



EUROPEAN COMMISSION

MEMO

Brussels, 24 January 2013

January infringements package: main decisions

	COMPETITION	DIGITAL AGENDA	EMPLOYMENT	ENERGY	INDUSTRY & ENTREPRENEURSHIP	ENVIRONMENT	JUSTICE	INTERNAL MARKET & SERVICES	TRANSPORT	HEALTH & CONSUMER POLICY	TAXATION & CUSTOMS UNION
AT								1	2		
BG	1			2		2					
DK											1
EE				1							
EL				1							
ES						1					
FI						1		1			
FR					1						
HU						1					
IT			1	1							
LV				1		1					
NL				1		1	1				
PL						1				1	1
PT		1		1		1		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 **171 decisions**, including **24 reasoned opinions** and **10 referrals** to the European Union's Court of Justice, out of which **7 include financial penalties**. 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 with financial penalties

- **Internal energy market: Commission refers BULGARIA, ESTONIA and the UNITED KINGDOM to Court for failing to fully transpose EU rules**

The European Commission is referring Bulgaria, Estonia and the United Kingdom to the Court of Justice of the European Union for failing to fully transpose the EU internal energy market rules. To date Bulgaria, Estonia and the UK have only partially transposed the Electricity and Gas Directives. The Directives had to be transposed by the Member States by 3 March 2011. For **Bulgaria**, for each partially transposed Directive, the Commission proposes a daily penalty of € 8 448. For **Estonia**, the Commission proposes daily penalties of € 5 068.80 for the partially transposed Electricity Directive and of € 4 224 for the partially transposed Gas Directive. For **the United Kingdom**, the Commission requests the Court to impose a daily penalty payment of € 148 177.92 for each of the partially transposed Directives. The penalties proposed take into account the duration and the gravity of the infringement. In case of an affirmative judgement of the Court, the daily penalty is to be paid from the date of the judgment until the transposition is completed. The final amount of the daily penalties will be decided by the Court.

(for more information: [IP/13/42](#) – M. Holzner - Tel. +32 229 60196 - Mobile +32 498 98 2280)

- **Digital Agenda: Commission asks Court of Justice to fine PORTUGAL over exclusion of companies from providing universal service**

The European Commission has asked the European Court of Justice to impose a fine on **Portugal** because it has not respected a [2010 Court judgment](#) requiring it to follow EU telecoms rules when deciding who should provide universal service in Portugal. The Commission is suggesting a lump sum of € 5 277.30 per day for the period between the 2010 judgement and eventual second Court ruling.

Today's decision to refer Portugal back to the Court, with a view to imposing financial penalties, follows a previous Court referral decision from the Commission in March 2012 ([IP/12/287](#)). The Commission has taken into account the progress made by the Portuguese authorities since then, in particular through the publication of invitations to tender, and has therefore proposed a reduced lump sum.

(for more information: [IP/13/44](#) – R. Heath – Tel. +32 229 61716 - Mobile +32 460 75 0221)

2. Other referrals to the Court of Justice

- **Antitrust: Commission takes BULGARIA to Court over assignment of digital terrestrial broadcasting authorisations**

The European Commission has decided to refer **Bulgaria** to the EU's Court of Justice over the assignment of digital broadcast spectrum. The Commission found that the procedure followed by Bulgaria was based on disproportionately restrictive award conditions, leading to the exclusion of potential candidates. This hampers competition in the future Bulgarian digital terrestrial television (DTT) infrastructure market, in breach of the applicable EU Directives on electronic communications.

(for more information: [IP/13/46](#) – A. Colombani – Tel. +32 229 74513 – Mobile +32 460 75 2063)

- **Gender Equality: European Commission refers the NETHERLANDS to the Court**

The European Commission decided today to refer **the Netherlands** to the Court of Justice of the European Union for not adequately protecting the rights of employees on maternity, adoption or parental leave related to their return to work. According to the EU [Gender Equality Directive](#), employees coming back from maternity, adoption or parental leave are entitled to return to their job or to an equivalent post. EU rules also specify that the employee will also benefit from any improvement in working conditions to which they would have been entitled during their absence. The EU Directive requires that the national laws explicitly protect those employment rights. Currently, Dutch legislation does not include specific and express provisions providing protection in relation to return from maternity, paternity or adoption leave. This casts doubt over the degree of protection foreseen by Dutch law and makes it difficult for citizens to know and enforce their rights.
(for more information: [IP/13/45](#) – M. Andreeva - Tel. +32 229 91382- Mobile +32 498 99 1382)

- **Environment: Commission takes POLAND to Court over nitrates and water pollution**

The European Commission is referring **Poland** to the EU Court of Justice for failing to guarantee that water pollution by nitrates is addressed effectively. Europe has strong legislation on pollution from nitrates, and although the requirements have been applicable in Poland since 2004, too little has been done. Poland has still has not designated a sufficient number of zones that are vulnerable to nitrates pollution, and measures to effectively combat nitrates pollution in these zones have not been adopted. On the recommendation of Environment Commissioner Janez Potočnik, the Commission is therefore taking Poland to the EU Court of Justice.
(for more information: [IP/13/48](#) – J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

3. Reasoned opinions

- **Environment: a fresh legal approach to improving air quality in Member States**

Ambient air quality is poor in many EU Member States – despite an obligation for governments to ensure good air quality for citizens. The situation is so serious that the Commission is currently taking action against 17 States with a consistent record of poor air quality. Today, as part of a fresh approach to the problem, **Bulgaria, Latvia and Slovenia** are being asked to urgently address an on-going issue that kills more citizens than road traffic accidents every year.
(for more information: [IP/13/47](#) – J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Road transport: Commission requests AUSTRIA, FINLAND and the UNITED KINGDOM to adopt measures on periodic roadworthiness tests**

The European Commission has requested **Austria, Finland and the United Kingdom** to implement in national law the requirements set out in the Directive on periodic roadworthiness tests for motor vehicles and their trailers (Directive 2010/48/EU). The adoption of these measures is important to take into account all technological developments of vehicle and trailer components to better allow verifying the vehicle's safety during the tests. All three Member States failed to communicate the necessary information to the Commission by the initial deadline of 31 January 2011. They also failed to take action following the reception of letters of formal notice. The Commission is therefore sending reasoned opinions (the second stage in EU infringement proceedings), giving two months to reply. In the absence of a satisfactory response, the Commission may refer them to the EU Court of Justice.

(for more information: H. Kearns - Tel. +32 229 87638 - Mobile +32 498 98 7638)

- **Energy Efficiency in Buildings – the Commission asks BULGARIA, GREECE, ITALY and PORTUGAL to adopt national measures on energy efficiency in buildings**

Today the Commission sent Reasoned Opinions to **Bulgaria, Greece, Italy and Portugal**, requesting 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 four Member States do not comply with their legal obligation within two months, the Commission may decide to refer them to the Court of Justice. More information here:

http://ec.europa.eu/energy/infringements/index_en.htm

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- **Environment: Commission asks HUNGARY and the NETHERLANDS to comply with EU law on water services**

The European Commission is asking **Hungary and the Netherlands** to bring their water laws into line with EU legislation. This is part of a horizontal exercise that concerns several Member States. Under the [Water Framework Directive](#), Member States must price water in a way that includes its environmental and resource costs and provides an adequate incentive to use it efficiently. Cost recovery of water services is an important tool to achieve the Directive's overall objective of good ecological and chemical status of water and to address human-made pressures on our waters. Member States may refrain from applying cost recovery if certain conditions are met, but they cannot exclude recovery as a matter of principle. Hungary and the Netherlands are currently failing to recover costs for impoundments for the purposes of navigation and flood protection, and Hungary is not recovering costs for groundwater abstracted by industry for its own purposes. The Commission is therefore sending both Member States a reasoned opinion (the second stage in EU infringement proceedings), giving them two months to reply.

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- **Renewable Energy: Commission sends Reasoned Opinions to LATVIA and The NETHERLANDS**

Today the European Commission has sent Reasoned Opinions to **Latvia** and The **Netherlands** for not informing the Commission about the full transposition of the Renewable Directive. The Renewable Energy [Directive \(2009/28/EC\)](#) had to be implemented by Member States by 5 December 2010. However, Latvia and The Netherlands have not informed the Commission of all the necessary transposition measures for fully transposing the Directive into their national legislation. 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. These two Reasoned Opinions complement 13 similar procedures involving Austria, Bulgaria, Cyprus, Czech Republic, Finland, France, Hungary, Greece, Ireland, Luxembourg, Malta, Poland and Slovenia. More information here: http://ec.europa.eu/energy/infringements/index_en.htm (for more information: M. Holzner - Tel. +32 229 60196 - Mobile +32 498 98 2280)

- **Public procurement: Commission requests AUSTRIA to apply EU rules**

The European Commission has today requested that **Austria** provide rapid and effective means of redress and ensure the respect of the principles of non-discrimination and transparency in a public procurement case involving the supply of goods to Austrian ministries. Austria has violated the principle of effective review as enshrined in [Directive 1989/665/EEC](#) as amended by [Directive 2007/66/EC](#) especially by pursuing a procurement procedure without changes although some of the tender specifications had been declared discriminatory and therefore void by the national review body. This also violated the principle of transparency of [Directive 2004/18/EC](#) on the coordination of procedures for the award of public contracts. The Commission's request takes the form of a reasoned opinion under EU infringement procedures. If no measures are notified to put an end to the violation of EU law within two months, the Commission may decide to refer Austria to the EU Court of Justice.

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- **Road transport: Commission asks AUSTRIA to adopt measures on the roadside inspection of commercial vehicles**

The European Commission has requested to transpose into national law the requirements set out in the Directive on technical checks during roadside inspections (Directive 2010/47/EU). These provisions are important in order to take into account the technological developments related to testing of brakes and emissions, and therefore enhancing road safety and the protection of the environment. **Austria** failed to meet the deadline of 1 January 2012 for communicating the necessary measures to the Commission. It also failed to take action following the reception of a letter of formal notice. The Commission is therefore sending a reasoned opinion (the second stage in EU infringement proceedings), giving Austria 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 BULGARIA to comply with industrial emission ceilings for Sulfur Dioxide, Nitrogen Oxide and dust**

The European Commission is concerned that **Bulgaria** is not yet complying with ceilings on emissions of Sulfur Dioxide, Nitrogen Oxide and dust from [industrial plants](#). Under the Treaty of Accession, the ceilings have applied since 2008, but they have been exceeded every year so far for which records have been submitted, and forecasts for 2012 show Bulgaria again exceeding ceilings for Nitrogen Oxide and dust. Concluding that the continuing absence of structural measures to reach compliance indicates that this consistent pattern of violation is likely to continue, the Commission is sending a reasoned opinion (the second stage in EU infringement proceedings), giving Bulgaria 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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- **Taxation: Commission asks DENMARK to amend exit tax rules**

The The European Commission has formally requested that **Denmark** amend its rules which apply an exit tax to shares held by individuals when leaving the country. When a person leaves Denmark to take up residence in another Member State, the gain made on his/her portfolio of shares is calculated and taxed. This tax is then collected from the individual either when the shares from his/her portfolio are sold, or when he/she receives dividends or other types of income from these shares. The Commission considers that the Danish tax rules go beyond what is needed to prevent tax evasion and breach the free movement of people and capital set out in the Treaties. Consequently, Denmark is requested to change its legislation within two months to bring it in line with EU law. Failing this, the European Commission may refer the case before the EU's Court of Justice.

(for more information: E. Traynor - Tel. +32 229 21548 - Mobile +32 498 98 3871)

- **Environment: Commission asks SPAIN to clean up landfills**

Under EU law, Member States had to ensure that landfills which had been granted a permit or were already in operation when the [landfill](#) Directive was transposed did not continue to operate after July 2009 unless they complied with the Directive. According to the Commission, a number of landfills in **Spain** were still operating after the 2009 deadline in breach of the Directive, and a letter of formal notice was therefore sent. After assessing the Spanish reply, the Commission has concluded that despite some progress, some landfills have still not been closed or brought in compliance with the Directive. The Commission is now sending a reasoned opinion (the second stage in EU infringement proceedings), giving Spain two months to reply.

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- **Free movement of goods: Commission requests FRANCE to remove barriers to trade for ambulances**

The European Commission has requested that **France** changes current rules concerning the procedure for registration and putting in service existing types of ambulances - those for which approval was granted before 29 October 2012 as complying with the EN 1789 European harmonised standard - as French rules mean that ambulances already registered in other Member States cannot automatically be used in France. According to the current rules, France imposes additional controls and certification requirements on ambulances already registered in other Member States for the transport and treatment of patients - without taking into account any checks already carried out and that EN 1789 certification was already given to the ambulances by another Member State. France is refusing to authorise the use of these ambulances for the transport of patients. The fact that in other Member States there is no equivalence to the required specific French tests, and that the tests can only be carried out by only one French testing centre, means that the principle of mutual recognition is denied and the free movement of ambulances within the EU is hindered. France's additional requirements are in breach of the EU Single Market rules because they make the commissioning of imported ambulances in France more difficult and costly (it costs € 35 000 to test each vehicle in France). Moreover, the additional requirements deny the main objectives of the standard: to set common requirements for the test methods and the performance of road ambulances. The Commission has therefore requested France to change its laws to comply with the harmonised standards agreed at EU level, and so allow the free movement of goods in the Single Market (current rules in France: Decree of 10 February 2009 and "Guide d'application GA 64-022"). The Commission request takes the form of a reasoned opinion under EU infringement procedures. If France does not inform the Commission within two months of measures taken to ensure full compliance with its obligations, the Commission may decide to refer it to the Court of Justice of the European Union.

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- **Environment: Commission asks FINLAND to bring national legislation into line with the requirements of the Mining Waste Directive**

The European Commission is asking **Finland** to bring its national laws into line with the [Mining Waste Directive](#), which aims to prevent or reduce as far as possible the adverse effects of the management of waste from extractive industries on human health and the environment, in particular water, air, soil, fauna and flora. Finland should have transposed the Mining Waste Directive into national legislation since 1 May 2008. The Commission sent a letter of formal notice to Finland in June 2012. As Finland has still not adopted the appropriate legislation, the Commission is sending a reasoned opinion (the second stage of the infringement procedure) giving Finland two months to reply. If it fails to do so, the Commission may refer the case to the EU Court of Justice.

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

The European Commission has requested **Italy** to fully apply the Council [Directive on fixed-term work](#) (1999/70/EC) that requires Member States to put into effect a framework agreement, reached by EU-level organisations representing trade unions and employers, setting out the general principles and minimum requirements relating to workers on fixed-term contracts. The Directive contains an absolute requirement to take fixed-term workers into consideration when calculating the threshold above which workers' representative bodies have to be established under national law. The relevant Italian rules are contrary to the Directive's requirements because they only take fixed-term employment of more than nine months into account for the purpose of this calculation. This means that employees on fixed-term contracts with a duration of less than nine months are not taken into account when assessing whether a company is large enough to be required to set-up workers' representative bodies. . The request takes the form of a 'reasoned opinion' under EU infringement procedures. Italy now has two months to notify the Commission of the measures taken to fully implement the Directive. Otherwise, the Commission may decide to refer Italy to the European Court of Justice.

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- **Public health: POLAND requested to complete transposition of EU legislation on human tissues and cells**

Human tissues and cells, such as bone marrow, tendons, ovocytes, and cornea are used in healthcare to treat people and cure them from various diseases. The transplantation of tissues and cells carries potential risks for disease transmission, and this is why EU legislation lays down rules to guarantee their quality and safety, while leaving to national legislation the uses that can be made of such tissues and cells. EU rules are essential to ensure that Europeans are treated with safe tissues and cells throughout the European Union. **Poland**'s transposition of the rules of the relevant Directives is incomplete. It does not apply these rules on quality and safety to three categories of tissues and cells covered by the EU legislation: reproductive cells, embryonic tissues and foetal tissues. Polish authorities have two months from the sending of this request to take necessary action to comply with EU law and to inform the Commission of the adopted measures. If Polish authorities fail to do so within the deadline, the Commission may decide to refer the case to the Court of Justice of the European Union.

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- **Taxation: Commission calls on POLAND to amend its rules on VAT rates for medical equipment and pharmaceutical products**

The European Commission has formally requested that **Poland** amends its legislation which allows a reduced VAT rate to be applied to medical equipment and pharmaceutical products beyond the scope of what is allowed under EU law. Under the EU VAT Directive, Member States can apply a reduced VAT rate for medical equipment, aids and other appliances which meet two conditions, namely if they are "normally intended to alleviate or treat disability" and if they are "for the exclusive personal use of the disabled". For pharmaceutical products, the VAT Directive allows a reduced rate for those related to health care, prevention of illnesses and medical and veterinary treatments. Poland goes beyond this scope by granting a reduced VAT rate to medical equipment of general use, and to certain non-medicinal pharmaceutical products, such as disinfectants and spa products. It is therefore requested to align the scope of the reduced rate to that which is permitted under EU law. The Commission's request takes the form of a reasoned opinion (second step of the EU infringement proceedings). In the absence of a satisfactory response within two months, the Commission may refer Poland to the Court of Justice.

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- **Environment: Commission asks PORTUGAL to bring laws on access to environmental information into line with European norms**

The European Commission is concerned that **Portugal's** laws on access to information regarding impacts on the environment are falling short of [European standards](#). Under EU legislation, Member States have to ensure that practical information is made available on 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 to participate effectively in such procedures. After assessing Portuguese legislation in this area, the Commission concluded that it contains no reference to the obligation to provide practical information. Despite an earlier letter of formal notice, the Portuguese law in question has still not been reviewed. The Commission is therefore sending a reasoned opinion (the second stage in EU infringement proceedings), giving Portugal two months to reply.

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- **Air transport: Commission requests PORTUGAL to provide guarantees of functional and financial independence of slot coordinator**

The European Commission has requested **Portugal** to notify within two months the measures necessary to comply with EU common rules on allocation of airport slots. The Commission is seeking guarantees as to its functioning and financial independence. The slot coordinator is in charge of allocating landing and take-off slots in a non-discriminatory, neutral and transparent manner, one of the essential pillars of a system that allows fair competition. The Commission is instructing the case on an ex-officio basis. No complaint has been received as to the functioning of the slot coordinator.

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- **Environment: Commission asks the SLOVAK REPUBLIC to update legislation on batteries**

The European Commission is asking the **Slovak Republic** to bring its national laws into line with the [Batteries Directive](#). The Slovak Republic was to transpose the Directive by 26 September 2008. The Commission sent a letter of formal notice to the Slovak Republic in June 2012. As the Slovak Republic has not adopted the appropriate legislation, the Commission is sending a reasoned opinion (the second stage of the infringement procedure) and giving the Slovak Republic two months to reply. If it fails to do so, the Commission may refer the case to the EU Court of Justice.

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