



EUROPEAN COMMISSION

MEMO

Brussels, 25 April 2013

**April infringements package: main decisions**

	CLIMATE ACTION	DIGITAL AGENDA	EMPLOYMENT	ENERGY	ENVIRONMENT	JUSTICE	TRANSPORT	HEALTH & CONSUMER POLICY	TAXATION & CUSTOMS UNION
BE						1			
CY			1		1				
DE					1		1		
DK									1
EE					1				
EL	1							1	
ES				1	1				1
HU							1		
IE				1					
IT								1	
LT							1		
LU			1						
NL		1							
PL					1				
RO							1		
SI				1					
SK			1						
UK					1		1		

In its monthly package of infringement decisions, the European Commission is pursuing legal action against Member States for failing to comply properly with their obligations under EU law. These decisions covering many sectors aim at ensuring proper application of EU law for the benefit of citizens and businesses.

The Commission has taken today **141 decisions**, including **20 reasoned opinions** and **4 referrals** to the European Union's Court of Justice. Below is a summary of the main decisions. For more information on infringements procedure, see [MEMO/12/12](#).

## 1. Referrals to the Court of Justice

- **Animal Welfare: Commission refers GREECE and ITALY to Court for failure to enforce ban on cages for laying hens**

Today, the European Commission decided to take **Greece** and **Italy** to the Court of Justice of the European Union over the failure to correctly implement Directive [1999/74/EC](#) banning "un-enriched cages" (battery cages).

The political decision for the ban on "un-enriched cages" was taken in 1999. Greece and Italy had twelve years to ensure a smooth transition to the new system and to implement the Directive. As from 1 January 2012, Directive 1999/74/EC requires that all laying hens are kept in "enriched cages" with extra space to nest, scratch and roost, or in alternative systems. Thus cages can be used only if they provide each hen with at least 750 cm<sup>2</sup> of cage area, a nest-box, litter, perches and claw-shortening devices, allowing the hens to satisfy their biological and behavioural needs.

(for more information: [IP/13/366](#) – F. Vincent - Tel. +32 229 87166 - Mobile +32 498 98 7166)

- **Old-age benefits: Commission refers Slovakia to Court for refusing to pay an old-age benefit to pensioners abroad**

The European Commission has referred **Slovakia** to the EU's Court of Justice for refusing to pay an old-age benefit, a so called Christmas allowance, to pensioners living in other EU Member States, Iceland, Liechtenstein, Norway or Switzerland in breach of its obligations under EU law on social security coordination.

Under EU law, entitlement to an old-age benefit cannot be conditional on a pensioner living in the Member State where he or she claims the benefit. This rule enables pensioners to move to another Member State when they retire whilst retaining their pension.

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- **Taxation: Commission refers Spain to Court over discriminatory real estate taxation**

The European Commission has decided to refer **Spain** to the EU's Court of Justice for discriminatory real estate tax rules that prevent non-residents from enjoying the same tax benefits as residents.

According to the Spanish legislation, capital gains from the sale of a permanent residence are exempt for tax if the money is used to buy another permanent residence. However, this provision only applies to Spanish residents, therefore discriminating against non-residents who can end up paying much higher taxes.

In practice if a person living in Spain sold its permanent residence to buy a new house in another Member State where he would move, he could be taxed on the capital gains made on the sale. Conversely if he had stayed in Spain and bought a new house there, he would not have been taxed. The Commission considers that this is an obstacle to free movement of persons, workers and self-employed persons and therefore breaches the EU Treaties. The referral to the EU Court of Justice is the last step in the infringement procedure.

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## 2. Reasoned opinions

- **Maritime: Commission requests the United Kingdom and Romania to adopt national measures on reporting formalities for ships**

The European Commission has requested the **United Kingdom** and **Romania** to transpose into national law requirements set out in the Directive on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC ([Directive 2010/65/EU](#)). The deadline for implementation was 19 May 2012. Despite the letters of formal notice sent to Romania and to the United Kingdom in July 2012, those two Member States did not communicate all the necessary national measures to the Commission. The adoption of the measures relating to the transposition is important given the objective to simplify and harmonise the administrative procedures applied to maritime transport.

The Commission is therefore issuing to each one of those two Member States a reasoned opinion (the second stage in an infringement proceeding). In the absence of satisfactory responses within two months, the Commission may refer the Member States to the EU Court of Justice.

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- **Energy Efficiency in Buildings: The Commission asks SLOVENIA and SPAIN to adopt national measures on energy efficiency in buildings**

Today the Commission sent Reasoned Opinions to **Slovenia** and **Spain** asking them to notify to the Commission their implementation measures for the Energy Performance of Buildings Directive. [Directive 2010/31/EU](#) had to be transposed into national law by 9 July 2012. Under this Directive, Member States must establish and apply minimum energy performance requirements for new and existing buildings, ensure the certification of buildings' energy performance and require the regular inspection of heating and air conditioning systems. In addition, the Directive requires Member States to ensure that by 2021 all new buildings are so-called 'nearly zero-energy buildings'. If the two Member States do not comply with their legal obligation within two months, the Commission may decide to refer them to the Court of Justice.

In September 2012 the Commission started infringement procedures against 24 Member States that had not notified to the Commission the national measures transposing the Directive into national law. In the meantime most Member States notified the Commission of their national transposition, although Italy, Greece, Portugal, and Bulgaria did not and reasoned opinions were therefore sent to those countries in January 2013.

More information here: [http://ec.europa.eu/energy/infringements/index\\_en.htm](http://ec.europa.eu/energy/infringements/index_en.htm)

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- **Parental leave: Commission asks BELGIUM to comply with EU rules**

The European Commission has asked **Belgium** to bring its laws into line with EU legislation on parental leave, after the country failed to inform the Commission of adequate measures to transpose the rules in national law. The Commission's request takes the form of a reasoned opinion (the second step in the three-step EU infringement process). The [Directive on Parental Leave](#) gives each working parent the right to at least four months leave after the birth or adoption of a child – although income during leave is left for Member States to determine. At least one of the four months cannot be transferred to the other parent – meaning it will be lost if not taken – offering incentives to fathers to take the leave.

So far, Belgium has failed to fully transpose the Directive. In particular, the Belgian authorities still need to bring national legislation in line with the EU rules in the Walloon region and the military. Belgium now has two months to comply with European Union rules. If Belgium does not comply, the Commission may decide to refer the case to the EU's Court of Justice.

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- **Pensions: Commission asks CYPRUS to take into account periods spent by Cypriot teachers working in Greece**

The European Commission has asked **Cyprus** to take into account periods spent by Cypriot teachers working in Greece when granting and calculating pensions in Cyprus. The Cypriot authorities currently refuse to take into account periods spent working in Greece when granting and calculating pension entitlements, and do not grant partial pensions to teachers who have worked in Greece and Cyprus. According to the authorities, the reason for this refusal is that the special Cypriot pension scheme for public officials does not fall under the provisions of [Regulation \(EC\) No 883/2004](#) on the coordination of social security systems.

While the Treaty requires all periods of work to be aggregated, and for any migrant worker to have a single career in terms of social security, the application of the Cypriot legislation has precisely the opposite effect, because it leads to a loss of rights and to a worker's career being interrupted. However, according to the case-law of the Court of Justice of the European Union, the coordination of national systems applies to all legislation relating to the eight traditional branches of social security: it applies to general and special schemes (both contributory and non-contributory), and also to systems concerning employers' obligations relating to the branches of social security. The Commission's request takes the form of a reasoned opinion. Cyprus has two months to notify the Commission of the measures taken to apply the rules in full, otherwise the Commission may decide to refer the case to the Court of Justice of the European Union.

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- **Environment: Commission asks CYPRUS to bring laws on access to justice into line with European norms**

The European Commission is concerned that **Cyprus'** laws on access to justice in environmental matters are falling short of [European standards](#). Under EU legislation, Member States have to ensure access to administrative and judicial review procedures related to the assessment of the impacts of certain projects and plans on the environment. This is intended to enable the public and NGOs to participate effectively in such procedures. After assessing Cyprus' legislation in this area, the Commission is concerned that the existing legislation may overly restrict the access to justice of certain NGOs.

Despite an earlier letter of formal notice, and Cyprus' intention to amend its legislation, the Commission has not been informed of any change to the Cyprus law. A reasoned opinion (the second stage in EU infringement proceedings) is therefore being sent. Cyprus has two months to reply. If it fails to ensure compliance with the EU law, the Commission may decide to refer the case to the Court of Justice.

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- **Taxation: the Commission requests Denmark to change tax rules on foreign investment institutes**

The European Commission has formally requested **Denmark** to change its taxation of dividends distributed to foreign investment institutes with minimum taxation (investeringsinstitutter med minimumsbeskatning).

In Denmark, dividends distributed to funds registered as "investment institutes with minimum taxation" are exempted from tax, but only if the institute is Danish.

The Commission considers that the Danish tax rules discriminate against "investment institutes with minimum taxation" from other Member States. This breaches the freedom to provide services and the free movement of capital as set out in the EU Treaties. Following the letter of formal notice sent by the Commission on 30 April 2012 (first stage of the infringement), today the Commission is requesting Denmark to change its legislation within two months to bring it in line with EU law (second stage of the infringement). If Denmark does not comply, the Commission may decide to refer the case to the EU's Court of Justice.

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- **Environment: Commission asks ESTONIA to improve law on access to environmental information**

The European Commission is concerned that **Estonia's** laws on access to information regarding the environment are falling short of [European standards](#). Under EU legislation, Member States have to ensure access to information on the environment held by public authorities. After assessing Estonia's legislation in this area, the Commission concluded that it contained shortcomings. These include the lack of an obligation to weigh up the public interest against the interest served by the refusal of a request that concerns internal communications, and the absence of a requirement to state the name of the authority preparing material which is not yet completed and the estimated time needed for its completion.

Although Estonia agrees with Commission's assessment, the Estonian law in question has still not been reviewed. The Commission is therefore sending a reasoned opinion (the second stage in EU infringement proceedings), giving Estonia two months to reply. If the Estonian authorities do not reply satisfactorily, the Commission may refer the matter to the EU's Court of Justice.

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- **Maritime security: the Commission asks GERMANY to apply measures to enhance security in its ports correctly**

The European Commission has sent **Germany** a reasoned opinion calling on it to apply correctly the EU Directive on enhancing port security ([2005/65/EC](#)) in its ports in Mecklenburg-Western Pomerania (in Rostock, in particular). The port security assessments and plans provided for in the Directive have not yet been implemented by Mecklenburg-Western Pomerania. The Directive, which is one of the cornerstones of maritime security policy, aims to guarantee uniformly high levels of security in all European ports. Germany has two months to notify the Commission of the measures taken to apply the rules in full, otherwise the Commission may decide to refer the case to the Court of Justice of the European Union.

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- **Environment: Commission asks GERMANY to improve law on access to justice**

The European Commission is concerned that **Germany's** laws on access to justice regarding decisions that have an impact on the environment are falling short of [European standards](#). Under EU legislation, Member States have to ensure that interested parties or parties impaired in their rights including NGOs have access to review procedures to challenge the legality of decisions relating to the environment. After assessing Germany's legislation in this area, the Commission has concluded that it contains a number of shortcomings regarding individuals and NGOs and their access to justice, especially as regards decisions covered by the Directive on Environmental Impact Assessments for projects and the IPPC Directive on industrial emissions. Germany recently adopted new legislation on access to justice, but the Commission remains unconvinced that the shortcomings have been addressed.

After an initial letter of formal notice in October last year, the Commission is now sending a reasoned opinion (the second stage in EU infringement proceedings), giving Germany two months to reply. In the absence of a satisfactory response, the Commission may refer it to the EU's Court of Justice.

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- **Climate change: Commission asks Greece to comply with EU laws on fluorinated greenhouse gases**

[Regulation 842/2006](#) requires companies to take a range of measures to reduce leaks from equipment containing fluorinated gases (F-gases) and to recover the gases at the end of the equipment's lifetime. The Regulation also establishes rules on training and certification for personnel involved in servicing equipment, labelling of F-gas equipment, reporting on production, imports and exports of F-gases as well as some bans in specific areas. These are important measures to limit emissions of this family of industrial gases, which are also powerful greenhouse gases, and thus help prevent further global warming.

To date **Greece** has failed to indicate to the Commission which national bodies should certify the relevant service companies for stationary refrigeration, air-conditioning and heat pump equipment as well as stationary fire protection systems and fire extinguishers containing F-gases, including the titles of the certificates that will be issued. The Commission is therefore today asking **Greece, in a reasoned opinion** (the second stage in EU infringement proceedings), to comply with these rules within two months. Otherwise, the Commission may decide to refer Greece to the EU's Court of Justice.

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- **Maritime Safety: Commission requests Hungary to comply with new standards for equipment placed on board ships**

The European Commission has today asked **Hungary** to adopt national legislation implementing the latest marine equipment standards, as introduced by EU Law. The [marine equipment Directive](#) aims at reaching a uniform application of international standards on marine equipment in the EU and facilitating free movement of marine equipment within the internal market. The lack of timely transposition undermines the uniform implementation of these new safety rules within the internal market, with impact on maritime safety.

The Commission's request takes the form of a reasoned opinion under EU infringement procedures. If Hungary fails to inform the Commission within two months of the measures it has taken to ensure full compliance with EU law, the Commission could refer the case to the European Court of Justice.

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- **Internal energy market: Ireland called upon to comply with EU electricity internal market rules**

Today the Commission sent an additional reasoned opinion to **Ireland** urging it again to fully transpose the [Electricity Directive](#) of the third energy package. This Directive should have been fully transposed by the Member States already by 3 March 2011. It contains key provisions for a proper functioning of the electricity markets, such as new rules on unbundling of networks, rules strengthening the independence and powers of national regulators and rules on the improvement of the functioning of retail markets to the benefit of consumers. The additional reasoned opinion sent now complements the reasoned opinion that was already sent to Ireland in June 2012 and clarifies the Commission's views with regard to the transposition of the unbundling provisions in the Electricity Directive. If Ireland does not comply with its legal obligation within two months, the Commission may decide to refer the case to the Court of Justice.

In autumn 2011 the Commission launched infringement proceedings against 19 Member States for non-transposition of the Third Package Electricity and Gas Directives. In 2012 and early 2013 reasoned opinions were sent to 16 Member States who still had not completed the transposition. At the end of 2012 and in the beginning of 2013 a number of Member States were referred to Court. These were Poland, Slovenia, Finland, Bulgaria, Estonia, the UK and Romania. The Commission is still examining the situation in the few remaining Member States who had received reasoned opinions to verify if they have fully transposed the Directives.

More information: [http://ec.europa.eu/energy/infringements/index\\_en.htm](http://ec.europa.eu/energy/infringements/index_en.htm)

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- **Ports: Commission sends an additional reasoned opinion to Lithuania for maintaining a priority right for cargo-handling operators to renew their port contract upon its expiry**

This additional reasoned opinion follows a reasoned opinion sent by the Commission in June last year. Following the latter **Lithuania** has modified its legislation governing the lease of port land for the provision of cargo-handling services. As a result of these changes the public port land in Lithuania should be leased to a cargo handling operator only after a competitive procedure. However, the amended legislation maintains the priority right of the incumbent cargo-handling operator if as a result of the tender procedure it appears that the other bidders offer the same terms as the incumbent.

The Commission considers that such a provision may lead to discrimination against operators from other Member States wishing to establish themselves in Lithuania. In the absence of a satisfactory response from Lithuania within two months, the Commission may decide to refer the case to the European Court of Justice.

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- **Labour Law: Commission requests LUXEMBOURG to fully apply Fixed-Term Work Directive**

The European Commission has requested **Luxembourg** to review its legislation to protect employees against abusive renewals of fixed-term contracts in order to fully comply with the requirements of the [Directive on fixed-term work](#). Teaching and research staff at the University of Luxembourg as well as staff in the entertainment sector are excluded from the scope of Luxembourg's current legislation, leaving them with no protection against such abusive practices. The Directive requires Member States to ensure that when an employer makes permanent vacancies available, fixed-term staff must be informed.

The relevant rules in Luxembourg only provide for indirect communication through the works council, and there is no provision for informing fixed-term staff directly. This problem is particularly acute in small undertakings, where no works council exists. The request takes the form of a 'reasoned opinion' under EU infringement procedures. Luxembourg now has two months to notify the Commission of the measures taken to fully implement the Directive. Otherwise, the Commission may decide to refer Luxembourg to the EU's Court of Justice.

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- **Telecoms: Commission asks The Netherlands to ensure independence of Dutch regulator**

The European Commission is taking action to ensure the Dutch telecoms regulator, ACM, retains full independence in the application of EU telecoms rules to television broadcasting transmission. The [2009 EU Regulatory Framework](#) for telecoms requires that national regulators have full independence in how they apply market regulation. The Commission believes that current Dutch regulation limits this regulatory discretion by attempting to directly regulate the market in two ways. In the first case, broadcasters subject to "must-carry obligations" are forced to offer for resale their television programmes, as well as the transmission service that carries them, at wholesale level at "cost-oriented" prices (to prevent undue profits). The second provision obliges the ACM to force companies found to have significant market power to resell their programmes to competitors at cost-oriented prices.



The Commission is mainly concerned about how these regulatory provisions were imposed. It should be up to independent regulators to decide on whether such measures should be imposed, rather than the Dutch Government. The Commission is therefore sending a reasoned opinion (the second stage in EU infringement proceedings). **The Netherlands** has two months to reply. In the absence of a satisfactory response, the Commission may refer it to the EU Court of Justice.

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- **Environment: Commission asks Poland to respect Environmental laws in preparing Flood prevention Programme**

The Commission has a number of concerns about environmental aspects of **Poland's** Upper Vistula Flood Prevention Programme. Despite the fact that the Programme will affect the status of water bodies and a number of Natura 2000 sites, no appropriate impact assessment taking the environmental objectives set up in the EU law as required by [Strategic Environmental Impact Assessment Directive](#) has been carried out. Some 120 of the 410 projects included in the Programme are also considered to have significant impacts on 50 different Natura 2000 sites.

Under the [Habitats Directive](#), such projects may be justified for reasons of overriding public interest, providing compensatory measures are proposed and alternative solutions carefully analysed, but this does not appear to have been done. There are also concerns regarding the [Water Framework Directive](#), as the programme puts water bodies at risk, compromising their capacity to attain good environmental status by 2015. While fully supporting Polish efforts to develop flood prevention infrastructure in order to protect people and cultural heritage from floods, the Commission maintains that these efforts need to comply with EU environmental legislation.

The Commission sent a letter of formal notice to Poland in November 2012, but since Poland has still not taken the appropriate measures to redress the situation, the Commission is sending a reasoned opinion, giving Poland two months to reply. If Poland does not comply, the Commission may decide to refer the case to the EU's Court of Justice.

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- **Environment: Commission asks Spain to bring the Barranco de Sedases landfill up to standard**

The Commission is asking **Spain** to clean up the Barranco de Sedases landfill in Fraga, Huesca, in the region of Aragon. The site falls short of the standards set [by EU waste legislation](#). It is operating without the appropriate permits and should have been conditioned or, alternatively, closed down by 16 July 2009 at the latest. The Commission sent a letter of formal notice to Spain on this matter on 1 June 2012.

As no appropriate administrative measures have been adopted to end this situation, the Commission is sending a reasoned opinion to Spain, giving it two months to reply. If the Spanish authorities do not reply satisfactorily, the Commission may refer the matter to the EU's Court of Justice.

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- **Environment: Commission asks the UNITED KINGDOM to strengthen laws for the disposal of processed fuel oil**

The Commission is asking the **United Kingdom** to change its [end-of-waste criteria](#) for waste oils. Under UK end-of-waste criteria, processed fuel oils may be used like virgin equivalent fuel oils. The Commission is concerned that these criteria allow certain contaminants to remain in high concentrations, and that these contaminants are then released during combustion, threatening human health and the environment. Standard combustion plants, unlike waste incineration plants, are not necessarily equipped with technologies to remove pollutants contained in emissions from processed fuel oils such as heavy metals, hydrogen chloride and halogens.

The Commission is therefore sending a reasoned opinion, giving the UK two months to reply. If the United Kingdom fails to act, the Commission may refer the case to the EU's Court of Justice.

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