



EUROPEAN COMMISSION

MEMO

Brussels, 17 October 2013

October infringements package: main decisions

	LEGAL SERVICE	EMPLOYMENT & SOCIAL AFFAIRS	ENERGY	ENVIRONMENT	INTERNAL MARKET & SERVICES	JUSTICE	TAXATION & CUSTOMS UNION
AT				1			
BE	1						
BG				1			
CY				2			
CZ			1				
DE				1			
DK				1			
EE				1			
ES		1					
FI				1			
FR							1
IT						1	
PL				1	1		
RO			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 **108 decisions**, including **12 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

- **The Commission takes Belgium to Court to ensure that it applies tax exemptions granted to European Union Institutions**

The European Commission considers that **Belgium** is not complying fully with the provisions of the Protocol on the Privileges and Immunities of the European Union. It has decided to refer the matter to the Court of Justice on the recommendation of Commission Vice-President Maroš Šefčovič, who is responsible for Interinstitutional Relations and Administration.

(for more information: [IP/13/952](#), A. Gravili - Tel. +32 229 54317 - Mobile +32 498 95 4317)

- **Environment: The Commission takes BULGARIA to Court for failing to protect endangered species**

The European Commission is taking **Bulgaria** to Court over its failure to protect unique habitats and important species. The case concerns the Kaliakra region, a migratory route and resting place for highly endangered species, where large numbers of wind turbines and other developments have been authorised without adequate assessment of their environmental effects. Although Bulgaria is committed to increasing the protection of rare species and habitats in the region, the reverse appears to be happening. On the recommendation of Environment Commissioner Janez Potočnik, the Commission is therefore taking Bulgaria to the EU Court of Justice.

(for more information: [IP/13/966](#), J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Public procurement: The Commission refers POLAND to the Court over illegal reasons for excluding candidates from procurement procedures**

The European Commission has today decided to refer **Poland** to the EU Court of Justice for incorrect implementation of the provisions of [Directive 2004/18/EC](#) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. The Commission believes that the provisions of the Polish Public Procurement Act may substantially hinder access to procurement markets.

(for more information: [IP/13/965](#), C. Hughes - Tel. +32 2 2964450 - Mobile +32 498 964450)

- **Environment: The Commission takes GERMANY to Court over failure to respect rules on access to justice**

The Commission is taking **Germany** to Court over a loophole in its legislation on access to justice in environmental matters. Under EU legislation, Member States must ensure a legal review procedure for decisions taken in the context of the Environmental Impact Assessment Directive and the Industrial Emissions Directive. The Commission is concerned with apparent gaps in German legislation in this area, which may be restricting citizens' access to justice. On the recommendation of Environment Commissioner Janez Potočnik, the Commission is therefore taking Germany to the EU Court of Justice.

(for more information: [IP/13/967](#), J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Health and Safety: The Commission refers SPAIN to the Court for failing to protect Civil Guard**

The European Commission has decided to refer **Spain** to the EU's Court of Justice for not fully applying the EU Directive that establishes basic rules on protecting workers' health and safety to members of the Civil Guard ('Guardia Civil'). The Commission considers that Spain has not adequately ensured the appointment of qualified personnel to verify that health and safety protection measures are put in place in all Civil Guard workplaces. This is in breach of Article 7 of Directive [1989/391/EEC](#), which requires employers to provide necessary staff and equipment to ensure that preventive and protective actions, such as risk assessments, can be carried out.

(for more information: [IP/13/963](#), J. Todd - Tel. +32 229 94107 - Mobile +32 498 99 4107)

2. Reasoned opinions

- **Energy Efficiency in Buildings: the CZECH REPUBLIC and ROMANIA are requested to adopt national measures on energy efficiency in buildings**

The Commission has formally requested the **Czech Republic** and **Romania** 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 the two 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 that the building's energy performance is certified and carry out regular inspections 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 (all except Denmark, Ireland and Sweden) that had not notified the Commission of 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, to Belgium, Germany, Finland, France, Latvia, Poland and the Netherlands in June 2013 and to Austria, Cyprus, Estonia, Lithuania, Luxembourg, Hungary and the United Kingdom in September 2013. More information here: http://ec.europa.eu/energy/efficiency/buildings/buildings_en.htm

(for more information: M. Holzner - Tel. +32 229 60196 - Mobile +32 498 98 2280)

- **Environment: The Commission asks to AUSTRIA improve Access to Justice**

The European Commission is asking **Austria** to improve provisions designed to ensure access to justice in decisions affecting the environment. Under the [Environmental Impact Assessment \(EIA\) Directive](#), citizens may ask for a judicial review of decisions taken within its scope, but the Commission is not convinced that individuals have sufficient rights under Austria's current provisions. The Commission is particularly concerned with restrictions related to individuals' rights to challenge decisions on whether EIAs are required are not. If Austria fails to act within two months, the case may be referred to the EU Court of Justice.

(for more information: J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

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

The European Commission is urging **Cyprus** 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. Cyprus has failed to enact rules on the limitation of hazardous substances in electronic equipment into national legislation and, in a separate case, has also failed to enact technical measures on exemptions for certain equipment containing lead. After Cyprus missed the original deadlines, the Commission sent letters of formal notice. As the shortcomings have still not been corrected, the Commission is sending two reasoned opinions. If Cyprus fails to act within two months, the cases may be referred to the EU Court of Justice, where financial penalties may be imposed.

(for more information: J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Environment: The Commission asks DENMARK to send River Basin Management Plans**

The European Commission is urging **Denmark** to send new River Basin Management Plans (RBMPs). RBMPs are a requirement under the [Water Framework Directive](#), and they define measures to achieve 'good ecological and chemical status' by 2015. The plans had to be sent to the Commission in 2009. After several reminders, Denmark adopted RBMPs in 2012, but Danish Courts found that the consultation period set by the authorities to comment on the draft plans was too short, and subsequently annulled them. As there are therefore no RBMPs in DK at present, the Commission is re-launching the infringement procedure and sending a reasoned opinion. If Denmark fails to act within two months, the case may be referred to the EU Court of Justice.

(for more information: J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

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

The European Commission is urging **Estonia** 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. Estonia has failed to enact technical measure on exemptions for certain equipment containing lead or cadmium. The two Directives had to be enacted in national legislation by 2 January 2013. After Estonia 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 two reasoned opinions. If Estonia fails to act within two months, the case may be referred to the EU Court of Justice, where financial penalties may be imposed.

(for more information: J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Environment: The Commission asks FINLAND to enact EU rules on industrial emissions**

The European Commission is urging **Finland** to send details about how EU legislation on [industrial emissions](#) is being enacted in its 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. Finland missed the deadline and was sent a letter of formal notice on 21 March 2013. The Directive has only been enacted in part on the mainland, and has not been enacted at all on the island of Åland. The Commission is now sending a reasoned opinion. 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.

(for more information: J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)

- **Taxation: The Commission asks France to abolish the discriminatory capital gains tax on precious metals**

Currently, French legislation concerning taxation on the sale of precious metals allows taxpayers resident in **France** to choose between two tax options. The first option is to pay tax on the amount of capital gains realised at the progressive personal income tax rate, in accordance with the standard rules. The second is to pay a flat-rate tax of 16% on the total amount of the sale.

Non-residents, however, are obliged to pay the flat-rate tax. In certain cases this can lead to higher taxation, particularly when no capital gain is realised.

A distinction of this nature constitutes an unwarranted restriction on the free movement of capital as laid down by Article 63 of the Treaty on the Functioning of the European Union (TFEU) and Article 40 of the Agreement on the European Economic Area (EEA).

The Commission's request takes the form of a reasoned opinion (which constitutes the second stage in the infringement procedure). In response to a formal notice sent in April 2011 (the first stage of the procedure) France committed to changing the current tax regime, however the Commission has received no notification to date that any measures have been taken.

If there is no satisfactory response within two months, the Commission may decide to take France to the EU Court of Justice.

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

- **Justice: Insufficient implementation of rules on compensation for crime victims in ITALY**

The Commission has today issued a reasoned opinion to **Italy** in the second stage of infringement proceedings following complaints about the country's implementation of EU rules on compensation for victims of crime ([Directive 2004/80/EC](#)). The EU rules mean Member States must ensure that their national compensation scheme guarantees fair and appropriate compensation to victims of 'violent intentional crimes' committed on their own territory. Italy does not have any general compensation scheme for such crimes. Instead, Italian legislation provides merely for compensation to victims of certain violent intentional crimes, such as terrorism or organised crime, but not for others. To date, Italy has not taken the necessary steps to amend its legislation in order to comply with the requirements of EU legislation, meaning that certain victims of violent intentional crimes may not have access to the compensation they should be due. If Italy does not comply with its legal obligation within two months, the Commission may decide to refer the country to the EU Court of Justice.

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

- **Environment: The Commission asks POLAND to enact EU rules on industrial emissions**

The European Commission is urging **Poland** to send details of how EU legislation on [industrial emissions](#) is being enacted in its 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. Despite a letter of formal notice sent on 21 March 2013, Poland has still not notified the Commission of national measures taken to enact the Directive. The Commission is therefore sending a reasoned opinion. If Poland fails to act within two months, the case may be referred to the EU Court of Justice where financial penalties may be imposed.

(for more information: J. Hennon - Tel. +32 229 53593 - Mobile +32 498 95 3593)