 strategy targets...

apply to all Member States



II-A) Europe 2020 strategy

European Union's ten-year strategy for

- *growth*
- and*
- *jobs*

launched in 2010.



II-A) Europe 2020 Strategy

All Member States committed to achieving Europe 2020 targets by translating such targets into national targets and growth-enhancing policies.

It is about more than just overcoming the crisis from which our economies are now gradually recovering. It is also about addressing the shortcomings of our growth model and creating the conditions for a smart, sustainable and inclusive growth.



II- A) Europe2020 - 5 targets

- **employment;**
- **research and development;**
- **climate/energy;**
- **education;**
- **social inclusion and poverty reduction.**



II - A) Detailed targets

1. *Employment rate to be reached: 75% of the 20-64 year-olds*
2. *R&D rate of investment: 3% of the EU's GDP*
3. *Climate change and energy sustainability:*
 - greenhouse gas emissions 20% lower than 1990 (or even 30%, if the conditions are right)
 - 20% of energy from renewables
 - 20% increase in energy efficiency
4. *Education:*
 - reducing the rates of early school leaving below 10%
 - at least 40% of 30-34-year-olds completing third level education
5. *Fighting poverty and social exclusion*
 - reducing the number of people threatened by poverty by 20 millions (in or at risk of poverty and social exclusion).



II) ES: policy coordination

A) Europe 2020 targets

B) Macro-economic targets (Stability and Growth Pact)



II-B) Stability and Growth Pact (SGP)

The SGP contains two arms:

- ***the preventive arm (article 121 TFEU) – part of the European Semester***
- ***the corrective arm – the EDP (article 126 TFEU)***



II) CSRs implementation

Sanctions?



II) TAXUD and the CSRs

Key/main policy areas under Europe2020 - comparing MS' performances:

Thematic summaries were developed to facilitate a comparison between MS and to put the economic challenges they face into a broader context.

But, CSR are based on a thorough examination of the challenges that each MS faces, taking account of all relevant factors, thus going beyond what can be captured in the key indicators included in the thematic summaries.



II) Taxation thematic summary

More Growth-Friendly Tax Structures: tax shifts

Broadening of the tax bases

Better design of individual taxes

Tax compliance

Redistribution



II) CSRs 2013 - excerpts

*Excerpts from the 2013 CSRs relating
(mainly) to taxation.*



CSRs 2013 - Belgium

5. Establish concrete and time-specific proposals for shifting taxes from labour to less growth-distortive tax bases, notably by exploring the potential of environmental taxes, for example on diesel, heating fuels and the taxation of the private use of company cars.

Simplify the tax system by reducing tax expenditures in income taxation, increasing VAT efficiency and improving tax compliance by closing existing loophole.



CSRs 2013 - Spain

2. Conduct a systematic review of the tax system by March 2014.

Consider further limiting tax expenditure in direct taxation, explore the scope to further limit the application of the reduced VAT rates and take additional steps in environmental taxation, in particular, as regards excise duties and fuel taxes.

Take further measures to address the debt bias in corporate taxation.

Intensify the fight against the shadow economy and undeclared work.



END OF PART TWO



3rd PANEL discussion

*EU constraints on recent and expected tax changes
in Spain and Belgium*