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The State of Implementation of the Habitats Directive

Enforcement and Implementation Challenges

Laura Hildt

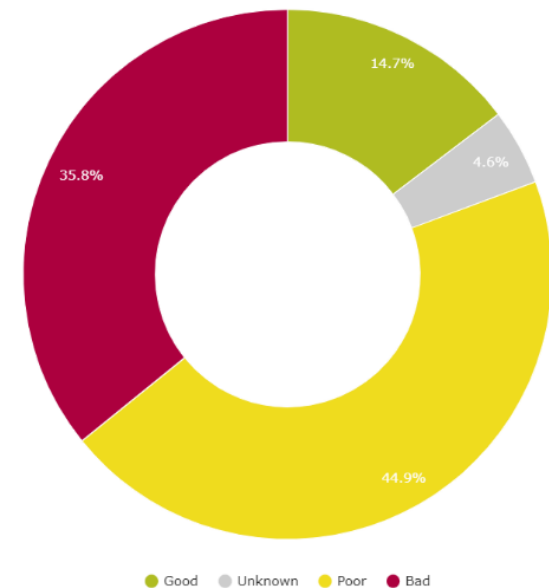
24 May 2023

Why focus on enforcement?

81% of habitats are in *bad* or *poor* conservation status – despite legal obligation to achieve good status **since 1992**

- Rule of law
- Undermines citizen's trust
- Weakens credibility of the EU
- Effectiveness of law-making
- Midst of biodiversity and climate crisis

Figure 1. Conservation status of habitats at EU level, 2013-2018





Mission: swift action



Ursula von der Leyen
President of the European Commission

Mission letter

Brussels, 1 December 2019

Frans Timmermans

**Executive Vice-President for the European
Green Deal**

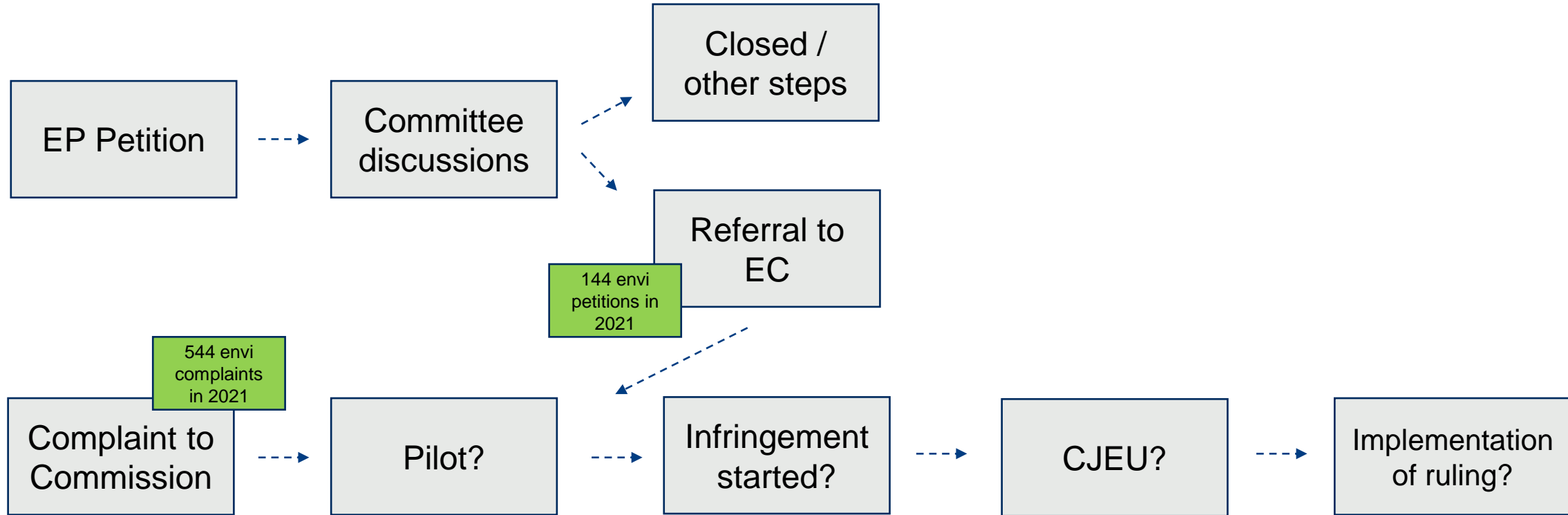
Dear Frans,

Given that any legislation is only as good as its implementation, I want you to **focus on the application and enforcement of EU law** within your field. You should provide support and continuous guidance to Member States on implementation, and be ready to take swift action if EU law is breached.



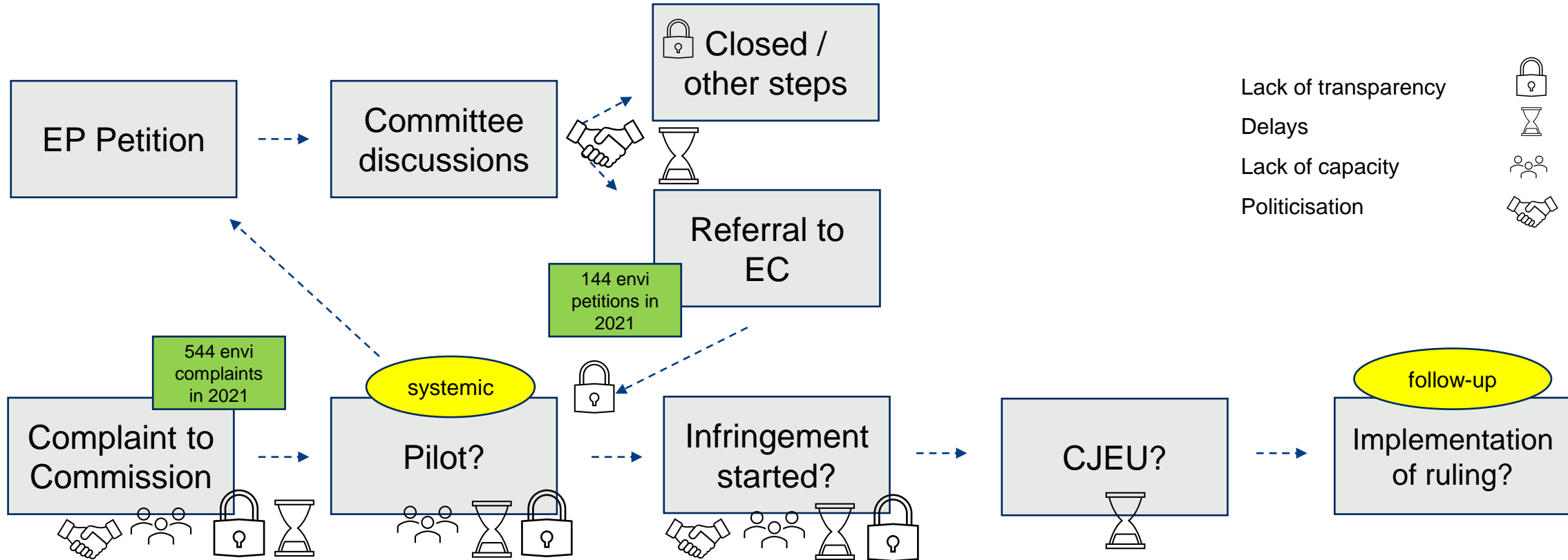
From breach to compliance?

Breach of EU environmental law



From breach to compliance?

Breach of EU environmental law



Continued breach & potentially irreversible deterioration



Lack of transparency

- Database on infringements & press releases on infringement steps: **very limited information**
- No access to letters of formal notice, reasoned opinion, details on provisions breached, answers by Member States, information on petitions handling
- Confidentiality argument does not hold up:
 - environment as a public good
 - Aarhus Convention environmental information obligations
 - Enforcement of legal obligations – not negotiation
 - ‘Guardian of treaties’ → public should be beneficiary



Delays

EC Communication: *“As a general rule, the Commission will investigate complaints with a view to arriving at a decision to issue a formal notice or to close the case within not more than 1 year from the date of registration of the complaint, provided that all required information has been submitted by the complainant.”*

NABU grassland complaint:

- 2014: complaint submitted
- June 2018: EC starts pilot procedure
- July 2019: letter of formal notice
- October 2020: reasoned opinion
- December 2021: EC referred Germany to CJEU
- January 2023: EC submits written statement to CJEU



Insufficient capacity

- Overall trend in staff capacity of DG Environment since 2009: decrease of staff
- Legal Service: stable figures, but very small team dealing with environment (alongside internal market for goods, energy including Euratom, enterprise and the customs union)
- Yet, midst of biodiversity, climate and pollution crisis
- Green Deal → number of new legal initiatives



Politicisation

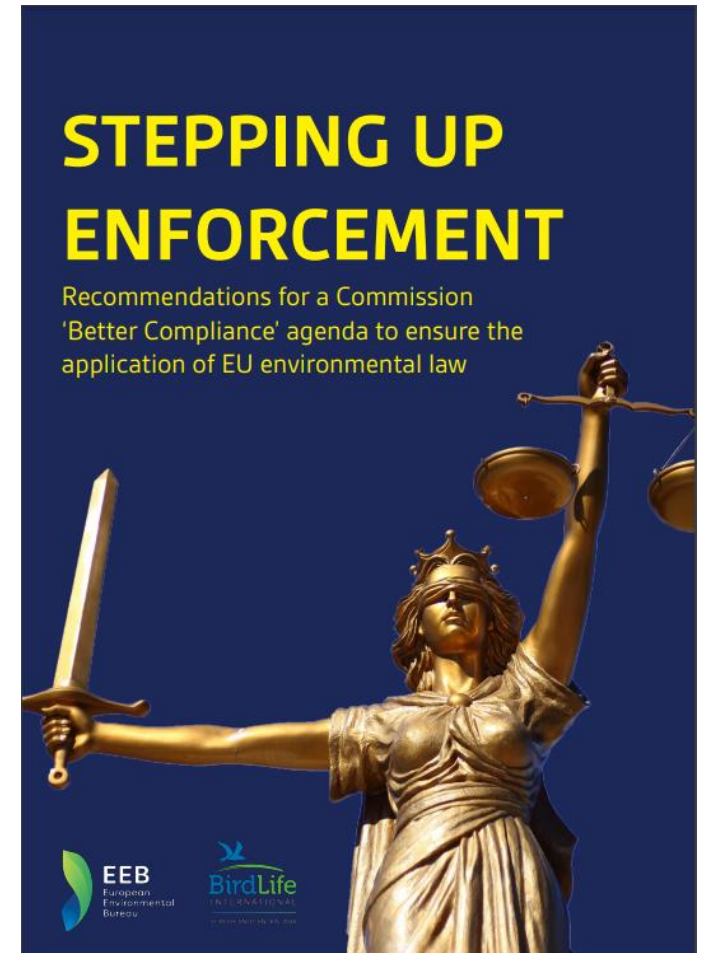
- EC: discretionary powers on infringements
- Taking political considerations, elections, Council Presidency etc. into account undermines guardian of treaty role
- Irregularity of infringement packages
- EP petitions: concerns re political considerations and partisan approach to petitions



Better compliance

Recommendations:

1. Real **political will**
2. More **staff**
3. Full **transparency**
4. Regularity
5. **Swifter processes**
6. More interim measure
7. Systemic follow-up
8. New environmental inspections legislation



Implementation of CJEU rulings

- Mixed implementation of CJEU rulings
- Follow-up activities, including Art. 260 TFEU proceedings, are often necessary to ensure that harmful activities are stopped, damage is restored and habitats properly managed
- No public information on implementation steps and EC follow-up
- Systematic follow-up on infringement proceedings is needed






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Thanks for listening!

Keep in touch

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