



EUROPEAN COMMISSION

MEMO

Brussels, 30 May 2013

May infringements package: main decisions

| | DIGITAL AGENDA | EMPLOYMENT & SOCIAL AFFAIRS | ENERGY | INDUSTRY & ENTREPRENEURSHIP | ENVIRONMENT | HOME AFFAIRS | JUSTICE | INTERNAL MARKET & SERVICES | TRANSPORT | 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 **143 decisions**, including **15 reasoned opinions** and **5 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

- **Digital Agenda: Commission refers ESTONIA to EU Court of Justice over independence of national telecoms regulator**

The European Commission has decided to refer **Estonia** to the Court of Justice of the EU over its national law which does not guarantee the impartiality of the national telecoms regulator. According to EU telecoms rules, national authorities exercising regulatory tasks cannot at the same time be involved in the ownership or control of telecoms companies.

The Ministry of Economic Affairs and Communications in Estonia carries out some regulatory tasks, in particular over the allocation of radio frequencies and procedures for granting frequency authorisations. At the same time it exercises control of the state-owned company Levira Ltd, the largest TV and radio broadcast network operator in Estonia, which provides telecoms services such as broadcasting and wireless broadband access.

The Commission sent Estonia a formal request to comply with EU rules in June 2012 ([IP/12/630](#)) but Estonia has not adapted its national law to guarantee the impartiality of the telecoms regulator and this can have negative consequences for competition in the sector.

(for more information: [IP/13/480](#) – R. Heath – Tel. +32 229 61716 - Mobile +32 460 75 0221)

- **Taxation: Commission refers FRANCE to the Court of Justice over discriminatory property tax rules**

The European Commission has decided to refer **France** to the EU's Court of Justice for discriminatory tax rules on new residential property. The French rules allow investments in new residential property in France to benefit from accelerated depreciation, but do not allow the same for similar investments abroad.

The French tax provisions allow accelerated depreciation to be applied to new residential property in France which is intended for letting for a minimum of 9 years. This results in favourable tax treatment for these investments. By contrast, a French taxpayer who invests in residential property to let in another EU Member State cannot benefit from accelerated depreciation, and hence cannot enjoy these tax benefits. In practice this means that taxpayers investing the same amount in immovable goods abroad would face a higher tax liability.

The Commission considers such provisions to be incompatible with the free movement of capital, a fundamental principle of the EU's Single Market. The referral to the EU Court of Justice is the last step in the infringement procedure.

(for more information: [IP/13/473](#) – E. Traynor - Tel. +32 229 21548 - Mobile +32 498 98 3871)

- **Environment: Commission takes GREECE to Court over landfill in Peloponnese**

The European Commission is concerned that **Greece** is failing to protect its citizens from the effects of badly treated waste in the Peloponnese region. Despite earlier warnings, the Kiato landfill is operating in breach of EU waste and landfill legislation and thus represents a serious risk for human health and the environment. In an effort to urge Greece to speed up its actions in this area, the Commission is taking Greece to the EU Court of Justice, on the recommendation of Environment Commissioner Janez Potočnik.

The Landfill Directive imposes stringent technical requirements for landfills, to prevent adverse effects on human health, water, soil and air. Various on-site inspections have revealed that space has run out at the Kiato landfill, but that it continues to operate without a valid permit, creating a serious threat to health and the environment. Although the Greek authorities recognise the problem and are trying to address it, the necessary measures to clean up the landfill have still not been taken and Kiato continues to operate in breach of EU waste legislation.

(for more information: [IP/13/483](#) – J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Disability benefits: Commission refers SLOVAKIA to Court of Justice for discriminating against severely disabled people living abroad**

The European Commission has referred the **Slovak Republic** to the EU's Court of Justice for not paying disability benefits to severely disabled persons living in other Member States, Iceland, Liechtenstein, Norway or Switzerland, in breach of EU law on social security coordination.

Under Slovak law, three Slovak care benefits for the severely disabled, namely the carer's allowance ('peňažný príspevok na opatrovanie'), disability allowance ('peňažný príspevok na osobnú asistenciu') and cash allowance for compensation of increased costs for severely disabled persons ('peňažný príspevok na kompenzáciu zvýšených výdavkov') are provided only to those who live in Slovakia.

According to the case-law of the EU's Court of Justice, cash benefits for long-term care which improve the standard of living of persons in need of care and compensate for the additional expense brought about by their condition, must be regarded as a sickness benefit within the meaning of [Regulation \(EC\) No 883/2004](#) on the coordination of social security systems. The entitlement to these cash benefits cannot be conditional on the person living in the Member State where he or she claims the benefit. This rule enables persons who are dependent on care to move to another Member State whilst retaining their right to cash benefits for long-term care from their country of insurance.

(for more information: [IP/13/476](#) – J. Todd - Tel. +32 229 94107 - Mobile +32 498 99 4107)

- **Social security benefits: Commission refers the UNITED KINGDOM to Court for incorrect application of EU social security legislation**

Under EU law, social security benefits in question have to be granted to people from other EU Member States on condition that their place of habitual residence is in the **United Kingdom**. This condition, and the criteria for the determination of habitual residence, were unanimously reaffirmed by Member States at EU level in 2009 as part of an update of EU rules on social security coordination ([Regulation EC/987/2009](#) laying down the implementing rules for [Regulation EC/883/2004](#) on the coordination of social security systems). According to these criteria, in order to be considered genuinely habitually resident in a Member State, a person has to show that his or her habitual centre of interest is located there.

The Commission considers that these criteria laid down by EU law are strict enough and thus ensure that only those people who have actually moved their centre of interest to a Member State are considered habitually resident there and no longer resident in the Member State where they previously lived. A thorough and strict application of these criteria for determining habitual residence constitutes a powerful tool for Member States to make sure that these social security benefits are only granted to those genuinely residing habitually within their territory.

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2. Other case with specific interest

- **Air transport: Commission urges BELGIUM and GREECE to proceed with ratification of the agreement with the Western Balkans on a Common Aviation Area**

The European Commission is concerned that **Belgium** and **Greece** have failed to ratify the Agreement between the European Union, its Member States and the Western Balkans establishing a European Common Aviation Area (the "ECAA Agreement"). Lack of ratification of the ECAA Agreement by Belgium and Greece affects the opening of markets in aviation with the Western Balkans. If the Belgian and Greek authorities fail to deposit the instrument of ratification of the ECAA Agreement in compliance with the relevant EU provisions within the next two months, the Commission may refer both cases to the EU Court of Justice.

(for more information: [IP/13/479](#)– H. Kearns - Tel. +32 229 87638 - Mobile +32 498 98 7638)

- **European Health Insurance Card: Commission expresses concerns about refusals by SPANISH public hospital to recognise EHIC**

The European Commission has requested information from **Spain** about complaints that Spanish hospitals providing public healthcare are refusing to recognise the European Health Insurance Card (EHIC). The Commission is concerned that Spain might be failing to fulfil its obligations under EU law to provide emergency healthcare to temporary visitors from other Member States on the same terms and conditions as are available to Spanish nationals under the public healthcare scheme.

The Commission's request for information follows an increasing number of complaints it has received concerning hospitals providing public healthcare services, mainly in tourist areas of Spain, which refuse to treat citizens on the basis of their European Health Insurance Card and instead request a travel insurance policy and credit card details. Public healthcare is generally free of charge in Spain and the European Health Insurance Card entitles its holder to be treated on the same terms as Spanish nationals. However, in some

cases, citizens have been erroneously informed that their European Health Insurance Card is not valid if they have travel insurance. Other patients believed they were being treated on the basis of their European Health Insurance Card, but later found out that their travel insurance company had been sent a bill for treatment.

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3. Reasoned opinions

- **Renewable Energy: BELGIUM and ESTONIA called upon to comply with EU renewable energy rules**

Today the Commission has formally request **Belgium** and **Estonia** to take action to ensure full compliance with EU rules on renewables. The European Commission has sent reasoned opinions to Belgium and Estonia for not informing the Commission about the full transposition of the Renewable Energy Directive ([Directive 2009/28/EC](#)). The Renewable Energy Directive had to be implemented by Member States by 5 December 2010. However, Belgium and Estonia 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 similar procedures involving Austria, Cyprus, Czech Republic, Finland, Hungary, Ireland, Poland, Slovenia, Latvia and the Netherlands.

More information here: http://ec.europa.eu/energy/renewables/targets_en.htm

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- **Gender equality: Commission continues legal action against AUSTRIA on rights of the self employed**

Today, the Commission decided to send a reasoned opinion to **Austria** due to its failure to fully transpose the Directive on equality between men and women in self-employed activity. The transposition deadline for this Directive expired on 5 August 2012 and a letter of formal notice was sent to Austria in September 2012. Until now, Austria has still only partially transposed the directive into national law. It has notified a number of transposing measures, but further measures are still missing both at federal and at regional level.

The [Directive on self-employed workers and assisting spouses](#) (2010/41/EU) guarantees social protection rights for millions of women in the labour market, strengthening female entrepreneurship. Under the rules, female self-employed workers and assisting spouses or life partners of self-employed workers are granted a maternity allowance and a leave of at least 14 weeks, should they choose to take it. At present only one in three entrepreneurs is a woman. In the absence of a satisfactory response within two months, the Commission can refer Austria to the Court of Justice of the EU.

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

- **Data Retention Directive: Commission asks BELGIUM to comply with EU rules**

The European Commission has asked **Belgium** to bring its laws into line with EU legislation on data retention, 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 [Data Retention Directive](#) makes it mandatory for telephone companies and Internet service providers to store telecommunications traffic and location data (not data on the content of the communications) for law enforcement purposes. It was adopted in 2006 and should have been transposed into national law by 15 September 2007, with the option of postponing the retention of communications data relating to Internet access, Internet telephoning and Internet e-mail until 15 March 2009.

Belgium has failed so far to transpose fully. In particular, the Belgian authorities still need to bring national legislation in line with the EU rules on requiring companies to retain data for between 6 months and 2 years with appropriate data security and data protection safeguards. 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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- **Free movement of goods: CZECH REPUBLIC to remove barriers to import of jewellery from other Member States**

The European Commission has requested that **Czech Republic** changes its rules and administrative practice so articles of jewellery from other Member States can be sold there. In this particular case, the Czech Assay office refuse to recognise hallmarks used by the Dutch Assay office on jewellery, claiming that these hallmarks don't allow them to distinguish between products originating in the EU and products originating from third countries (such as China and Hong Kong). According to the Commission, the current rules 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 TFEU.

Concerning the trade in products made of precious metals, the Court of Justice of the EU has previously stated that Member States cannot require a fresh hallmark to be affixed to products imported from another Member State in which they have already been lawfully marketed and hallmarked in accordance with the legislation of that State, provided that the information on the hallmark is equivalent to that prescribed by the Member State of importation and also intelligible to consumers of that State. The Commission has therefore issued a reasoned opinion asking Czech Republic to change its laws to allow the free movement of goods in the Single Market. If the Czech legislation is not appropriately modified within two months, the Commission may refer the matter to the Court of Justice of the EU.

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

- **Social security: Commission asks FINLAND to remove restrictions on migrant workers' entitlement to unemployment benefits**

The European Commission has asked **Finland** to remove a discriminatory condition affecting migrant workers' entitlement to unemployment benefits. Like most EU Member States, Finland has a general condition requiring workers to have a minimum period of employment or self-employment to qualify for unemployment benefit. However in Finland migrant workers applying for unemployment benefit must in addition have worked in Finland for at least four weeks as an employee, or four months in self-employment. If this requirement is not met, the applicant's insurance for employment or self-employment periods completed in another Member State are not taken into account and he or she is thus not entitled to unemployment benefits.

The Commission considers that the requirement of minimum employment or self-employment periods in Finland in order for previous periods completed in another Member State to be taken into consideration is in contradiction with EU legislation. The [Treaty on the Functioning of the European Union](#) (Article 45) and [Regulation \(EC\) No 883/2004](#) (Article 6) require Member States to take into account periods of insurance, residence and employment periods completed under the legislation of any other Member State as though they were periods completed under their own legislation. This requirement constitutes one of the basic principles for the coordination of social security schemes in the European Union. It ensures that by exercising the right to free movement, migrant workers are not deprived of social security advantages to which they would have been entitled if they had spent their working life in only one Member State.

The Commission's request takes the form of a 'reasoned opinion' under EU infringement procedures. Finland has now two months to notify the Commission of the measures taken to comply with EU rules. Otherwise, the Commission may decide to refer Finland to the EU's Court of Justice.

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- **Insurance: Commission requests GREECE to comply with EU law**

The European Commission has today requested **Greece** to correctly apply the First and Third Non-life Insurance Directives ([73/239/EEC](#) and [92/49/EEC](#)) in its law on roadside assistance services. Under the Greek law, insurers are obliged to systematically (on an annual basis) notify the responsible insurance supervisor of their roadside assistance insurance policies. The Commission considers that this constitutes an infringement of EU law.

Common rules agreed since the 1970s include conditions for initial authorisation, on-going prudential supervision, in particular with regard to their overall state of solvency, their technical provisions and assets covering those provisions. They also include the abolition of prior approval or systematic notification of policy conditions and tariffs which encourages insurance companies to enter new markets, increasing competition. Greece is therefore being asked to waive this obligation. 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 Greece to the Court of Justice of the European Union.

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- **Free movement of goods: Commission requests GREECE to remove barriers to trade for parallel exportation of medicines**

The Commission sent a reasoned opinion to **Greece** as the country created obstacles to the exportation of pharmaceuticals, thus denying potential exporters of the products the benefits of parallel exporting. Greek laws provide that wholesalers may export medicines abroad only when they have bought the medicines to be exported directly from pharmaceutical companies. This is not possible if they buy them from other wholesalers. Also pharmaceutical stores which export pharmaceuticals cannot act as an intermediary in the exports conducted by other pharmaceutical stores. These wholesalers can sell these medicines as an intermediary within Greece, but when doing so they cannot export these products. The Greek restriction in question has thus the same effect of a quantitative restriction on exports, which is discriminatory and is hence in breach of Article 35 TFEU.

Member States may impose certain obligations on marketing authorisation holders and distributors of medicines, proportionate to the public health objective pursued – e.g. to ensure appropriate and continued supplies of medicines in a given Member State. When a restriction is proportional to the objective of public health protection it is compatible with EU rules. However, if it goes beyond what is necessary to ensure continuous supply, it is an unjustifiable measure of equivalent effect to a quantitative restriction on export.

Therefore, the Commission sent a reasoned opinion to Greece as the country created obstacles to the exportation of pharmaceuticals. If the Member State concerned 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 HUNGARY to transpose EU rules on the protection of animals used for scientific purposes**

The European Commission is urging **Hungary** to transpose EU legislation on the [protection of animals used for scientific purposes](#) into its national law. The Directive in question aims to minimise the use of animals in experiments, and requires alternatives to be used where possible, while ensuring that research in the EU remains of top quality. The Directive had to be transposed into national legislation by 10 November 2012. As Hungary missed the deadline, a letter of formal notice was sent on 31 January 2013.

Hungary informed the Commission about the relevant domestic provisions in March 2013, but the Commission is still concerned that certain provisions have not been included in Hungary's law. In particular, Hungarian laws do not seem to ensure sufficient protection for primates used in experiments. The Commission is therefore sending a reasoned opinion and if Hungary fails to act within two months, the case may be referred to the EU Court of Justice, where financial penalties may be imposed.

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- **Working time: Commission asks ITALY to respect doctors' right to minimum daily and weekly rest periods**

The European Commission has requested **Italy** to respect the rights of doctors working in public health services to minimum daily and weekly rest periods, as required by Working Time Directive ([Directive 2003/88/EC](#)). Under Italian law, several key rights contained in the Working Time Directive, such as the 48-hour limit to average weekly working time and minimum daily rest periods of 11 consecutive hours, do not apply to "managers" operating within the National Health Service. The Directive does allow Member States to exclude "managing executives or other persons with autonomous decision-taking powers" from these rights. However, doctors working in the Italian public health services are formally

classified as "managers", without necessarily enjoying managerial prerogatives or autonomy over their own working time. This means that they are unjustly deprived of their rights under the Working Time Directive.

In addition, Italian law contains other provisions and rules that exclude workers in the national health service from the right to minimum daily and weekly rest. The Commission has received several complaints concerning the fact that, as a result of the Directive not being correctly applied, doctors are obliged to work excessive hours without adequate rest.

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 bring national legislation in line with EU law. Otherwise, the Commission may decide to refer Italy to the EU's Court of Justice.

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- **Free movement: Commission continues action against LITHUANIA to uphold EU citizens' rights**

The European Commission has given **Lithuania** two months to comply with EU rules on the free movement of EU citizens and their families across the EU. The Commission's request takes the form of a reasoned opinion (the second step in the three-step EU infringement process). Lithuania does not sufficiently ensure that national authorities may only expel those EU citizens who are a real, serious and present danger to society. The [Free Movement Directive](#) aims to ensure EU citizens can fully enjoy their rights to freely travel, live and work anywhere in the European Union. It also contains a number of safeguards in case Member States want to restrict the right to free movement.

In the absence of a satisfactory response within two months, the Commission can refer Lithuania to the Court of Justice of the EU. The Free Movement Directive (2004/38/EC) should have been fully transposed by Member States in their national rules by April 2006.

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- **Electronic money: Commission requests POLAND to implement EU rules**

The European Commission has today requested **Poland** to fully implement the Directive on the taking up, pursuit and supervision of electronic money institutions ([Directive 2009/110/EC](#)). This Directive, commonly referred to as the second e-money Directive, replaces Directive 2000/46/EC and had to be implemented in all EU Member States by 30 April 2011.

The Commission's request takes the form of a complementary reasoned opinion under EU infringement procedures. A first reasoned opinion was issued at the end of April 2012, after Poland had failed to report that it had transposed the directive into national legislation ([IP/12/418](#)). Poland then notified the Commission that it had taken over part of the required provisions and that full transposition was expected before the end of 2012. Failing notification of full transposition of the Directive by Poland since then, the Commission has decided to issue a complementary reasoned opinion. If no measures on full transposition of EU law are notified within two months, the Commission may decide to refer Poland to the Court of Justice of the EU. More information:

http://ec.europa.eu/internal_market/payments/emoney/transposition/index_en.htm

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- **Taxation: Commission requests UNITED KINGDOM to ensure private boats do not use lower taxed fuel**

The European Commission has formally requested the **United Kingdom** to amend its legislation to ensure that private pleasure boats such as luxury yachts can no longer buy lower taxed fuel intended for fishing boats. Under EU rules on fiscal marking for fuels, fuel that can benefit from a reduced tax rate has to be marked by coloured dye. Fishing vessels for example are allowed to benefit from fuel subject to a lower tax rate but private boats must use fuel subject to a standard rate.

Currently the UK law does not impose fuel distributors to have two separate fuel tanks, one with marked fuel subject to a lower tax rate and the other with regular fuel subject to a standard tax rate. As a consequence, private leisure boats can not only use fuel intended for fishing vessels but also risk heavy penalties if they travel to another Member State and the ship is controlled by the local authorities.

The Commission's request takes the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer the United Kingdom to the EU's Court of Justice.

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