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Gold-plating: Why a pact against it is not enough

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INTRODUCTION

Under increasing geopolitical and economic pressure and following the European Commission's lead, the EU is renewing its push against gold-plating. In her 2026 State of the Union, President Ursula von der Leyen proposed a pact against the practice.[1] Her mid-October letter to the European Council[2] and the Commission's report on Simplification, Implementation and Enforcement[3] published in early November further spell out the initiative, highlighting that preventing gold-plating "is a shared responsibility among all EU institutions and the Member States".

Gold-plating, when authorities introduce national, regional or local requirements beyond those needed to implement EU law, should be distinguished from justified national measures pursuing legitimate objectives. The practice is deeply embedded in EU policymaking and takes many forms: higher standards, stricter reporting and labelling requirements, additional authorisations and documents, parallel procedures at different levels of government, and divergent interpretations of EU rules. It can arise when transposing directives but also when implementing directly applicable regulations.

Regardless of its form, gold-plating fragments the Single Market, reduces competitiveness and undermines a common EU approach across policy fields. The EU's renewed attention is therefore welcome. However, decades of communications, strategies and other initiatives have failed to end the practice. Why would another pact change behaviour when the problem has long been recognised? Naming and shaming could help in principle, also providing some further legitimacy for some member states to challenge others, but only if authorities involved recognise that the practice's negative effects outweigh their short-term direct benefits.[4]

Commission guidance and questionnaires to national authorities can also help map transposition practices and identify where support is needed. However, these actions and the pact largely rely on commitments that governments have already made and, in some key areas, ignored.

Emphasising national responsibility also allows the Commission to shift blame towards member states and other institutional actors. National governments, the Council and the European Parliament bear considerable responsibility for additional requirements and legislative compromises that enable divergence. But the Commission remains responsible for the clarity and deliverability of its proposals, its support for implementation and its enforcement choices. Shared responsibility cannot leave any institution off the hook.

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Gold-plating is one symptom of a wider EU problem, as this Policy Brief will explain. The central issue is divergence and fragmentation, which also arise from unequal implementation capacities, unclear legislation and uncertainty about how common obligations should be applied. Even eliminating further gold-plating would not remove these other sources of inconsistent implementation.

Addressing gold-plating therefore requires changing the incentives behind divergence, attaching consequences to national choices and pursuing a more ambitious agenda towards the improvement of policymaking.[5] In the short term, mutual recognition can help address existing fragmentation. But a broader effort to improve policymaking and close the delivery gap is needed to gradually eliminate the conditions leading to its persistence.[6]

BACKGROUND: GOLD-PLATING BEGINS WITH THE WRONG INCENTIVES AND ENDS IN FRAGMENTATION

Gold-plating has been on the European policy agenda for a quarter of a century. The 2001 Mandelkern report on Better Regulation already explicitly examined the practice, recognising that additional national requirements could preserve barriers within the Single Market even where they were legally justified.[7] The challenge of reconciling national choices with a functioning common framework is therefore longstanding.

Gold-plating should be distinguished from national discretion that helps achieve EU objectives while also leaving space for local considerations. An EU measure may deliberately establish a minimum, allowing national rules to address a demonstrable local risk or protect a valued interest more effectively. Subsidiarity and national adaptation can also enable experimentation: a solution may suit a particular context while also proving suitable for wider adoption at a later stage.[8]

Gold-plating serves neither purpose. Gold-plating can make cross-border activity disproportionately expensive or distort competition, undermining the purpose of the legislation. Firms operating across borders must navigate several national and sometimes local versions of an intended common EU framework. Conflating gold-plating with justified national choices, as is sometimes done in policy and academic analyses, creates confusion and weakens possible solutions. It also risks overlooking its deeper causes.

Gold-plating can make cross-border activity disproportionately expensive or distort competition.

Additional rules, stricter standards and heavier reporting burdens often reflect the wrong policymaking incentives. For example, due to complex legislative bargaining, securing agreement sometimes explicitly leaves room for opt-outs or differing national requirements.[9]

Member states also differ in their administrative capacities, institutional structures and willingness to curb gold-plating. In federal systems, implementation responsibilities may be divided between national and regional authorities; independent regulators may exercise further discretion. National additions can also accommodate political or administrative interests that were not directly represented in legislative negotiations.

In some instances, civil servants may also add safeguards to avoid infringement proceedings, inadvertently over-regulating. In other situations, governments may use "Brussels made us do it" as an excuse to introduce stricter domestic policies.

Poorly designed harmonisation can then entrench fragmentation, locking in an approach whose shortcomings become apparent only later, when correction is harder. Instead, a well-designed EU rule should not only look like a common framework. It should effectively function like one.

Gold-plating must therefore be understood as an instance of and contributor to regulatory fragmentation, alongside the misapplication of EU law, limited operational convergence and other barriers.[10] The result is incoherence: common rules apply inconsistently.

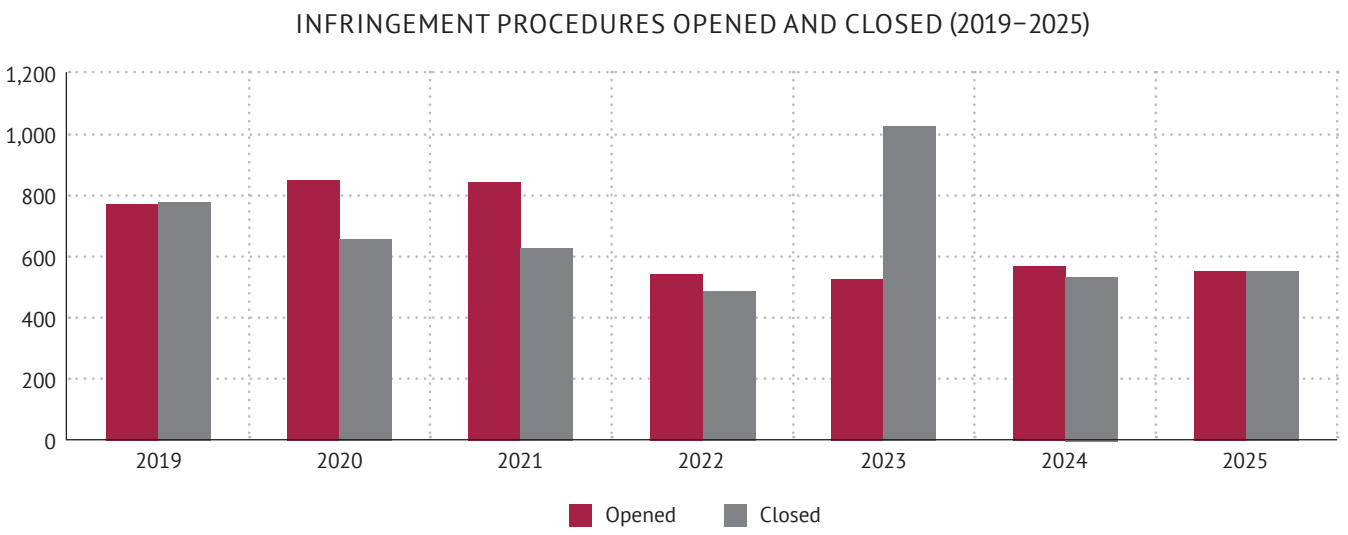
STATE OF PLAY: THE LIMITS OF TRANSPARENCY AND MONITORING

In her October letter to EU leaders, von der Leyen emphasised transparency and monitoring, asking governments to explain additions to national law and their implications for businesses. Systematic disclosure could distinguish gold-plating from justified national choices. This would respond to calls by Mario Draghi and experts to examine the purpose, proportionality and effects of additions, allowing more targeted scrutiny of harmful divergence.[11]

Governments, however, are reluctant to invite that scrutiny.[12] When notifying the transposition of a directive, member states can already flag national measures exceeding its requirements.[13] The Commission itself has acknowledged that this option remains unused. A voluntary commitment by central government therefore provides no assurance that incentives or practices will change across the bodies responsible for implementation.

The fact that gold-plating may happen at different levels, and through different means, also makes it hard to monitor, for all relevant actors.

Figure 1



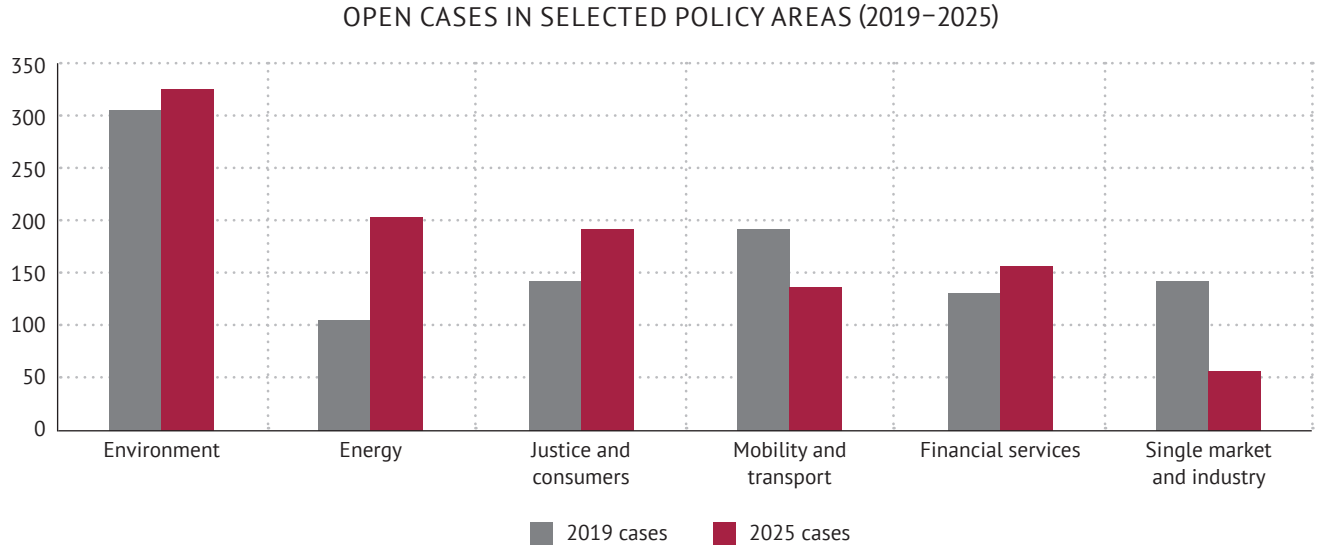
Source: European Commission THEMIS infringement dashboard, https://ec.europa.eu/implementing-eu-law/member-state-infringement-cases/en. EU-wide figures exclude UK cases. Annual figures refer to calendar years; policy-area values are open cases at year end.

Against this background, the Commission is also experimenting with AI tools, with some Directorates-General, including DG GROW, reviewing legislation in their remit, beginning with existing directives. These reviews use word counts to identify national additions as a proxy for gold-plating. Yet more text does not necessarily mean stricter requirements.[14] Additional provisions may be consistent with a directive's objectives, while fewer words can produce a wider scope and heavier obligations.

Monitoring must therefore assess the substance of national measures, while also accounting for the constant evolution of gold-plating and regulatory fragmentation. To this end, AI tools and progressive digitalisation could be an analytical and monitoring game-changer. Legal measures as well as decisions adopted at the national level are progressively being digitalised. AI could be used to aggregate and examine this vast amount of information. This could provide a fuller picture of national and local developments without depending on government notifications, helping identify where interventions are needed.

However, a more fundamental question remains: what happens after gold-plating has been identified? Whether governments disclose additions or Commission monitoring uncovers them, detection alone does not provide an effective response. Recent increases in enforcement activity (see Figures 1 and 2)[15] do not settle the question of when and against whom infringement

Figure 2



Source: European Commission THEMIS infringement dashboard, https://ec.europa.eu/implementing-eu-law/member-state-infringement-cases/en. EU-wide figures exclude UK cases. Annual figures refer to calendar years; policy-area values are open cases at year end.

proceedings are used,[16] also exposing the limits of the existing remedies. In addition, infringement proceedings can only address breaches of EU law. A lawful national requirement may create burdens or fragmentation without giving the Commission grounds to demand its removal or impose sanctions.

Why regulations are no panacea

New legislation cannot deliver a common market or – for that matter, a common environmental policy or migration system – if existing rights and obligations remain inconsistent across member states, or are difficult to understand, use or enforce. While this problem is well-known, it is also constantly evolving.

The most familiar form of gold-plating occurs when member states transpose directives into national law, sometimes introducing requirements that complicate market access for businesses from elsewhere in the EU.

Yet regulations are not exempt. Regulations now play an increasingly important role well beyond the Single Market (see Figure 3). Their direct applicability might appear to offer protection against the practice of gold-plating. However, their increasing use also overlooks that many still require national authorities, monitoring arrangements, guidance, standards and implementation and enforcement structures. They may also allow derogations and exceptions. A regulation that leaves too much unresolved can produce effects similar to those of a directive.

The increasing frequency of regulations in key policy areas can lead to divergent requirements, additional burdens and fragmentation and yet, it falls outside gold-plating in its classic transposition sense. In this sense, their growing use in key areas can be explained by the diminished Commission need for transposition checks, a substantial task for an institution already constrained by its structure and resources.[17] However, it makes it harder to monitor when additional measures at the national level undermine the rules' goals.

Replacing every directive with a regulation would therefore not solve the problem of gold-plating and could make it worse. The resulting fragmentation would be harder to monitor without being less costly or consequential.

Changing the incentives: closing the delivery gap and mutual recognition

Unless the underlying incentives that lead to fragmentation change, the practice of gold-plating will therefore continue and take new forms. Monitoring and shaming, or switching legal instruments, would not be able to prevent it or mitigate its consequences. Addressing the structural causes of fragmentation requires stronger enforcement and credible follow-through on infringement proceedings. It also requires a different approach to policymaking.

Figure 3

EUROPEAN PARLIAMENT AND COUNCIL REGULATIONS VS. DIRECTIVES PUBLISHED IN THE OFFICIAL JOURNAL OF THE EUROPEAN UNION (2006-2026)



Source: Official Journal of the European Union.

At the moment, the European Parliament and Council can both contribute to gold-plating through their legislative amendments. Strategic ambiguity can facilitate agreement between co-legislators while enabling later divergence. Implementation needs are also often not considered before choices are fixed, creating further incentives for adding measures later at the national or even local level. On the other hand, instead of supporting implementation, the current structure of European funding is at risk of rewarding transgression.

Unless the underlying incentives that lead to fragmentation change, the practice of gold-plating will therefore continue and take new forms.

More broadly, governments that strongly oppose legislation may also introduce additional requirements later. Keeping all member states on board can thus require weaker common commitments, while pursuing unity can put more ambitious action at risk.[18]

Better policymaking could prevent or mitigate such problems from arising in the future. At the same time, existing and remaining instances of gold-plating would still require pragmatic solutions. Mutual recognition and country-of-origin approaches could accommodate different national rules while allowing cross-border activity, subject to common minimum standards.[19]

Mutual recognition allows national rules to differ while requiring authorities to accept compliance with another member state's framework in the areas covered. For goods, it already enables products lawfully marketed in one member state to be sold in another, subject to justified and proportionate public-interest restrictions. A country-of-origin approach identifies which state's rules govern a cross-border activity.[20] Their wider use could reduce the effects of divergence without first harmonising every national rule.

Mutual recognition would remain a sub-optimal solution. It may not work equally well across all policy fields. Firms would still face additional costs. Reverse discrimination could disadvantage domestic businesses, particularly smaller firms, that remain subject to stricter requirements than their cross-border competitors. System shopping could also encourage operators to choose the least demanding national framework while leaving divergence intact.

Mutual recognition could therefore only help address existing fragmentation to a certain extent. Better policymaking would therefore be needed to prevent gold-plating and close the gap between the EU's objectives and what it delivers for businesses and citizens.

PROSPECTS AND RECOMMENDATIONS

Gold-plating contributes to fragmentation, weakening competitiveness and trust in EU policies. A Commission-brokered pact will fall short unless it is part of a wider structural change that alters the conditions and incentives that sustain gold-plating and wider fragmentation. A credible response must address the roots of the delivery gap, change the incentives for national additions and use advanced technologies to strengthen monitoring and transparency, in line with the following recommendations:

- The EU should make quality legislation and closing the delivery gap central governance priorities. Responsibility for delivering agreed objectives should be clearly assigned and assessed against results. This requires changes across the Commission, the European Parliament and Council, national governments and regional authorities. Policy design must follow those objectives, with implementation considered before political choices are fixed. Targeted consultations must involve stakeholders and implementation actors early enough to identify practical constraints and shape workable obligations. Strategic ambiguity should be avoided where it risks leading to later divergence. Clear responsibilities, adequate resources and realistic timelines must underpin delivery.

- The Commission should integrate AI tools into monitoring at EU, national, regional and local levels. These tools should examine administrative acts and other national and local level decisions alongside legislation, reducing reliance on authorities reporting their own additions. Automating initial screening could also free resources for investigating identified problems and pursuing remedies. Advanced technologies can also help identify substantive divergence before full-scale monitoring becomes possible, with differences in word counts between adopted legislation at EU and national levels serving as a starting point for a more thorough assessment rather than proof of gold-plating.

- Monitoring should also involve businesses, trade unions, consumer organisations and civil society through clear channels for reporting divergent requirements and their effects. Independent monitoring and scrutiny bodies should be created where absent, and should have defined responsibilities and adequate resources to examine the evidence, while the responsible authorities should explain how they have addressed their findings. This would broaden accountability beyond government self-reporting and ensure that scrutiny considers the different interests affected by national additions.

- National, regional or local authorities proposing requirements beyond those of EU law should publish an impact assessment and justify their changes. These should distinguish the EU obligation from the additional national choice, explain its objective and assess its benefits, costs and cross-border effects.

Authorities should also explain why a less burdensome approach would not achieve the same objective. The requirement should cover additions made through legislation and administrative implementation. National additions should also face defined review or expiry deadlines, with continuation dependent on a renewed justification and impact assessment. This would place the burden of defending additional requirements on the authorities introducing or retaining them.

- Enhanced cooperation should also become a more readily accepted option. Where agreement requires diluted obligations or excessive flexibility, a smaller group of committed states may deliver more. Successful cooperation could then encourage others to join, rather than embedding derogations that enable future fragmentation.[21]

- The EU should consider extending and strengthening mutual recognition by default, whether in directives or regulations. Relevant directives and regulations should establish a presumption of recognition, with clear grounds and deadlines for objections. Unless the receiving authority demonstrates within that period that a restriction is necessary and proportionate to protect a legitimate public interest, mutual recognition should apply and produce effects. Applied effectively across policy areas, mechanisms such as mutual recognition could reduce the need to revise every existing national rule. They could preserve diversity while enabling cross-border operations, with authorities and courts intervening where divergent obligations obstruct rights.

- Under the next EU budget, member states should not receive support while undermining common obligations. Funding conditions should link support to compliance with the EU obligations relevant to the funded activity, with proportionate consequences for non-compliance. Lawful national additions should be addressed through justification and review, rather than treated automatically as grounds for withholding funding.

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