



EUROPEAN COMMISSION

MEMO

Brussels, 26 September 2013

**September infringements package: main decisions**

	CLIMATE ACTION	EMPLOYMENT & SOCIAL AFFAIRS	ENERGY	ENTREPRISE	ENVIRONMENT	HEALTH & CONSUMER POLICY	INTERNAL MARKET & SERVICES	JUSTICE	TAXATION & CUSTOMS UNION	TRANSPORT
AT			1		1					
BE		1							3	
BG								1		
CY		1	1		1					1
DE				1						
EE			1		1					
EL										1
ES			1		1					
FI					1					
FR		1								
HU			1							
IE							1			1
IT			1		2					1
LT			1							
LU			1							
PL	1					1			1	
RO					1		1	1	2	
SE					1					
SI	1				1					
SK					1					
UK			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 **220 decisions**, including **32 reasoned opinions** and **6 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

- **Free movement of workers: Commission refers BELGIUM to Court for discriminatory access to local public sector jobs**

The European Commission has decided to refer **Belgium** to the EU's Court of Justice because of discriminatory conditions for candidates wishing to work in the local public sector in the French and German speaking regions, as well as the Brussels region, and who have not followed education in Dutch, French or German. In particular, candidates' knowledge of languages is only recognised if they obtain a certificate issued by the Belgian governmental recruitment service (SELOR). No other certificates are accepted as proof of language knowledge.

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- **Commission refers BELGIUM to Court over discriminatory inheritance tax provisions**

The European Commission has decided to refer **Belgium** to the EU Court of Justice over tax rules in the Walloon Region that are discriminatory and in breach of EU rules on the free movement of capital. The Commission considers that the absence of choice while valuating shares listed on stock markets outside Belgium is discriminatory and restricts the free movement of capital as set out in Article 63 of the Treaty on the Functioning of European Union.

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- **Social security: Commission refers CYPRUS to Court for discriminating against former Cypriot civil servants working in other Member States**

The European Commission has decided to refer **Cyprus** to the EU's Court of Justice for applying discriminatory conditions to the pension rights and unpaid leave rights of former Cypriot civil servants working in another Member State. The Commission considers that these discriminatory conditions breach EU rules on the free movement of workers.

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- **Taxation: Commission refers POLAND to Court over reduced VAT rate for medical and fire protection goods**

The European Commission has decided to refer **Poland** to the EU Court of Justice for the illegal application of a reduced VAT rate to general medical equipment and pharmaceutical products. Under the EU VAT Directive, Member States are allowed to apply a reduced VAT rate for medical equipment and other appliances if they meet two conditions. They have to be intended to alleviate or treat disability and they have to be for the exclusive personal use of the disabled. Poland goes beyond this scope by granting a reduced VAT rate to medical equipment of general use such as for example equipment used in hospitals, and to certain non-medicinal pharmaceutical products such as disinfectants and spa products.

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- **Public Health: Commission refers POLAND to Court for failure to comply with EU legislation on quality and safety of human tissues and cells**

Today, the Commission decided to take **Poland** to the European Court of Justice for non-compliance with EU rules on the quality and safety of human tissues and cells. Poland so far, despite repeated calls by the Commission to complete this transposition has failed to do so.

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## 2. Reasoned opinions

- **Energy Efficiency in Buildings: Seven Member States requested to adopt national measures on energy efficiency in buildings**

The Commission has formally requested **Austria, Cyprus, Estonia, Lithuania, Luxembourg, Hungary** and the **United Kingdom** to ensure full compliance with their obligations under EU legislation on energy efficiency in buildings ([Directive 2010/31/EU](#)). The Commission sent a reasoned opinion to these Member States asking them to notify the Commission of all their transposition measures for the directive, which had to be transposed into national law by 9 July 2012. If the Member States do not comply with their legal obligation within two months, the Commission may decide to refer them to the Court of Justice. Under this directive Member States must establish and apply minimum energy performance requirements for 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 from 2021 onwards all new buildings will be so-called nearly zero-energy buildings. 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. Reasoned opinions were already sent to Italy, Greece, Portugal and Bulgaria in January 2013, to Spain and Slovenia in April 2013 and to Belgium, Germany, Finland, France, Latvia, Poland and the Netherlands in June 2013. More information here: [http://ec.europa.eu/energy/efficiency/buildings/buildings\\_en.htm](http://ec.europa.eu/energy/efficiency/buildings/buildings_en.htm).

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- **Environment: Commission asks four Member States to enact EU rules on industrial emissions**

The European Commission is urging **Italy, Cyprus, Slovenia** and **Romania** to send details about how EU legislation on industrial emissions is being enacted in their domestic law. The new [industrial emissions Directive](#) replaces and updates older rules seeking to prevent, reduce and as far as possible eliminate pollution arising from industrial activities, and had to be enacted in national legislation by 7 January 2013. The Member States in question missed the deadline, and were sent letters of formal notice on 21 March 2013. The Commission is now sending reasoned opinions. If the four fail to act within two months, their cases may be referred to the EU Court of Justice, where financial penalties may be imposed.

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- **Climate change: Commission asks POLAND and SLOVENIA to adopt national measures for the revised scheme for greenhouse gas emission allowance trading within the EU (EU ETS)**

The Commission has today formally asked **Poland** and **Slovenia** to notify the transposition of [Directive 2009/29/EC](#) which reforms the EU greenhouse gas emission allowance trading scheme (EU ETS).

The EU ETS is a cornerstone of the European Union's policy to combat climate change and its key tool for reducing industrial greenhouse gas emissions cost-effectively.

Member States are legally obliged to transpose this Directive into national law by 31 December 2012. To date, Poland and Slovenia have not notified any transposing measures. The Commission is therefore today asking these two Member States, in a Reasoned Opinion (the second stage in EU infringement proceedings), to comply with EU law.

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- **Renewable energy: ITALY and SPAIN called upon to comply with EU renewable energy rules**

The Commission has formally requested **Italy** and **Spain** to take action and ensure full compliance with EU rules on renewable energy. The Commission has sent a reasoned opinion to these countries for not informing the Commission about the full transposition of the Renewables Directive ([Directive 2009/28/EC](#)). The law had to be implemented by Member States by 5 December 2010. However, Italy and Spain 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 17 similar procedures involving Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Hungary, Greece, Ireland, Luxembourg, Malta, Poland, Slovenia, Latvia and the Netherlands. According to the Directive, every Member State has to reach individual targets for the overall share of renewable energy in energy consumption. For reaching these targets, Member States have to lay down rules, for example, for improving the grid access for electricity from renewable energy, the administrative and planning procedures, information and training of installers. In addition, where biofuels are used to achieve the transport target, these must meet a set of sustainability requirements, which also need to be included in national legislation. More information here: [http://ec.europa.eu/energy/renewables/targets\\_en.htm](http://ec.europa.eu/energy/renewables/targets_en.htm)

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- **Environment: Commission asks AUSTRIA to enact EU technical rules on the restriction of the use of certain hazardous substances in electrical and electronic equipment**

The European Commission is urging **Austria** to send details about how EU legislation on the restriction of the use of certain hazardous substances in electrical and electronic equipment is being enacted in its domestic law. Austria has failed to transpose exemptions for certain equipment containing lead or cadmium. The two Directives had to be enacted in national legislation by 2 January 2013. After Austria missed the original deadline, the Commission sent a letter of formal notice on 21 March 2013. As the shortcomings have still not been corrected, the Commission is sending a reasoned opinion. If Austria fails to act within two months, the case may be referred to the EU Court of Justice.

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- **The Commission asks BELGIUM to stop taxing foreign collective investment undertakings**

The European Commission has officially asked **Belgium** to amend the rules which it applies for the annual taxation of foreign collective investment undertakings (CIUs).

Belgian legislation grants a reduced rate of the annual tax only to CIUs under Belgian law. This results in less favourable treatment for similar CIUs governed by the law of other EU Member States or EEA countries.

The Commission considers that the Belgian tax rules go against the freedom of establishment and the free movement of capital provided for by the European Union Treaties (Articles 56 and 63 of the Treaty on the Functioning of the European Union). Consequently, Belgium has been invited to amend its legislation.

The CIUs concerned are CIUs governed by foreign law of which one or more sections or classes of securities are collected exclusively from institutional or professional investors acting on their own behalf and whose securities may be purchased only by these investors.

The Commission's request takes the form of a reasoned opinion. If Belgium fails to comply within two months, the Commission may refer the matter to the European Court of Justice.

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- **The Commission asks BELGIUM to stop discriminatory taxation on certain settlements**

The European Commission has officially asked **Belgium** to amend the tax regime applied by the Walloon region to donations of certain units in undertakings for collective investment in transferable securities (UCITS) from other EU Member States or from another EEA country.

Belgian legislation provides for a reduced taxation rate only for donations of units in closed-end Belgian UCITS and private Belgian UCITS (which collect capital without promoting the sale of their shares to the public), but not for donations of units in similar UCITS elsewhere in the EU.

The Commission considers that Belgian tax rules go against the free movement of capital provided for by the European Union Treaties (Article 63 of the Treaty on the Functioning of the European Union). Consequently, Belgium is asked to amend its legislation.

The Commission's request takes the form of a reasoned opinion. If Belgium fails to comply within two months, the Commission may refer the matter to the European Court of Justice.

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- **Enterprise: Commission requests GERMANY to comply with EU rules on selling products containing MDI chemical mixtures**

The European Commission has officially asked **Germany** to adapt its law on chemicals by changing how it governs the sale of products (mixtures) containing the substance MDI. MDI is common in products used by consumers working on "Do-it-yourself" projects. It is normally freely available in hardware stores, in products such as in "one component" foams, hot melt adhesives and other products for gluing, putty/filler systems in cartridges and brush painting.

The EU's REACH Regulation ([1907/2006/EC](#)) states that mixtures containing the substance MDI may be safely placed on the market for the general public if their packaging contains protective gloves and specific written health warnings for consumers. The German law in question (the Chemicals Prohibition Ordinance) goes further by banning consumers from buying products containing MDI mixtures "off the shelf" and imposing additional conditions of sale on retailers. The Commission considers that as Germany imposes more stringent measures than EU law requires, it is in breach of the REACH Regulation.

The Commission requests that Germany amends its law takes the form of a reasoned opinion. If Germany does not bring its legislation into compliance within two months, the Commission may refer the matter to the EU's Court of Justice.

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- **Environment: Commission asks ESTONIA to enact EU rules on groundwater pollution**

The European Commission is urging **Estonia** to bring its domestic laws on the protection of groundwater against pollution and deterioration into line with the [Groundwater Directive](#). An analysis of Estonian legislation showed that the Directive had not been correctly transposed and the Commission sent a letter of formal notice on 22 November 2012. Most of the shortcomings concern technical details, like a lack of specificity in the definitions of pollutants. Although Estonia agrees on the shortcomings, measures to correct these have not been adopted. The Commission is therefore sending a reasoned opinion, giving Estonia two months to act. If it fails to do so, the case may be referred to the EU Court of Justice.

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- **Environment: Commission asks FINLAND to transpose EU rules on the protection of animals used for scientific purposes**

The European Commission is urging **Finland** 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 Finland missed the deadline, a letter of formal notice was sent on 31 January 2013. Although a number of pieces of legislation have been adopted, the Commission is concerned that certain provisions of the Directive have not been included in the legislation and that legislation covering the Åland islands remains to be adopted. The Commission is therefore sending a reasoned opinion and if Finland 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 requests FRANCE to respect hospital doctors' rights to working hours limit and minimum rest periods**

The European Commission has sent a formal request to **France** to respect the rights of hospital doctors to a 48-hour average weekly working time and to minimum rest periods after working extra hours at night, as required by the Working Time Directive ([2003/88/EC](#)). Under the Directive, a Member State may allow an employer to ask a worker to work hours in excess of the 48-hour limit (the so-called 'opt-out'), but only if certain conditions are respected. French law allows this opt-out for hospital doctors, but does not comply with the required conditions laid down by the Directive. Firstly, the doctor may be required to work hours over the 48 hour limit in several situations without the doctor's individual consent, which is contrary to the Directive. Secondly, there are no guarantees to protect a doctor from being penalised if she or he refuses to work the excess hours. Thirdly, the rules for measuring working time of hospital doctors are unclear, so that in practice doctors are required to work excessive hours. In addition, current practices in public hospitals mean that doctors who are called out at night to deal with emergencies after their normal working hours sometimes cannot take adequate rest before having to return to work (the Directive gives workers the right to a minimum daily rest period, of 11 consecutive hours in every 24). The Commission has acted after receiving a complaint. The Commission's request to France takes the form of a 'reasoned opinion' under EU infringement procedures. France has two months to notify the Commission of measures taken to ensure compliance with EU law. Otherwise, the Commission may decide to refer France to the EU's Court of Justice.

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- **Free movement of services: Commission requests IRELAND to remove barriers to travel agents and tour operators**

The European Commission has today requested that **Ireland** respect the principle of free movement of services as regards travel agents and tour operators ([Article 56 TFEU](#), [Article 16 Services Directive](#), [Article 3 e-commerce Directive](#)). Ireland's legislation and administrative practice requires that tour operators and travel agencies from other Member States, intending to provide services in Ireland, obtain an Irish authorisation, subscribe to an Irish bond, have a minimum capital required by Irish law and indicate a postal address in Ireland. These provisions do not take into account the fact that such service providers are entitled to provide services in other Member States and are already subject to insolvency protection requirements in their Member State of establishment, according to the [Package Travel Directive](#). Such EU service providers should therefore be entitled to provide services cross-border on a temporary basis (including electronically) in Ireland without being subject to unjustified or disproportionate requirements. As Ireland has not yet amended these provisions, the Commission requests Ireland, in the form of a reasoned opinion, to take action to fully comply with EU rules. If the Irish authorities do not notify measures taken to ensure compliance with EU rules within two months, the Commission may refer the matter to the EU Court of Justice. More information: [http://ec.europa.eu/internal\\_market/services/services-dir/index\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/index_en.htm)

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- **Air transport: Commission requests IRELAND to provide a sanctions scheme for misuse of airport slots**

The European Commission has asked **Ireland** to notify, within two months, the measures it has taken to comply with EU rules on the allocation of airport slots. Ireland must put in place a sanctions scheme to punish the misuse of airport slots, as required by the Slot Regulation. Airport slots are used to allocate scarce airport capacity (runway, terminal space) at the busiest airports in Europe.. The EU Slot Regulation requires Member States to ensure effective, proportionate and dissuasive sanctions to deal with repeated and intentional behaviour that might cause disruption to other airlines at an airport and which hampers effective planning of airport operations. This happens, for example, when airlines operate flights at a time significantly different to the slot allocated without good reason, or when they use a larger aircraft type to the one for which the slot was allocated. The EU slot regulation is currently being strengthened as part of the airports package. More info: [IP - Memo](#)

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- **European Commission continues legal action against ROMANIA on rights for the self-employed**

The Commission has today sent a reasoned opinion to **Romania** due to its failure to fully transpose the Directive on equality between men and women in self-employed activity. The deadline for transposition expired on 5 August 2012 and a letter of formal notice was sent to Romania in September 2012. So far Romania has only partially introduced the directive into national law. It has notified the Commission of a number of transposing measures, but further measures are still required for full transposition.

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 these 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 Romania to the Court of Justice of the EU.

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- **Financial reporting rules: Commission requests ROMANIA to change accounting rules**

The European Commission has today requested **Romania** to align its rules on valuation and accounting of purchased debt claims with EU law. According to EU law, as a general rule, items shown in the annual accounts shall be valued using a method based on the principle of purchase price or production costs. Under Romanian accounting legislation, transferred debt claims are to be shown using their nominal value in the books and records of the transferee. EU law does not provide for any derogation which permits the use of the nominal value of purchased debt claims for accounting purposes. Therefore the Commission requests Romania, in the form of a reasoned opinion, to take action to fully comply with EU rules. If the Romanian authorities do not notify measures taken to ensure compliance with EU rules within two months, the Commission may refer the matter to the EU Court of Justice.

More information:

[http://ec.europa.eu/internal\\_market/accounting/legal\\_framework/index\\_en.htm](http://ec.europa.eu/internal_market/accounting/legal_framework/index_en.htm)

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- **Taxation: Commission requests ROMANIA to change its VAT refund practice**

The European Commission has formally requested **Romania** to change its administrative practice of refunding VAT. Almost all VAT refunds claims are systematically settled with unreasonable delays, sometimes taking over 180 days. This practice is not in line with [EU VAT rules](#) which foresee that VAT should be refunded swiftly so as not to create a burden for taxpayers. Even if Member States have a certain margin of manoeuvre in determining refund conditions, Romanian taxpayers bear the burden of VAT for too long as a result of the current delays.

The request of the Commission takes the form of a reasoned opinion (the second stage of an infringement procedure). In the absence of a satisfactory response within two months, the Commission may refer Romania to the EU's Court of Justice.

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- **Taxation: Commission requests ROMANIA to review its tax rules on non-residents' employment income**

The European Commission has officially asked **Romania** to amend its discriminatory tax treatment of employment income of non-residents.

Romanian legislation does not allow non-resident individuals who work and earn all or most of their income in Romania to benefit from personal and family deductions. This may result in unfair higher taxation in Romania, as the taxpayer's personal and family situation risks being disregarded in both his country of residence where he does not have sufficient taxable income and in Romania as the country of employment.

According to the Commission, these Romanian provisions are contrary to the principle of free movement of workers as set out in the EU Treaties and EU case-law which has established that non-resident taxpayers earning all or most of their income in an EU Member State must receive the same treatment as resident taxpayers (Case [C-279-93 Schumacker](#)).

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 Romania to the EU's Court of Justice.

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- **Environment: Commission asks SLOVAKIA to protect birds**

The European Commission is asking the **Slovak Republic** to bring its hunting legislation into line with the [Birds Directive](#). Despite decreasing populations of wild birds, Slovakia made its hunting rules less stringent in 2009. The Commission sent a letter of formal notice on the matter on 27 February 2012, and while a number of issues have been resolved, some concerns remain. Slovakia promised to introduce non-hunting areas in the protected areas of Dunajske luhy and Zahorske pomoravie to halt the decrease in population of Greylag Goose, Bean Goose and Bluebill, but the amendments have still to be adopted. The Commission is therefore sending a reasoned opinion. If Slovakia fails to act within two months, the case may be referred to the EU Court of Justice.

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- **Environment: Commission asks SPAIN to stop groundwater abstraction until an adequate environmental impact study has been completed**

The European Commission is urging **Spain** to respect the [Habitats Directive](#) and the [Environmental Impact Assessment Directive](#). The Commission is concerned that Spain authorised an irrigation project in the province of Jaén (Andalusia) with water from the protected area Sierras de Cazorla, Segura y Las Villas without adequately assessing the impact of the catchment on the water resources, the natural habitats and the species of the site. The Commission sent a letter of formal notice on 25 March 2013. While Spain has set a provisional limit on water abstraction, the Commission is not convinced that the measure is sufficient to protect the area, and is therefore sending a reasoned opinion. If Spain fails to act within two months, the case may be referred to the EU Court of Justice.

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- **Environment: Commission asks SWEDEN to enact EU rules on waste batteries**

The European Commission is urging **Sweden** to make sure its legislation on waste batteries and accumulators is in line with the EU Batteries Directive. The Batteries Directive lays down rules on the marketing and labelling of batteries containing hazardous substances and asks Member States to fix quantified collection and recycling targets for batteries and accumulators. An analysis of Swedish legislation showed that the Directive had not been correctly transposed and the Commission sent a letter of formal notice on 1 October 2012. Although most shortcomings have been rectified, some of them have not been adopted yet. The Commission is therefore sending a reasoned opinion and if Sweden fails to act within two months, the case may be referred to the EU Court of Justice.

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### **3. Letters of formal notice**

- **Transport: Commission urges ITALY, CYPRUS and GREECE to implement EU rules to unblock congestion in Europe's airspace**

Today the European Commission has requested **Italy, Cyprus and Greece** to urgently clarify the measures taken to establish Functional Airspace Blocks (FABs), required under the [Single European Sky](#) legislation 2004, in order to reform Europe's out-of-date air traffic control system. The FABs are intended to replace the current patchwork of 27 national air traffic blocks with a network of larger, regional blocks, to gain efficiency, cut costs and reduce emissions. The Commission is looking to head off a capacity crunch as the number of flights is forecast to increase by 50% over the next 10-20 years.

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- **Environment: European Commission urges ITALY to bring a steel plant in Taranto up to environmental standards**

The European Commission is taking action against **Italy** in an effort to reduce the environmental impact of the ILVA steel plant in Taranto (hereafter "ILVA"), Europe's largest iron and steel works. Following a number of complaints from citizens and NGOs, the Commission has found that Italy is failing to ensure that ILVA complies with EU requirements on [industrial emissions](#), with serious consequences for human health and the environment. It is also failing to respect the [Environmental Liability Directive](#), which enacts the "polluter pays" principle. On the recommendation of Environment Commissioner Janez Potočnik, the European Commission is therefore sending a Letter of Formal Notice, giving Italy two months to reply.

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## 4. Closures

- **Electoral rights: Commission action ensures EU citizens can cast their vote in European and local elections**

European Union citizens will be able to use their right to vote in European and local elections more easily when living in another EU country, following legal action by the European Commission. The news comes as the Commission today closed infringement proceedings against **Bulgaria** for applying additional requirements to non-Bulgarian EU citizens wishing to vote or stand as a candidate in local and European elections (for example to provide the number and date of their residence certificate). Following changes to Bulgarian law, the Commission has decided to end legal action against the country. The Commission had identified similar obstacles to EU citizens' voting rights in their country of residence in a further ten Member States (**Cyprus, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Romania, Slovenia and Slovakia**) since 2010, which have now been resolved except in three pending cases. The move comes eight months ahead of the next elections for the European Parliament, to be held on 22-25 May 2014.

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