



EUROPEAN COMMISSION

MEMO

Brussels, 23 January 2014

January infringements package: main decisions

	EMPLOYMENT & SOCIAL AFFAIRS	ENERGY	ENVIRONMENT	HEALTH	INDUSTRY & ENTREPRENEURSHIP	INTERNAL MARKET & SERVICES	JUSTICE	TAXATION & CUSTOMS UNION	TRANSPORT
BE				1				1	
BG			1						
CY				1					
CZ		1							
DE					2				1
DK									1
EL	1			1					
ES	1								
FI				1					
FR			2	1	2				
IE		1							
IT			2						
LV						1			
PL						1			1
PT							1	2	2
SI			2	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 to ensure proper application of EU law for the benefit of citizens and businesses.

The Commission has today taken **134 decisions**, including **22 reasoned opinions** and **7 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. Major Cases involving Member States

- **Animal welfare: Commission requests BELGIUM, CYPRUS, GREECE, FRANCE, SLOVENIA and FINLAND to comply with the requirement on group housing of sows**

In order to improve the welfare of pigs, [Council Directive 2008/120/EC](#) requires that sows are kept in groups and not in individual stalls during part of their pregnancy. Entry into force of this rule was on 1 January 2013, following a 12 year transition period. Following the formal request for compliance, sent to nine Member States in February 2013 ([see press release](#)), the Commission has today issued reasoned opinions for four of them which appear to still not have fully enforced the requirement on group housing of sows as laid down in the Directive: **Belgium, Cyprus, Greece and France**¹. Should these countries fail to comply with EU law within two months, the Commission may decide to refer them to the Court of Justice of the European Union. The Commission has sent letters of formal notice to two other Member States – **Slovenia and Finland**, for failure to fully enforce the rule on sow stalls. The next step for these countries, should they fail to comply within two months, would be a reasoned opinion.

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2. Letter of formal notice

- **Commission requests GERMANY to apply Directive 2006/40/EC on mobile air conditioning (case 2013/2254)**

The Commission is acting to ensure the enforcement of the MAC Directive, by requesting that the relevant German authorities fully apply this Directive to vehicles produced by all their manufacturers.

Vehicles that are not in conformity with EU law were placed on the EU market by a German manufacturer. However, the German approval authorities opted not to react and did not impose adequate remedial measures on the concerned manufacturer. Furthermore, in May 2013, the national authorities accepted the request by one manufacturer to discontinue the use of type approvals granted to some vehicles which were using the new refrigerant and which were already being produced and put on the market. The authorities accepted to grant extensions of old vehicle type approvals to those vehicles. This action had the effect of allowing a temporary exclusion of the concerned vehicles from full compliance with the MAC Directive until 1.1.2017.

The Commission considers that there are indications that the extensions were requested with the sole purpose of circumventing the application of the MAC Directive, depriving it of its intended effects.

The Commission remains committed to ensuring that the climate objectives of the Directive are fulfilled and that the law is uniformly applied throughout the EU's internal market so that fair competitive conditions are ensured for all economic operators.

¹ No reasoned opinions were sent to the remaining five Member States where in the spirit of sincere cooperation the Commission is currently assessing their attained level of compliance.

Under EU infringement procedures, following today's action, Germany has two months to respond to the letter of formal notice written by the Commission concerning this issue.

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3. Referrals to the Court of Justice

- **Renewable Energy: Commission refers IRELAND to Court for failing to transpose EU rules**

The European Commission is referring **Ireland** to the Court of Justice of the European Union for failing to fully transpose the Renewable Energy Directive. The Directive aims at ensuring a 20% share of renewable energy in the EU by 2020. The Directive had to be transposed by the Member States by 5 December 2010.

The Commission proposes a daily penalty of EUR 25 447.5. 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/14/44](#) - M. Holzner - Tel. +32 229 60196 - Mobile +32 498 98 2280)

- **Environment: European Commission asks Court to impose financial penalties on ITALY**

The European Commission is referring **Italy** to the EU Court of Justice for its failure to enact new European rules on animal testing into its domestic legislation. Directive 2010/63/EU on the protection of animals used for scientific purposes was to be enacted in national legislation by 10 November 2012. On the recommendation of Environment Commissioner Janez Potočnik, the European Commission is asking the Court to impose penalty payments of EUR 150 787 per day.

(for more information: [IP/14/46](#) - J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Environment: Commission takes BULGARIA to Court over illegal landfills**

The European Commission is concerned that **Bulgaria** is failing to protect its citizens from the effects of bad waste management. Despite earlier warnings from the Commission, numerous Bulgarian landfills are still operating in breach of EU waste and landfill legislation, representing a serious risk for human health and the environment. In an effort to urge Bulgaria to speed up its actions in this area, the Commission is taking Bulgaria to the EU Court of Justice, on the recommendation of Environment Commissioner Janez Potočnik.

(for more information: [IP/14/47](#) - J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Nationality requirement for notaries: Commission refers LATVIA to Court**

The European Commission has today decided to refer **Latvia** to the Court of Justice of the European Union because it allows only Latvian nationals to take up and practise the profession of notary.

The Court of Justice of the EU already ruled in May 2011 that such nationality requirements are contrary to the principle of freedom of establishment, and that the activities of notaries are not covered by an exception under Article 51 of the Treaty on the Functioning of the EU concerning activities linked to public authority.

(for more information: [IP/14/48](#) - C. Hughes - Tel. +32 2 2964450 - Mobile +32 498 964450)

- **Road safety: Commission takes PORTUGAL to Court for failure to establish guidelines for assessing infrastructure safety**

The European Commission has decided to take **Portugal** to the Court of Justice of the European Union because Portugal has not adopted and notified compulsory guidelines for the application of safety management procedures for road infrastructure in the trans-European network (TEN-T). The adoption of these guidelines would save more lives on Portuguese roads, reinforcing the trend in Portugal towards fewer deaths on the road.

(for more information: [IP/14/49](#) - H. Kearns - Tel. +32 229 87638 - Mobile +32 498 98 7638)

- **Taxation: Commission refers PORTUGAL to Court over exit taxation for individuals**

The European Commission has decided to take **Portugal** to the EU Court of Justice for discriminating against taxpayers which cease to be tax resident there. The Commission considers such provisions to be incompatible with their right to free movement set out in the Treaties.

(for more information: [IP/14/50](#) - E. Traynor - Tel. +32 229 21548 - Mobile +32 498 98 3871)

- **Environment: European Commission takes SLOVENIA to Court for pollution problems from waste disposal**

The European Commission is taking **Slovenia** to Court for its failure to comply with the requirements of EU waste legislation. The Commission's concerns relate to two illegal landfills containing hazardous waste, one near the centre of Celje, and another in nearby Bukovzlak. Landfills operating in breach of EU waste legislation can be a serious threat to human health and the environment. Slovenia had agreed to address the problem, but slow progress has led the Commission to call Slovenia before the EU Court of Justice.

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4. Reasoned opinions

- **Taxation: Commission asks BELGIUM to end the discrimination of credit institutions established in other Member States**

The Commission has requested **Belgium** to amend its law on transactions in certain securities. This law only allows credit institutions established in Belgium to operate settlement systems with tax clearing. The settlement systems in question are those that permit the holding and transfer of fixed-interest securities.

The Commission sees no valid justification for excluding credit institutions established in other Member States. Belgium could subject them to the same requirements as Belgian institutions and use the available Community instruments on administrative cooperation between tax administrations to ensure tax compliance.

The Commission therefore considers that the exclusion of credit institutions established in other EU Member States goes against the freedom to provide services of Article 56 of the Treaty on the Functioning of the European Union.

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

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- **Energy Services: the Commission asks the CZECH REPUBLIC to ensure that final energy consumers are provided with individual meters**

The Commission has today formally requested the **Czech Republic** to bring its national law in line with the EU Energy Services Directive ([2006/32/EC](#)). Under this Directive the Member States have to ensure that final energy customers are provided with competitively priced individual meters that accurately reflect their actual consumption. Individual metering plays a crucial role for promoting the efficient use of energy as it allows energy consumers to better monitor their individual consumption of electricity, gas, heating/cooling or hot water. Individual metering is also needed for the provision of individual billing based on actual consumption. The Directive had to be fully transposed into national law by 17 May 2008. The Commission's request takes the form of a reasoned opinion under the EU infringement procedure. If the Czech Republic does not comply with its legal obligation within two months, the Commission may decide to refer it to the Court of Justice.

More information on the Energy Services Directive:
http://ec.europa.eu/energy/efficiency/end-use_en.htm.

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- **ENTR: Commission requests GERMANY to remove barriers to trade for pyrotechnics (case 2012/ 2198)**

The European Commission has requested that **Germany** changes its rules regarding the requirements for pyrotechnic goods (including fireworks) that were previously tested and CE marked in another EU Member State. German rules impose additional obligations to those required by the EU Directive on the placing on the market of pyrotechnic articles ([2007/23/EC](#)) and so are creating a barrier to trade.

German legislation requires that manufacturers and importers notify CE marked pyrotechnic articles, together with their instructions for use, to the Federal Institute for Material Research and Testing (BAM), before their placing on the German market. They also require that the instructions for the articles include an identification number attributed by BAM during this process. The Commission believes that by imposing these additional obligations on pyrotechnic articles lawfully manufactured and marketed in another EU country, Germany is not complying with internal market rules.

The Commission has therefore issued a reasoned opinion asking Germany to review its national legislation in this area. If Germany does not inform the Commission within two months of measures taken to ensure full compliance with their obligations under the Directive, the Commission may decide to refer them to the European Court of Justice.

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- **Transport: Commission urges GERMANY to take the necessary measures to ratify the Air Transport Agreement (ATA) between the European Community and its Member States and the United States of America**

Today the European Commission urges **Germany** to take the necessary measures in order to proceed with the ratification of the Air Transport Agreement ([ATA](#)) between the European Community and its Member States and the United States of America. The Commission believes that the Agreement is instrumental in the liberalisation of the bilateral air transport market by ensuring new commercial freedoms for operators and new regulatory framework within which these freedoms could be exercised, reflecting the importance placed by Europe and the United States on safe, secure and effective regulation of the sector.

Germany is the only Member State that has not yet ratified the ATA which was signed in 2007. Failure to notify adequate measures could lead to the Commission referring the case to the Court of Justice of the European Union.

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- **Rail transport: Commission asks DENMARK to complete transposition of EU legislation on rail safety**

The Commission is asking **Denmark** to bring all its national rules in line with [Directive 2004/49/EC](#) on railway safety, in particular as regards the status of investigation and the independence of the investigating body.

The legislation aims at establishing safety requirements on the rail system, including safe management of infrastructure and traffic operation, roles and responsibilities of railway undertakings as well as infrastructure managers and their interaction. It sets a common safety regulatory framework, and provides for management, supervision of safety and investigation of accidents. The legislation should have been in place since 30 April 2006.

If Denmark fails to react satisfactorily, the Commission may refer the matter to the EU Court of Justice. The Commission opened infringement proceedings against Denmark on the matter in February 2013, and a reasoned opinion (the second stage in EU infringement proceedings) is now being sent. Denmark has two months to reply to the Commission.

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- **Pension rights: Commission asks GREECE to accept certified copies of documents from other Member States**

The European Commission has requested **Greece** to comply with EU rules on free movement of workers by accepting copies of pension records certified by Cyprus and by taking into account insurance periods completed in other Member States where a person has worked. The Commission received a complaint from a Cypriot citizen who had worked in both Greece and Cyprus regarding her request for a partial pension. Given that the complainant resides in Cyprus, the Cypriot authorities initiated the procedure for the calculation of her pension but the Greek authorities refused to accept a copy of her Greek pension record certified by the authorities in Cyprus, as evidence of the time worked in Greece. Instead, the complainant was asked to produce the original documents as a requisite to processing the file. The Commission considers such practices to be an obstacle to the free movement of workers within the EU and against the principle of proportionality laid down in the [Regulation on the coordination of social security systems](#) (EC/883/2004). This Regulation forbids procedures that impose a disproportionate burden on applicants during document processing. The Commission request takes the form of a 'reasoned opinion' under EU infringement procedures. Greece now has two months to notify the Commission of measures taken to remedy this problem. Otherwise, the Commission may decide to refer Greece to the EU's Court of Justice.

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- **Working Time: Commission requests SPAIN to respect the rights of Civil Guard staff to a limit on working hours and to minimum rest periods**

The European Commission has requested **Spain** to respect Civil Guards' rights to minimum rest periods and the 48-hour limit on average weekly working time, as required by the Working Time Directive ([Directive 2003/88/EC](#)). Under the current Spanish national law, certain categories of Civil Guard workers are not entitled to these rights, particularly those with command, managing, teaching and investigative functions. Under the Directive, Member States may exclude managing executives or other persons with autonomous decision-taking powers from the 48-hour limit to average weekly working time and minimum rest periods. However, this derogation only applies to persons with genuine and effective autonomy over both the amount and the organisation of their working time, which is not the case for at least the majority of the Civil Guard workers concerned. The Directive also permits Member States to exclude from the provisions on minimum rest periods activities involving the need for continuity of service or requiring a permanent presence in order to protect property and persons, but this is on condition that the workers concerned are afforded equivalent periods of compensatory rest, which Spanish national law does not guarantee. As a result, the Spanish Civil Guards workers affected are vulnerable to working excessive hours without adequate rest periods. The Commission received several complaints about this situation. The request takes the form of a 'reasoned opinion' under EU infringement procedures. Spain 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 Spain to the EU's Court of Justice. The Commission previously decided to refer Spain to the Court concerning the application of EU health and safety legislation to Civil Guards (see [IP/13/963](#)).

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- **ENTR: Commission requests FRANCE to remove barriers to trade for alcohol test kits in cars (case 2012/4188)**

The European Commission has requested that **France** changes its rules regarding the use of alcohol test kits in cars and by the police. French rules do not currently allow the use of tests approved by other EU countries, thus hindering the free movement of goods within the EU.

French law currently obliges car drivers to have only "*normes françaises*" (the French collective certification mark - NF) tests in their cars; and also that the police use only NF certified alcohol test kits when performing checks on drivers. The Commission believes that the French goal to avoid car accidents due to alcohol is valid but that alcohol tests previously certified in other EU countries - or those which comply with the "NF" or an equivalent standard - should also be accepted. The Commission believes that in this case France is not observing the principles of non-discrimination and of mutual recognition of products lawfully manufactured and marketed in another EU member state.

The Commission has therefore issued a reasoned opinion asking France to change its laws to comply with the relevant EU law: Article 34 of the Treaty on the Functioning of the European Union. If France does not inform the Commission within two months of measures taken to ensure full compliance with their obligations under EU law, the Commission may decide to refer the case to the European Court of Justice.

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- **Environment: Commission asks FRANCE to improve treatment of wastewater from small agglomerations**

The European Commission is asking **France** to upgrade the treatment of wastewater from a number of small agglomerations around the country. Under [EU law](#), towns and cities are required to collect and treat their urban wastewater, as untreated wastewater can be contaminated with harmful bacteria and viruses, presenting a risk to public health. EU law stipulates that secondary treatment had to be in place for all wastewater from small agglomerations (i.e. with a population equivalent of between 10 000 and 15 000 inhabitants) by 2005. In 2009, infringement proceedings began against France as some 551 small agglomerations were failing to comply with European norms. Good progress followed, but more than 8 years after the initial deadline, 54 small agglomerations are still falling short of the EU standard. A reasoned opinion has therefore been sent. If France fails to comply with the Directive, the case may be referred to the EU Court of Justice.

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- **Environment: Commission asks FRANCE to amend its law on environmental impact assessments**

The European Commission has asked **France** to ensure that its legislation is in line with EU rules on Environmental Impact Assessments. These assessments are intended to ensure that projects likely to have a significant impact on the environment are assessed before they are authorised, so that people are aware of the possible effects. French law appears to circumvent the obligation to carry out such assessments for "provisional permits", which can be granted by the authorities in the absence of a regular permit for certain types of work including mining. In its reply to a letter of formal notice sent in January last year, France informed the Commission that it did not plan to modify its national legislation. The Commission maintains that French law does not currently comply with the [EIA Directive](#) as interpreted by the Court of Justice, and a reasoned opinion is being sent. If France fails to comply with the Directive, the case may be referred to the EU Court of Justice.

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- **Environment: Commission asks ITALY to amend water legislation**

The European Commission is asking **Italy** to bring its water legislation into line with EU standards. The shortcomings relate to the enactment in national law of the [Water Framework Directive](#), the Union framework for action in the field of water policy. Conformity checks carried out by the Commission in 2009 identified a number of issues and in May 2010 the Commission sent a letter of formal notice, followed by a reasoned opinion in March 2012. While many of the original issues have now been addressed, an additional reasoned opinion is being sent about the minimum requirements of programmes to cover diffuse sources liable to cause pollution to water, and measures to prevent or control the input of pollutants. If Italy fails to comply with the Directive, the case may be referred to the EU Court of Justice.

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- **Professional Qualifications: Commission requests POLAND to respect EU rules for lawyers**

The European Commission has today asked **Poland** to respect EU rules on recognition of professional qualifications for lawyers. The Polish Lawyers' Act, as interpreted by the Polish Ministry for Justice, deals with exemptions from the obligation to take the Polish state exam for practising as a lawyer. It prevents the competent authority from taking into account experience which may have led to the acquisition of relevant professional knowledge and skills (including in Polish law), in as far as this experience is not acquired under a contract with a firm established under Polish law. The Commission's interpretation of Article 49 of the Treaty on the Functioning of the European Union is that the assessment criteria should only concern the knowledge and experience acquired by a candidate in a traineeship. The legal relation of the applicant with the law firm where the experience was acquired and the country of establishment of the law firm do not appear to have significant bearing on the level and the type of professional knowledge that should be required. In accordance with the second stage of EU infringement proceedings, the Commission's request takes the form of a reasoned opinion. If Poland fails to act within two months, the Commission may refer the case to the Court of Justice of the European Union.

More information:

http://ec.europa.eu/internal_market/qualifications/other_directives/lawyers/index_en.htm

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- **Commission urges POLAND to comply with EU rules on the separation of accounts in rail**

The European Commission is concerned that **Poland** should ensure full transparency by separating its accounts between infrastructure managers and railway operators ([Directive 2012/34/EU](#)). One of their main purposes is to ensure transparency in the use of public funds and a more rational allocation so that transport service providers may compete on an equal footing to the benefit of end users.

To date Poland has not yet fully transposed accounting rules such as the obligation to separate accounts for rail transport services and railway infrastructure management. The accounts must also reflect the prohibition to transfer public funds from one of these two sectors to the other, in order to avoid cross-subsidies.

Keeping transparent accounts is the only way to identify how public money is spent and whether it is used for other purposes than the ones foreseen. Indeed, the current arrangements in Poland do not exclude that public funds that are intended for infrastructure or dedicated to specific categories of transport services are used to cross subsidise other transport services.

This could distort competition, potentially giving an unfair competitive advantage to those receiving the public subsidies.

Since this is contrary to existing EU rules, which aim at establishing an efficient, non-distorted and competitive EU internal market for rail, the Commission sent a reasoned opinion to Poland. In the absence of a satisfactory response within two months, the Commission may refer it to the Court of Justice of the European Union.

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- **PORTUGAL: failure to ratify convention on compensation for damage from oil spills**

The Commission has today issued a reasoned opinion to **Portugal** in the second stage of infringement proceedings, following the country's failure to ratify an international convention on civil liability for oil pollution damage ([the Bunkers Convention](#)). Under EU law ([Council Decision 2002/762/EC](#) and Article 4 TEU), EU Member States are obliged to ratify the convention, which aims to ensure proper compensation for those suffering damage caused by oil spills, when the oil is carried as fuel in ships' bunkers. Under the convention, a registered owner of a vessel is obliged to maintain compulsory insurance cover for pollution damage. Portugal's non-compliance means that there is a lack of protection for victims of oil pollution if a spill occurs in Portuguese waters. The Convention was adopted in 2001 and has since been ratified by 74 countries, including all 27 other EU Member States. Up until now, Portugal has not completed the relevant parliamentary procedure required for ratification, meaning that it is failing in its obligations under EU law.

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- **Transport: Commission asks PORTUGAL to amend national measures for safe transport of dangerous goods**

The Commission has requested **Portugal** to amend its national legislation regarding the transport of dangerous goods (such as industrial chemicals, petroleum products or explosive materials) by road and rail. Portugal has not notified the transposition of the rules that entered into application on 1 July 2013. Therefore, the Commission is sending today a Reasoned Opinion to Portugal on this matter.

The [Directive](#) on the inland transport of dangerous goods was adopted in 2008. The Directive is revised every two years to keep it up-to-date with technical progress and to maintain coherence with related international agreements. The Commission adopted the [latest update](#) in December 2012. The Directive specifies uniform conditions for the safe transport of dangerous goods, by road, rail and inland waterways in the EU. Failure to comply with the common provisions may create unnecessary risks during transport and hinder the transport of these substances and articles in the EU.

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- **Taxation: Commission requests PORTUGAL to take into account real depreciation in taxing second-hand vehicles**

The Commission has formally requested **Portugal** to amend its legislation on the taxation of imported second-hand vehicles. The calculation of the taxable value of second-hand vehicles introduced into Portugal from another Member State does not take into account the real value of the vehicle. No depreciation is taken into consideration before the vehicle is one year old and no further depreciation is taken into account of in the case of vehicles older than five years. This may result in higher taxation than that applied to domestically purchased vehicles. The Commission's request 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 Portugal to the EU's Court of Justice.

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- **Environment: Commission asks SLOVENIA to publish a list of abandoned mining sites**

The European Commission is asking **Slovenia** to draw up a list of abandoned mining sites which have the potential to cause harm to citizens or the environment. Under the [Mining Waste Directive](#), Member States had until May 2012 to publish a list of such sites on their territory that have the potential to cause serious environmental harm. Slovenia missed the deadline, and the Commission began infringement proceedings in October 2012. The Slovenian authorities have reported regularly on progress, but the task is not yet complete and Slovenia is behind the timetable it agreed with the Commission. A reasoned opinion is being sent, and if Slovenia fails to act within two months, the Commission may refer the case to the EU Court of Justice.

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