



EUROPEAN COMMISSION

MEMO

Brussels, 21 February 2013

February infringements package: main decisions

| | DIGITAL AGENDA | EMPLOYMENT | ENERGY | INDUSTRY & ENTREPRENEURSHIP | ENVIRONMENT | JUSTICE | TRANSPORT | HEALTH & CONSUMER POLICY | TAXATION & CUSTOMS UNION |
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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 **151 decisions**, including **15 reasoned opinions** and **13 referrals** to the European Union's Court of Justice, out of which **2 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

- **Environment: Commission takes GREECE back to Court over illegal landfills and asks for fines**

The European Commission is taking **Greece** back to the European Court of Justice for failing to implement an earlier ruling on illegal landfills. In 2005, the Court ruled that Greece was not taking sufficient measures to close down and rehabilitate illegal landfills, of which there were several hundred operating across the country. Eight years later, in view of insufficient progress since the ruling, the Commission is referring the case back to Court and, in line with established policy, suggesting a daily penalty payment of € 71 193 for each day after the second Court ruling until Greece complies with the judgment and a lump sum calculated on the basis of € 7 786 per day for the period between the first judgment and the day of compliance or the day of the second Court ruling.

(for more information: [IP/13/143](#) – J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Environment: Commission refers SWEDEN back to Court over industrial permits, asks for fines**

The European Commission is taking **Sweden** back to Court for its failure to license industrial installations that are operating without permits. Despite an earlier Court judgement on this matter, Sweden has still not licensed two major industrial installations. On the recommendation of Environment Commissioner Janez Potočnik, the Commission is therefore referring Sweden back to the European Court of Justice and, in line with established policy, suggesting a daily penalty payment of € 14 912 for each day after the second Court ruling until Sweden complies with the judgment and a lump sum calculated on the basis of € 4 893 per day for the period between the first judgment and the day of compliance or the day of the second Court ruling.

(for more information: [IP/13/145](#) – J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

2. Other referrals to the Court of Justice

- **Road transport: Commission refers AUSTRIA, FINLAND and POLAND to the European Court of Justice for failing to apply EU working time rules to self-employed drivers**

The European Commission has decided today to take **Austria, Finland and Poland** to the European Court of Justice for failing to apply EU working time rules to self-employed drivers (Directive [2002/15/EC](#)). More than two years have passed since the Commission requested the authorities of all Member States to inform the Commission on the actions undertaken to ensure full compliance with the legislation in force. These three Member States still have not notified their national transposing measures giving full effect to the Directive.

(for more information: [IP/13/142](#) – H. Kearns - Tel. +32 229 87638 - Mobile +32 498 98 7638)

- **Taxation: The Commission brings FRANCE and LUXEMBOURG before the Court of Justice concerning the reduced rate of VAT applied to digital books**

The European Commission has decided to bring an appeal before the European Court of Justice against **France and Luxembourg** with regard to a reduced rate of VAT being applied to digital books. EU legislation is very clear as to which goods and services may benefit from a reduced rate of VAT. The supply of digital books is a service provided electronically and a reduced rate may not be applied to this type of service.

(for more information: [IP/13/137](#) – E. Traynor - Tel. +32 229 21548 - Mobile +32 498 98 3871)

- **Taxation: Commission refers BELGIUM to Court over discriminatory tax reduction for Walloon tax residents**

Today, the European Commission has decided to refer **Belgium** to the EU Court of Justice over its discriminatory tax rules in the Walloon Region.

Under the Walloon Decree of 3 April 2009 personal income tax can be reduced when buying shares or bonds of the Investment Fund of Wallonia. However, this reduction applies only to residents of Wallonia. The Commission is of the opinion that excluding non-residents that earn their income in the Walloon Region from this reduction is discriminatory and restricts the free movement of workers which is provided for in EU Treaties. The European Commission sent a reasoned opinion to Belgium in November 2011 formally requesting the Belgian authorities to amend this law (see [IP/12/281](#)). In the absence of a reaction of the Belgian authorities the European Commission has decided to refer the case to the Court of Justice.

(for more information: [IP/13/136](#) – E. Traynor - Tel. +32 229 21548 - Mobile +32 498 98 3871)

- **Taxation: Commission refers HUNGARY to Court over tax exemption of pálinka**

Today, the European Commission has decided to refer **Hungary** to the European Court of Justice for granting an exemption from excise duty to the production of fruit distillates (pálinka). Hungary exempts pálinka from excise duty when it is produced by households or distilleries for personal use, up to a maximum of 50 litres a year.

(for more information: [IP/13/138](#) – E. Traynor - Tel. +32 229 21548 - Mobile +32 498 98 3871)

- **Pensions: Commission refers The NETHERLANDS to Court for discriminating against pensioners abroad**

The European Commission has referred **The Netherlands** to the EU's Court of Justice for failing to notify measures to stop discriminating against pensioners who live abroad when paying out an allowance for elderly taxpayers. This results from a discriminatory condition under Dutch law for entitlement to the '*koopkrachttegemoetkoming oudere belastingplichtigen*' (purchasing power allowance for elderly taxpayers).

(for more information: [IP/13/140](#) – J. Todd - Tel. +32 229 94107 - Mobile +32 498 99 4107)

- **Environment: Commission takes POLAND to Court over water legislation**

The European Commission is referring **Poland** to the EU Court of Justice for failing to transpose European water legislation correctly. Polish water legislation has shortcomings in a number of areas, including the transposition of some definitions provided by the Directive and gaps in transposition of the Directive's Annexes. The Commission is particularly concerned about the absence of Annex II, which outlines the characterisation system for surface waters and groundwaters, and about omissions in the transposition of Annex III, which should provide specifications and reference points for river basin district analysis, reviews of the environmental impact of human activities on water, and the economic analysis of water use. The monitoring of water status is also a cause for concern. Despite a number of reminders no satisfactory reply has been forthcoming. On the recommendation of Environment Commissioner Janez Potočnik, the Commission is therefore calling Poland before the European Court of Justice.

(for more information: [IP/13/144](#) – J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Interoperability of European railways: Commission refers SLOVENIA to the Court of Justice**

The European Commission has decided today to refer **Slovenia** to the European Court of Justice for failure to notify national measures transposing a directive on railway interoperability. The deadline for implementation was 31 December 2011.

Directive [2011/18/EU](#) amends Directive [2008/57/EC](#) on interoperability which modifies the description of the rail systems and specifies the procedures of their verification.

The Commission had already requested Slovenia to take action to ensure compliance with Directive 2011/18/EU. However, Slovenia has not taken the necessary measures it was required to implement and have failed to notify the Commission of any such measures.

(for more information: [IP/13/141](#) – H. Kearns - Tel. +32 229 87638 - Mobile +32 498 98 7638)

- **Taxation: Commission takes the UK to Court over reduced VAT rate**

Today, The European Commission has decided to refer **the United Kingdom** to the EU Court of Justice for its reduced VAT rate on the supply and installation of energy-saving materials. This measure goes beyond what is allowed under the [VAT Directive](#).

(for more information: [IP/13/139](#) – E. Traynor - Tel. +32 229 21548 - Mobile +32 498 98 3871)

3. Other case with specific interest

- **Animal Welfare: Commission increases pressure on Member States to enforce group housing of sows**

Today, the European Commission, via a letter of formal notice, called on **Belgium, Cyprus, Denmark, France, Germany, Greece, Ireland, Poland** and **Portugal** to take action to address deficiencies in the implementation of EU legislation concerning the welfare of animals, and specifically to implement [Directive 2008/120/EC](#) which requires that sows are kept in groups during part of their pregnancy.

(for more information: [IP/13/135](#) – F. Vincent - Tel. +32 229 87166 - Mobile +32 498 98 7166)

4. Reasoned opinions

- **Taxation: Commission requests BELGIUM to amend discriminatory tax reductions in the Flemish region**

The European Commission has officially asked **Belgium** to amend its rules on the so-called "Winwinlening" ("Prêt gagnant-gagnant") venture capital scheme.

This legislation allows a tax reduction for loans from residents of the Flemish region to businesses established in that region. This reduction is not available for non-residents who receive their income in Belgium.

The Commission considers that the Belgian tax rules are in breach of the free movement of workers and the freedom of establishment set out in the EU Treaties. Consequently, Belgium is requested to change its legislation.

The Commission request takes the form of a reasoned opinion. If the legislation is not brought into compliance within two months, the Commission may refer the matter to the EU Court of Justice.

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

- **Taxation: the Commission asks BELGIUM to revise its taxation of paid interest**

The Commission has formally asked **Belgium** to amend the fiscal provisions concerning the taxation of paid interest, since they are considered to be discriminatory.

Belgian legislation charges property tax on the interest paid to foreign investment companies. The taxation of interest relating to securities deposited or credited to the accounts of financial institutions established outside Belgium is also discriminatory.

On the other hand, the same interest paid to Belgian investment companies or relating to securities deposited or credited to financial bodies established in Belgium is exempt from property tax.

These are unjustified restrictions on the freedom to provide services and on the free movement of capital as established respectively by the European Treaties.

The Commission's decision takes the form of a reasoned opinion. In the absence of a satisfactory response within a deadline of two months, the Commission may decide to refer the Kingdom of Belgium to the European Court of Justice.

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- **Free movement: Commission asks BELGIUM to comply with EU rules**

The European Commission requests **Belgium** to bring its laws into line with EU legislation. Under the [Free Movement Directive](#), Member States must ensure that Union citizens and their family members, including non-EU nationals, fully benefit from their rights to free movement as regards entry and residence in another Member State and protection against expulsion. Belgium is failing to transpose correctly a number of provisions in the Directive: Belgium does currently not facilitate the entry and residence of non-EU family members of Union citizens. In particular it does not facilitate the issuance of their visas and residence cards. Furthermore, Belgium has not transposed all the material and procedural safeguards against the expulsion of Union citizens who have recourse to the Belgian social assistance system: the Belgian law does not foresee an individual assessment of the personal circumstances of the citizen concerned before taking an expulsion measure. As a result, EU citizens are currently not protected against automatic expulsions measures and cannot protect themselves easily against such unlawful decisions of the Belgian authorities. Besides, Belgium's rules on protection against expulsions on grounds of public policy or public security offer safeguards to non-EU family members of Union citizens only but not to Union citizens. The Commission's request takes the form of a reasoned opinion under EU infringement procedures. Belgium has now two months to comply with European Union rules. Failing this, the European Commission may refer the matter before the EU's Court of Justice.

(for more information: M. Andreeva - Tel. +32 229 91382- Mobile +32 498 99 1382)

- **Environment: Commission asks CYPRUS to boost nature protection legislation**

The European Commission is asking **Cyprus** to extend its sites for [Natura 2000](#), Europe's network of protected natural areas. Under the [Birds Directive](#), Member States need to designate the most suitable sites as special protection areas (SPAs) for the conservation of bird species. Cyprus originally designated only 7 SPAs, significantly below the 16 required under the Important Bird Areas (IBA) inventory used by the Commission to assess whether Member States are complying with their obligation to classify SPAs. The Commission opened infringement proceedings in 2007, and although more SPAs are now in place, the Commission is not convinced that the coverage of the areas protected is sufficient to provide adequate protection for a number of important species. The Commission is therefore sending a complementary reasoned opinion (the second stage of the infringement procedure), giving Cyprus two months to reply. In the absence of a satisfactory response, the Commission may refer the Member State to the EU Court of Justice.

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- **Electronic communications: the Commission is concerned that ITALIAN legislation on ancillary services limits the discretion the national regulatory authority (AGCOM)**

The Commission has examined the **Italian** law imposing the unbundling of ancillary services, such as maintenance and activation of lines, from the wholesale local loop unbundling provided by the incumbent operator Telecom Italia. A recent Italian law, in an attempt to directly regulate such ancillary services, has in practice pre-empted the margin of discretion of the national regulatory authority (AGCOM). This is contrary to EU rules, which require that the national regulatory authority exercises its *ex ante* regulatory powers independently, in order to ensure that the measure adopted is appropriate to the competitive problems reported in the market analysis. The Commission has therefore decided to send a reasoned opinion to Italy, which has two months to reply. In the absence of a satisfactory response, the Commission may refer Italy to the EU Court of Justice

(for more information: R. Heath – Tel. +32 229 61716 - Mobile +32 460 75 0221)

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

Today the Commission sent a reasoned opinion to **Lithuania** urging it to fully transpose the Electricity as well as the Gas Directive of the third energy package. This legislation had to be fully transposed by the Member States by 3 March 2011. The package includes key provisions for a proper functioning of the energy markets, including new rules on unbundling of networks, rules strengthening the independence and the powers of national regulators and rules on the improvement of the functioning of retail markets to the benefit of consumers. Lithuania now has two months to respond. If it fails to comply, the Commission may refer it to the Court of Justice of the European Union.

During 2012, the Commission already sent reasoned opinions for failing to transpose the electricity and/or gas directives to a number of Member States in particular to Bulgaria, Cyprus, Spain, Luxembourg, Netherlands, Romania, Slovakia, Estonia, Finland, Sweden, the United Kingdom, Austria, Poland, Ireland and Slovenia. Subsequently, the Commission decided to refer Poland, Finland, Slovenia, the United Kingdom, Bulgaria and Estonia to the European Court of Justice whereas it closed the cases against Spain, Luxembourg, Netherlands, Sweden and Austria.

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)

- **Roadworthiness Tests: Commission requests LITHUANIA to adopt national measures on periodic roadworthiness tests**

The European Commission has requested **Lithuania** to fully transpose into national law all requirements set out in the directive on periodic roadworthiness tests and their trailers (Directive 2010/48/EU). Lithuania has failed to communicate necessary information to the Commission by January 31st 2011 as well as following deadlines set in consecutive letters of formal notice. Adoption of measures is important so as to take into account all technological developments of vehicle and trailer components to be tested. The Commission is therefore sending a reasoned opinion (the second stage in EU infringement proceedings), giving Lithuania two months to reply. In the absence of a satisfactory response, the Commission may refer the Member State to the EU Court of Justice.
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- **Free movement of goods: Commission requests POLAND to remove barriers to trade for food supplements**

Food supplements are a fast growing market. The European Commission has requested that **Poland** changes its rules for the importation of food supplements lawfully manufactured or marketed in other Member States. According to the Commission, the current rules in Poland create a barrier to the free movement of goods in the EU's internal market and so are contrary to Articles 34 and 36 of the Treaty on the Functioning of the European Union. The Commission is taking this action following several complaints about burdensome Polish explanatory proceedings for importers of food supplements originating in other Member States, especially when the food supplements contain substances that can potentially be used in medicinal products.

The Commission considers that the Polish legislation lacks legal certainty, in particular because of the reversed burden of proof with regard to the safety assessment of the food supplements. This means the cost of the safety assessment is payable by the importers, rather than being carried out and paid for by Polish authorities. It worth noting that the food supplements at stake are presumed to be safe because they were first lawfully manufactured or marketed in other Member States. Finally, the Commission considers that Poland has failed to fulfil its obligations under Regulation (EC) No 764/2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC by not applying the said Regulation to decisions denying or hindering market access to food supplements. The Commission has therefore issued a reasoned opinion asking Poland to change its laws to allow the free movement of goods in the Single Market. If the legislation is not brought into compliance within two months, the Commission may refer the matter to the EU Court of Justice.

(for more information: C. Corazza - Tel. +32 229 51752 - Mobile +32 498 99 2862)

- **Taxation: The Commission requests POLAND to amend its legislation on reduced VAT rates**

The European Commission has officially asked **Poland** to amend its legislation on a reduced VAT rate applicable to fire protection goods. This measure goes beyond the scope allowed under the VAT Directive ([2006/112/EC](#)).

Under the VAT rules, a reduced VAT rate can only be applied to certain goods and services listed in the directive (Annex III). This list has to be strictly observed and interpreted as agreed and unanimously adopted by all 27 EU Member States. The directive does not allow Poland to apply a reduced VAT rate to fire protection goods, as such supplies are not included in that list. The Commission, in its role of guardian of the EU Treaties, ensures that these rules are correctly applied and respected by all EU Member States.

The Commission's request takes the form of a reasoned opinion. If the legislation is not brought into compliance within two months, the Commission may refer the matter to the EU Court of Justice.

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- **Pensions: Commission requests ROMANIA to pay pensions to Greek citizens corresponding to the time worked in Romania**

The Commission has requested **Romania** to comply with Regulation (EC) No 1408/71 and Regulation (EC) No 883/2004 on social security coordination when calculating the pension rights of Greek citizens who worked in Romania before its accession to the European Union. The Romanian authorities currently refuse to take into consideration the periods of work of Greek migrants before the accession of Romania to the EU. This refusal is based on a bilateral agreement signed between Romania and Greece in 1996. In the context of that agreement, Romania paid Greece a fixed amount of USD 15 million and Greece is taking charge of the pensions corresponding to maximum 15 years worked. This means that working periods exceeding 15 years are currently lost in terms of pension rights for the workers. The Commission considers that the bilateral agreement cannot be used to deprive the rights of individuals that are directly granted by EU law and that Romania owes the workers the additional pension rights even if they correspond to periods prior to the accession of Romania to the EU.

The request takes the form of a reasoned opinion under EU infringement procedures. Romania now has two months to notify the Commission of the measures taken to fully implement the Regulations. Otherwise, the Commission may decide to refer Romania to the European Court of Justice.

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- **Taxation: Commission requests ROMANIA to review its taxation of foreign businesses**

The European Commission has officially asked **Romania** to amend its discriminatory tax treatment of foreign companies.

Under Romanian tax law a foreign business with several establishments in Romania is subject to corporate taxation on each of the establishments individually, despite the fact that these do not have separate legal personality. The impossibility for a foreign taxpayer to consolidate the results of all its establishments in Romania amounts to a cash-flow disadvantage or higher taxation for the foreign legal entity.

According to the Commission, such restriction is contrary to the freedom of establishment set out in the EU Treaties.

The Commission's request takes the form of a reasoned opinion. If the legislation is not brought into compliance within two months, the Commission may refer the matter to the EU Court of Justice.

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- **Air transport: Commission requests SPAIN to provide guarantees on independence of slot coordinator**

The European Commission has requested **Spain** to notify within two months the measures necessary to comply with EU common rules on allocation of airport slots. 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 as it seeks guarantees to the functioning and financial independence of the slot coordinator. In the absence of a satisfactory response, the Commission may refer the Member State to the EU Court of Justice.

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- **Taxation: Commission asks SPAIN to amend inheritance and gift tax rules in the Territorios Históricos de Alava y Bizkaia**

The European Commission has officially requested **Spain** to amend the provisions of the Inheritance and Gift Tax legislation of the *Territorios Históricos de Alava y Bizkaia* as these do not respect the free movement of capital.

Under these tax provisions public debt issued by the local administrations (*la Comunidad Autónoma del País Vasco, the Diputaciones Forales or the Entidades Locales Territoriales de los tres Territorios Históricos*) benefits from a preferential tax treatment. This means that titles of public debt from these administrations are less taxed than other similar titles after inheritance. This tax treatment discriminates against investments in public debt issued by other EU Member States or EEA States.

The Commission's request takes the form of a reasoned opinion. If the legislation is not brought into compliance within two months, the Commission may refer the matter to the EU Court of Justice.

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- **Fixed-Term Employment: Commission requests SWEDEN to tighten the safety net required by the Fixed-Term Work Directive**

The European Commission has requested **Sweden** to bring its legislation in line with Directive 1999/70/EC on fixed-term work and prevent the abuse of successive fixed-term employment contracts.

The current system in Sweden distinguishes several types of fixed-term employment. Some of these are not subject to any limitation. Other types have limits, but these limits do not take each other into account. Employers may therefore circumvent these limits by combining different forms of fixed-term employment for the same employee. As a result, the system cannot guarantee that there are no endless successions of fixed-term employment contracts. This is contrary to the Directive.

The problem had been raised with Sweden already in 2007. The Swedish government launched two initiatives for legislative action in order to comply with the Directive. However, none of the attempts to pass legislation were successful. The Commission therefore requests Sweden to intensify its efforts.

The request takes the form of a reasoned opinion under EU infringement procedures. Sweden now has two months to notify the Commission of the measures taken to fully implement the Directive. Otherwise, the Commission may decide to refer this Member State to the European Court of Justice.

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