



Report from the Commission  
**30<sup>th</sup> Annual Report on monitoring  
the application of EU law**

2012

*General  
Secretariat*



# INTRODUCTION

Effective application of law is essential if the European Union is to meet its policy objectives. While Member States are responsible for the timely and accurate transposition of directives as well as the correct application and implementation of the entire *acquis*<sup>1</sup>, the Commission has to monitor the Member States' efforts and ensure that their legislation complies with EU law.

The Commission has a wide array of tools to assess whether EU policies are properly implemented. It also relies on information from citizens, businesses, NGOs and other stakeholders that point to potential problems concerning the application of EU law. For many of these issues the Commission works closely with Member States to find an efficient and satisfactory solution without resorting to formal legal actions. If this partnership does not produce desired results and if Member States' do not respect their obligation under EU law, the Commission launches formal infringement procedure (under Article 258 TFEU<sup>2</sup>). Should cases be referred to the Court of Justice of the European Union (the "Court") under Article 260(2) TFEU for not having complied with a prior judgment and Article 260(3) TFEU, for late transposition of directives, sanctions can be proposed by the Commission and decided by the Court.

The 30th Annual Report on monitoring the application of EU law reviews the performance on key aspects of the application of EU law and highlights strategic issues. The performance and the challenges in the application of EU law are broken down by Member States and thematic areas in the Staff Working Documents accompanying this Report.

1 By the end of 2012, the *acquis* of the EU consisted of 9576 regulations (2011: approx. 8900) and 1989 directives (2011: approx. 1900) in addition to the primary law (the Treaties).

2 It should be noted that infringement procedures can also be initiated under other provisions of EU law, for example Article 106 TFEU in combination with Articles 101 or 102 TFEU.

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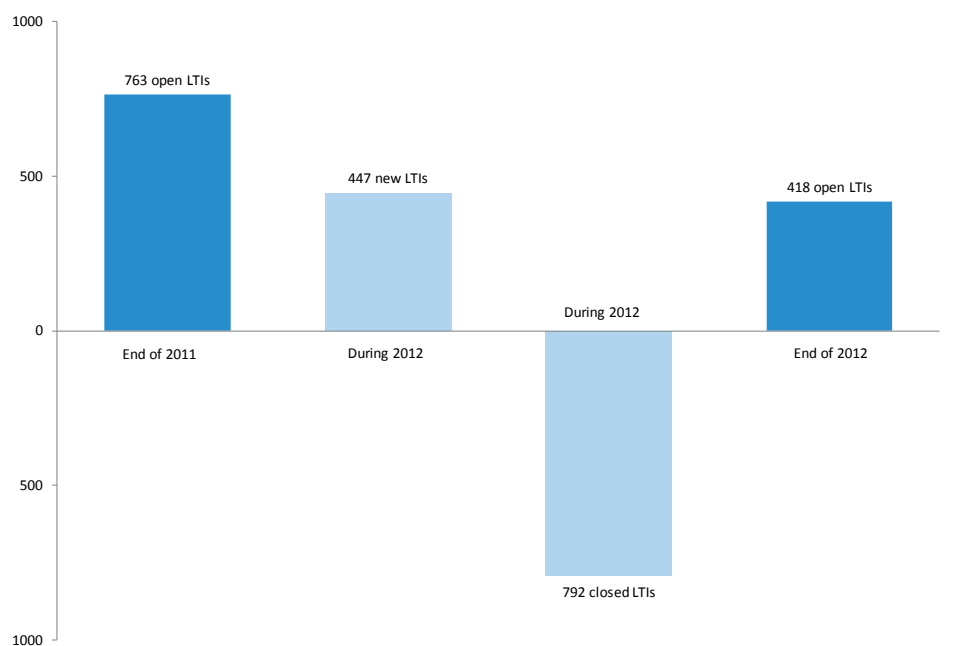
# 1. TRANSPOSITION OF DIRECTIVES

## 1.1. OVERVIEW OF THE 2012 TRANSPOSITION WORK

Reducing late transposition is a Commission priority.<sup>3</sup> The Commission proposes fines under the special penalty regime established by Article 260(3) TFEU against Member States, if they do not transpose directives in time (details in point 1.2 below).

There were less directives to transpose in 2012 compared to the previous years (i.e. 56 in contrast to 131 in 2011 and 111 in 2010). Accordingly, there was a decrease in late transposition infringements in 2012 compared to the previous year (447 late transposition infringements in 2012 compared to 1185 procedures in 2011 and 855 in 2010). 418 late transposition cases were open at the end of 2012, which represents a 45 % decrease when compared to the 763 cases at the end of 2011.

The following chart contains the key figures<sup>4</sup> on late transposition infringements initiated by the Commission during 2012:

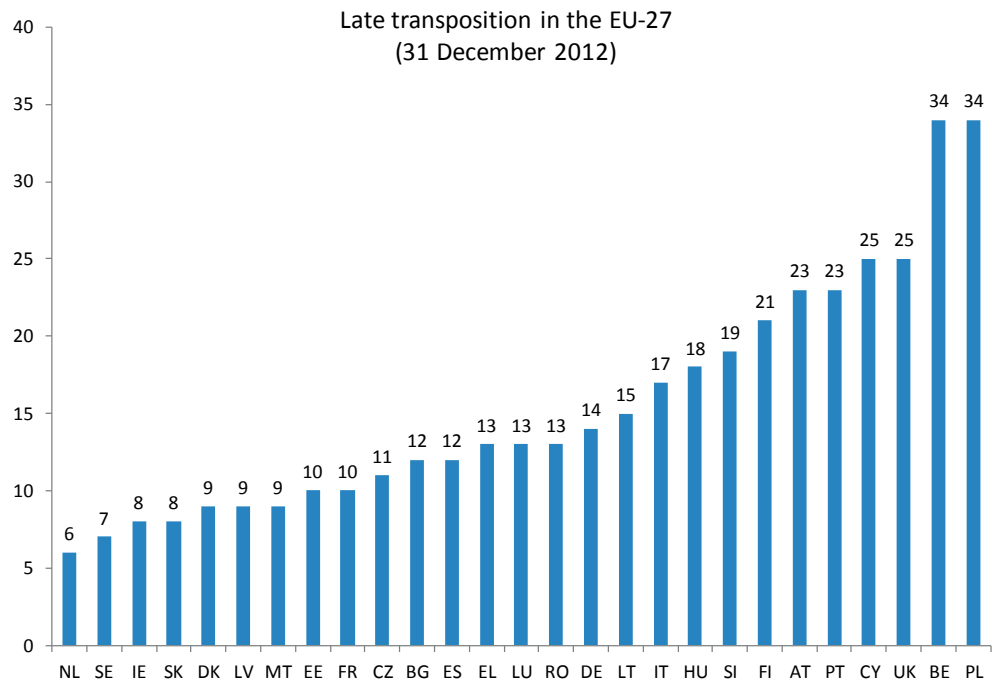


LTIs: Late transposition infringements

<sup>3</sup> Commission Communication on 'A Europe of results – Applying Community law', [COM\(2007\)502 final](#), p. 9.

<sup>4</sup> From the sum of the 2011 open LTIs and the 2012 new LTIs (763+447=1210), the number of closed LTIs is deducted (1210-792=418).

The following table shows late transposition infringements by Member State:<sup>5</sup>



The four policy areas where the most late transposition infringements were launched in 2012 were transport (115 procedures), health & consumers (108), environment (63) and internal market & services (53). Late transposition infringements were launched against more than two thirds of the Member States for some directives. For example, the Commission launched procedures against 24 Member States concerning late transposition of the Directive on buildings' energy performance.<sup>6</sup>

Similarly, 23 Member States were involved in late transposition infringements under the so-called Omnibus I Directive;<sup>7</sup> 20 procedures were launched concerning the Directive on intelligent road transport systems;<sup>8</sup> and the directive amending the Community code of medicinal products for human use<sup>9</sup> triggered 19 procedures. Finally, 18 Member States received a letter of formal notice due to the late transposition of the modifications in the so-called Prospectus Directive.<sup>10</sup>

## 1.2. REFERRALS TO THE COURT UNDER ARTICLES 258 / 260(3) TFEU

Under Article 260(3) TFEU, when referring a late transposition infringement to the Court according to Article 258 TFEU, the Commission may specify financial penalties without having to wait for a first judgment.<sup>11</sup> The purpose of this innovation in the Lisbon Treaty is to give a stronger incentive to Member States to transpose directives within the deadlines laid down by the legislator.

In 2012, the Commission referred a number of late transposition infringements to the Court with a request for financial sanctions under Article 260(3) TFEU. Twelve Member States were involved in 35 such decisions in 2012: Poland (10 cases), Slovenia (5), the Netherlands, Finland (4 each), Belgium, Cyprus (3 each), Germany, Bulgaria, Slovakia, Luxembourg, Portugal and Hungary (one each). The proposed daily penalty ranged from € 5,909.40 to € 315,036.54. Lump sum payments were not requested.

The Member States' infringement profiles in the Commission Staff Working Document (Part I) contain more detailed information on these cases.

5 The table below indicates the number of late transposition infringements open on 31 December 2012, irrespective of the year when the infringement was opened. By contrast, the section "Transposition of directives" in the Member State pages of Part I of the Commission Staff Working Document shows how many new late transposition infringements were initiated against the Member States in 2012.

6 [Directive 2010/31/EU](#) on the energy performance of buildings

7 [Directive 2010/78/EU](#) of the European Parliament and of the Council of 24 November 2010 amending several Directives in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)

8 [Directive 2010/40/EU](#) of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport

9 [Directive 2010/84/EU](#) amending, as regards pharmacovigilance, Directive 2001/83/EC on the Community code relating to medicinal products for human use

10 [Directive 2010/73/EU](#) amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

11 [Communication](#) from the Commission - Implementation of Article 260(3) of the Treaty



## 2. INCORRECT TRANSPOSITION AND BAD APPLICATION OF EU LAWS

While the Commission in its duty as the Guardian of the Treaties conducts its own enquiries to detect infringements of EU law (point 2.1.2), citizens, businesses and stakeholder organisations make a significant contribution to monitoring by reporting shortcomings in the transposition and/or application of EU law by Member State authorities (see complaints under point 2.1.1). Once detected, problems are followed up by bilateral discussions between the Commission and the Member State concerned in order to remedy them using the EU Pilot platform (point 2.1.3).

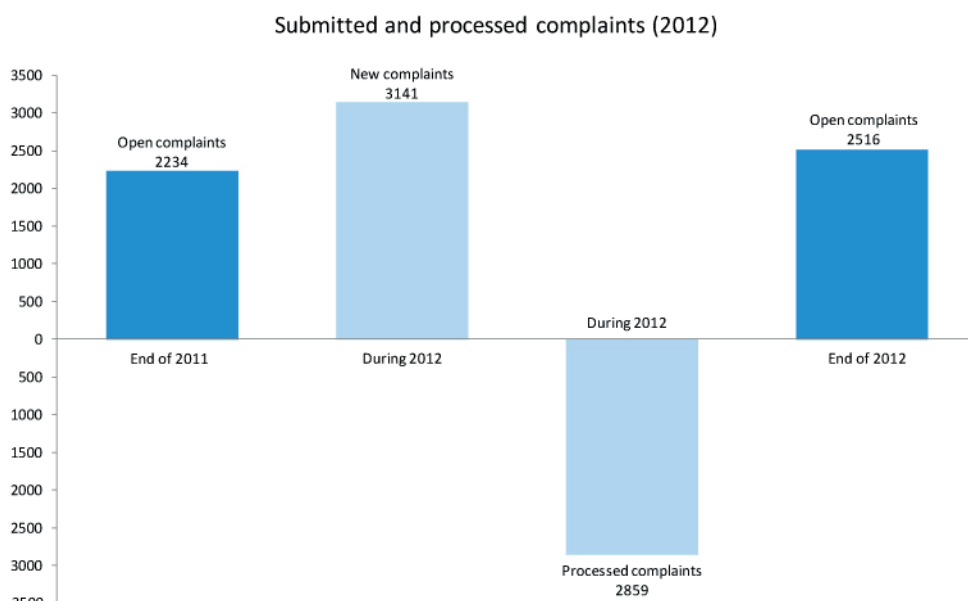
### 2.1. DETECTION OF PROBLEMS AND INFORMAL SOLUTIONS

#### 2.1.1. COMPLAINTS

Citizens, businesses, NGOs or other organisations file complaints to the Commission frequently. The Commission laid down its complaint handling rules in a Communication issued in 2002. Improvement and expansion of methods to properly register and treat correspondence from complainants concerning the application of Union law, the entry into force of the TFEU and the need for some linguistic clarification called for an update.

This Communication was updated in June 2012.<sup>12</sup> It maintains the existing general framework of complaint handling. It reaffirms the administrative measures to be complied with by the Commission when handling complaints including proper recording of every complaint received, sending an acknowledgment of receipt, informing the complainant on any steps taken by the Commission in further processing his/her complaint, and giving prior notice to the complainant before closing a file.

The chart below shows the key data<sup>13</sup> on citizens' complaints in 2012:



<sup>12</sup> Communication from the Commission to the Council and the European Parliament on updating the handling of relations with the complainant in respect of the application of Union law, [COM\(2012\) 154 final](#)

<sup>13</sup> From the sum of the 2011 open complaints and the 2012 new complaints (2234+3141=5375), the number of processed complaints is deducted (5375-2859=2516).

*3141 new complaints* – The three Member States against which the most complaints were filed were: Italy (438), Spain (306) and France (242). Similar to 2011, citizens, businesses and organisations reported irregularities especially in connection with environment, justice and internal market & services (588, 491 and 462 complaints, respectively).

*2859 processed complaints* – Following an initial assessment of more than 2800 submissions in 2012, the Commission opened bilateral discussions with the Member State concerned in relation to 621 complaints in order to clarify whether EU rules had been breached.<sup>14</sup> Complaints that led to bilateral discussions were most frequently related to environment, internal market & services and taxation & customs union (131, 130 and 92 files opened under EU Pilot, respectively).

Petitions by citizens to the European Parliament as well as questions from Members of Parliament could also raise perceived deficiencies in the way Member States apply EU law. Most frequently, these concerned environmental issues. On this basis, the Commission has sent two letters of formal notice under Article 258 TFEU (to the United Kingdom and Greece) and launched further 22 investigations in EU Pilot. The Commission received seven petitions from the European Parliament in relation to regional policy and four on health and consumers matters. Two EU Pilot files were launched upon written questions from the Parliament in the areas of agriculture, two in internal market and three in transport. More detailed information on petitions and written questions is provided in the Commission Staff Working Document (Part II pages on Environment, Agriculture, Internal Market & Services, Transport, Justice, Fundamental Rights & Citizenship, Regional Policy and Health & Consumers).

### 2.1.2. OWN INITIATIVE CASES

The Commission's own findings also reveal potential infringements of EU law. Similar to complaints, the Commission initiates first a bilateral discussion with the Member State concerned with a view to finding a solution complying with EU law. 791 investigations were launched during 2012. Environment, internal market and services and transport were the three policy areas where the most potential infringements were identified (386, 196 and 164 new files, respectively). The Member States primarily concerned were France, Spain and Italy (112, 110 and 107 new files, respectively).

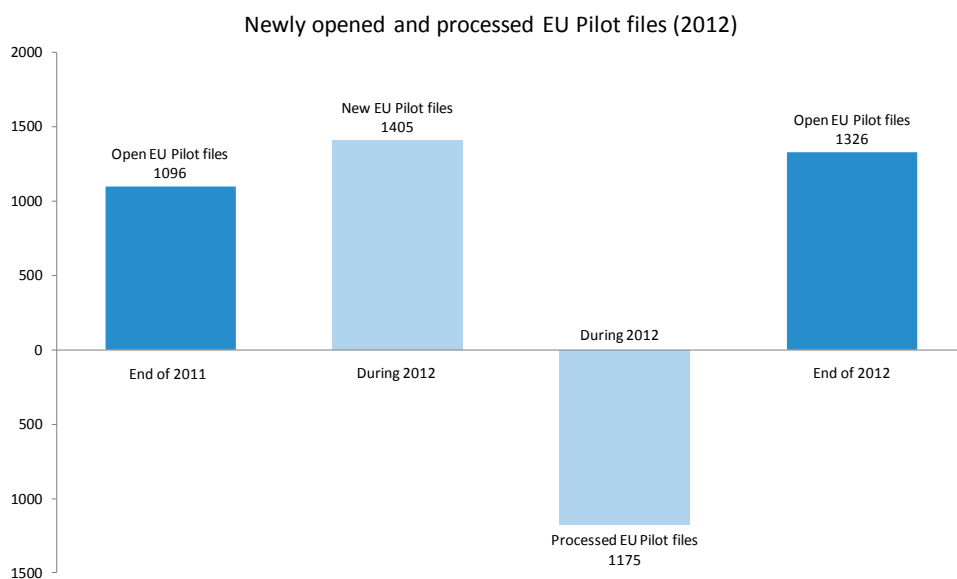
### 2.1.3. PARTNERSHIP WITH MEMBER STATES: EU PILOT

EU Pilot is a Commission initiative aimed at responding to questions and identifying solutions to problems related to the application of EU law. It is supported by an on-line database and communication tool. EU Pilot provides the opportunity to resolve problems before entering into formal infringement procedures. Given that cases should, in principle, be dealt with within 20 weeks, EU Pilot dialogue facilitates speedy resolution of problems for the benefit of citizens and businesses and achieving compliance with EU law obligations.

The gradual phase-in of Member States to EU Pilot has finished in June 2012, when the two remaining Member States, Luxembourg and Malta, signed up to the system. Accordingly, all Member States have become participants in EU Pilot.

<sup>14</sup> The rest of the complaints have not been further processed because either EU laws were not breached or the Commission lacked competence or the correspondence did not qualify as complaint. It is also noted that in urgent and exceptional cases, the Commission may decide to address a letter of formal notice (Article 258 TFEU) to the Member State without prior bilateral discussion.

The following chart contains the main EU Pilot figures for 2012:<sup>15</sup>



*1405 new dossiers during 2012* – This figure is composed of 621 complaints confirmed by the Commission and 784 new own initiative files.

*1175 files were closed during 2012* – Of the 1175 EU Pilot files in 2012, the Commission closed 803 files because the Member State provided a satisfactory response. This is a 68.34 % resolution rate for the Member States (a 4.16 % decrease from the 2011 rate of 72.5 %).<sup>16</sup>

*1326 files remained pending* – By the end of 2012, most of the EU Pilot files were addressed to Italy (135), followed by Spain (107) and Greece (82). From the point of view of policy areas, environment remained the leading field with 400 open dossiers before internal market & services (176) and justice & fundamental rights (125).

The Commission closed 334 EU Pilot files in 2012 by launching formal infringement procedures. Solutions were not found for 84 environment, 42 taxation & customs union and 42 transport cases. Italy, France and Spain had the highest number of such transfers to infringement proceedings (29, 28 and 26 files, respectively).

There were only two formal infringement procedures in 2012 that the Commission had launched directly by sending a letter of formal notice under Article 258 TFEU, without using EU Pilot.<sup>17</sup>

<sup>15</sup> From the sum of the 2011 open EU Pilot files and the 2012 new EU Pilot files (1096+1405=2501), the number of processed files is deducted (2501-1175=1326)

<sup>16</sup> Report from the Commission – 29th Annual Report on monitoring the application of EU law (2011), [COM\(2012\) 714 final](#), p. 8.

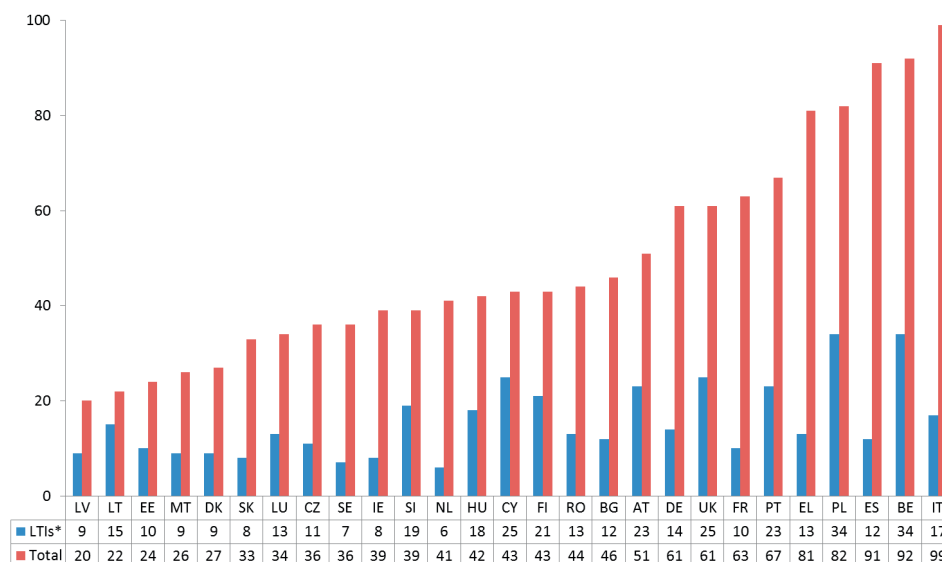
<sup>17</sup> Both cases concerned Hungarian measures. Further details may be found on the Member State page of Hungary in Part I of the Commission Staff Working Document.

## 2.2. INFRINGEMENT PROCEDURES

If a Member State does not resolve the alleged breach of EU law, the Commission launches infringement procedures under Article 258 TFEU<sup>18</sup> and may eventually refer the dispute to the Court.

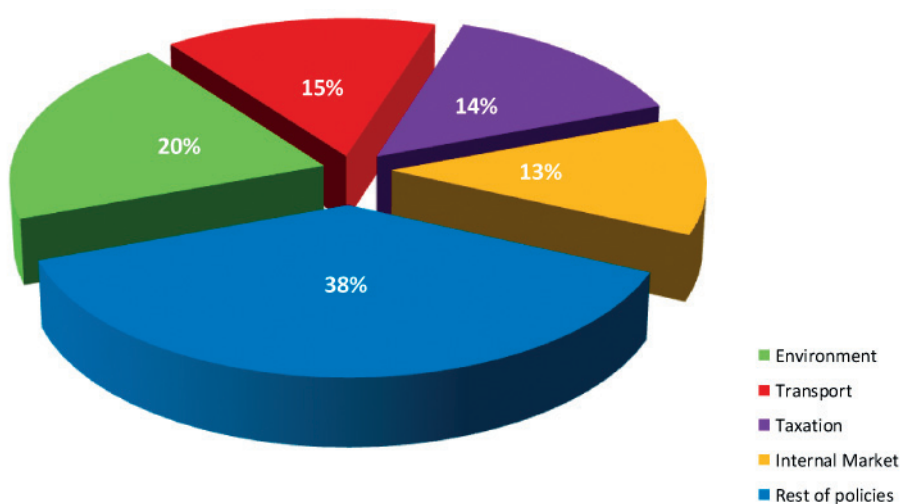
At the end of 2012, 1343 infringement cases were open.<sup>19</sup> The number of open infringement cases has continued to fall – from nearly 2900 cases in 2009, to 2100 cases in 2010 and to 1775 cases in 2011. The following charts break down the total number of infringement cases and late transposition infringements according to Member States and policy areas:

Number of infringements in the EU-27  
(31 December 2012)



\* LTIs: Late transposition infringements

The four most infringement-prone areas in 2012



18 Or under other provisions of the TFEU, see footnote 2 above.

19 This includes all procedures where the Member State has received at least a letter of formal notice from the Commission under Article 258 TFEU.

Discussions between the Member State and the Commission continue during the formal procedure, in order to bring national law or its application in line with EU legislation. Statistics confirm that Member States make serious efforts to settle their infringements without Court procedures.<sup>20</sup> During 2012:

- the Commission closed 661 infringements after sending the letter of formal notice;
- 359 cases were solved after reasoned opinion were sent to the Member State; and
- 42 infringements were closed (or withdrawn from the Court) after the Commission decided to refer the case to the Court.

In total, 1062 infringement cases were closed because the concerned Member States had demonstrated their compliance with EU law. The Court delivered 46 judgements under Article 258 TFEU in 2012, out of which 42 judgments (91 %) were in favour of the Commission. The Court passed the most judgments against Belgium (6 of which 1 was in favour of the Member State), Portugal (5/0), the Netherlands (4/1) and France (4/0). Environment (16), taxation & customs union (11) and internal market & services (6) were the three policy areas with the most judgments delivered by the Court during 2012.

While Member States frequently take the necessary measures to comply with the judgment of the Court in a timely manner, at the end of 2012, the Commission still had 128 open infringement procedures open because it could not yet confirm whether the Member States concerned complied with Court judgments under Article 258 TFEU. Most of these cases concerned Portugal (14), Greece (13) and Spain (12) and were related to environment (54), internal market & services (17) and taxation & customs union (16).

Out of these 128 cases, 11 had already been referred to the Court for the second time. Three Court judgments were delivered under Article 260(2) TFEU last year, two against Ireland<sup>21</sup> and one against Spain<sup>22</sup>. In principle, a Court judgment under Article 260(2) TFEU can impose lump sum and / or a (daily) penalty payment on the defaulting Member State. The latter must pay immediately the lump sum while paying the daily penalty until it reaches full compliance with the first and second Court judgment.

20 The following figures were calculated for all infringement cases irrespective of their origin (i.e., complaint, own initiative of the Commission or late transposition of directives by Member States).

21 Commission v Ireland, Cases [C-374/11](#) (lump sum payment: € 2,000,000; daily penalty: € 12,000 per day) and [C-279/11](#) (lump sum payment: € 1,500,000)

22 Commission v Spain, [C-610/10](#) (lump sum payment: € 20,000,000; daily penalty: € 50,000 per day pending compliance with the Court judgment)

## 3. POLICY DEVELOPMENTS

### 3.1. EU REGULATORY FITNESS

European lawmakers need to be attentive to unnecessary burden and red tape. In a Communication<sup>23</sup> published at the end of 2012, the Commission launched its Regulatory Fitness and Performance Programme (known as REFIT) strengthening its Smart Regulation tools and governance.

This includes:

- Enhanced assistance to Member States in transposing EU directives (including implementation plans);
- More systematic, risk-based conformity assessments of national implementing rules; and
- Fast problem-solving mechanisms before formal legal action (guaranteed by EU Pilot).

### 3.2. BETTER GOVERNANCE FOR THE SINGLE MARKET

From 2001 on, Heads of State and Government of the European Union agreed on a number of targets that Member States should achieve in order to improve their transposition records as regards the implementation of EU Single Market law (SM). [Internal Market Scoreboards](#) assess regularly how Member States performed against SM targets.<sup>24</sup>

Important steps were also taken in SM governance. “Core EU Single Market laws” are listed in the Annex of the Communication on the governance of the Single Market adopted in June 2012.<sup>25</sup> To accelerate Member States’ full compliance with the SM rules, the Communication identified new targets for handling infringements of core EU Single Market law:

- ‘Zero tolerance’ (0 %) as regards the timely and correct transposition of core EU Single Market law. This target is stricter than the general 1 % transposition deficit agreed in relation to EU Single Market law;
- Reduction of the duration of infringement procedures to 18 months; and
- Achieving full compliance with the judgments of the Court within 12 months.

The Commission has identified infringement procedures which involve the core EU Single Market laws and has focused its efforts on attaining full implementation of these laws.

In addition, the Communication encourages the Member States to submit draft implementation measures and explanatory documents (see point 3.3 below) in relation to core EU Single Market laws.

<sup>23</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EU regulatory fitness, [COM\(2012\) 746 final](#) (12 December 2012)

<sup>24</sup> Both the historical developments and the exact target rates can be found in the [Internal Market Scoreboards](#).

<sup>25</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on better governance for the Single Market, [COM\(2012\) 259](#)

### 3.3. EXPLANATORY DOCUMENTS FOR DIRECTIVES TRANSPOSED BY MEMBER STATES

The 2011 Annual Report<sup>26</sup> described the solution agreed between the EU institutions, in the form of Joint Political Declarations, as regards the provision of ‘explanatory documents’<sup>27</sup> by Member State authorities upon notifying their transposition measures for a given directive.

Member States are invited to explain how their national transposition rules responded to the objectives laid down in a number of directives.

Examples include:

- The Directive on energy efficiency;<sup>28</sup>
- The Directive concerning the control of major-accident hazards involving dangerous substances;<sup>29</sup> and
- The Directive on waste electrical and electronic equipment.<sup>30</sup>

As agreed in the Joint Political Declarations, the Commission will report on the implementation of these instruments by 1 November 2013.

## 4. CONCLUSIONS

Member States still have to meet major challenges in complying with EU law. There was a significant decrease in the number of late transposition infringements during 2012, which was distributed proportionally between Member States. The transposition performance of the Netherlands and that of Sweden have particularly improved but in general the ranking of Member States as regards late transposition infringements did not change. Despite the positive tendency, a large number of directives still have to be transposed and implemented. Member States are therefore invited to keep up efforts to transpose EU law correctly.

Member States have demonstrated great willingness to solve problems before formal steps are taken. With the joining of Malta and Luxembourg, all 27 Member States participate in EU Pilot, the on-line platform operated by the Commission to assist fast problem-solving. Exchanges of views in EU Pilot allowed for a quick resolution of nearly 1,200 potential infringements in 2012.

Together with the decrease of the number of formal infringement procedures, there were also fewer cases that the Commission had to refer to the Court. The general ranking of Member States as regards the total number of infringement did not change materially: those Member States had the fewest and the most infringement proceedings which had similar results in the previous year. Environment, transport, taxation and internal market remained the policy areas where the Commission initiates infringements most frequently.

This general trend is partly attributable to the successful co-operation between the Member States and the Commission. Where the Commission launched formal procedures, Member States have made further attempts to achieve compliance with EU law.

As the Guardian of the Treaties, the Commission will continue the active monitoring of the application of EU law. Proper implementation is an indispensable ingredient in regulatory fitness and performance.

26 Report from the Commission – 29th Annual Report on monitoring the application of EU law (2011), [COM\(2012\) 714 final](#), p. 12

27 Explanatory documents have to illustrate the relationship between national transposing rules and the specific provisions of a given directive. They may take the form of a correlation table.

28 Directive [2012/27/EU](#) on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC

29 Directive [2012/18/EU](#) on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC

30 Directive [2012/19/EU](#) on waste electrical and electronic equipment (WEEE)





# STAFF WORKING DOCUMENTS

PART I

# MEMBER STATES

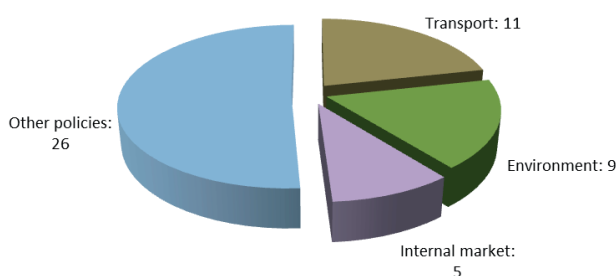
## AUSTRIA

### GENERAL STATISTICS

With 51 open cases at the end of 2012, Austria had the 18<sup>th</sup> highest number of infringement cases in the EU-27. In 2012, the Commission launched 31 new infringement procedures against Austria by sending letters of formal notice.

Austria's performance remained the worst in its reference group; Bulgaria had 46 open infringement cases and Sweden had 36. However, Austria ended the year with fewer infringements than in 2011 (65) and 2010 (57). The following chart shows the policy areas in which Austria was most frequently subject to infringement procedures:

#### 51 INFRINGEMENT CASES AGAINST AUSTRIA



The Commission did not bring any cases against Austria before the Court in 2012 (compared to two referrals in 2011). In Austria's reference group, Bulgaria and Sweden had two and one referrals, respectively.

### TRANSPOSITION OF DIRECTIVES

The Commission opened 24 infringement procedures against Austria for late transposition of various directives in 2012 (46 in 2011). In Austria's reference group, only six such cases were launched against Sweden, and 13 against Bulgaria. With 23 open late transposition infringement cases by the end of 2012, Austria (and Portugal) had the 5<sup>th</sup> worst performance in the EU-27.

Austria faced major challenges in transposing EU directives in the policy areas of transport and health & consumers (six new late transposition infringements were opened in both areas).

### COMPLAINTS

In 2012, the Commission received 116 complaints against Austria, the ninth-highest figure in the EU-27.

The areas in which most complaints were received were: justice (22 complaints, particularly on free movement of people and equal treatment); environment (21, many on nature protection, water protection and management, environmental impact assessments); internal market (21, mainly free provision of services and regulated professions). There were also complaints about nationality-based discrimination in relation to public-sector posts and public-transport fares. Other complaints concerned, among other, taxation of pensions, obstacles to the online sale of goods, and family benefits for migrant workers.

### EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2012, the Commission and the Austrian authorities were working on 46 open EU Pilot files, a significantly lower figure than the 102 files at the end of 2011. The Commission opened 41 new EU Pilot files with Austria in 2012. By decreasing its average EU Pilot response time to 62 days (from 77 in 2011), Austria managed to respect the 10-week target.

The Commission closed a number of infringement cases in 2012 because of action taken by the Austrian authorities: Austria carried out an ex-post environmental impact assessment for the project to expand Vienna Airport to identify the mitigation and compensation measures needed; it modified the rules relating to the acquisition of agricultural real estate in Tyrol to respect the free movement of capital; and it fully transposed the Blue Card Directive (on highly-skilled third-country employees)<sup>31</sup> and the Directive on defence procurement.<sup>32</sup>

### IMPORTANT JUDGMENTS

The Court declared that Austrian law had not ensured the independence of the Data Protection Commission (*Datenschutzkommission* or *DSK*) because its managing member was a federal officer subject to supervision, the DSK was part of the Federal Chancellery and the Federal Chancellor's information rights were too broad.<sup>33</sup> In addition, the reduced transport fare system put in place for students was found to contradict the general rules on the free movement of people<sup>34</sup> because students residing in Austria could benefit from the reduction only if their parents were entitled to the Austrian family allowance.<sup>35</sup> Finally, Austria was condemned for not issuing or renewing permits for several industrial installations under the Integrated Pollution Prevention and Control Directive,<sup>36</sup> which requires compliance with a number of environmental criteria.<sup>37</sup> In a preliminary ruling addressed to the Austrian judiciary, the Court confirmed that a collective employment contract was in line with the Employment Equality Framework Directive,<sup>38</sup> if the contract's terms determined pay grades solely on the basis of professional experience gained at a specific airline and excluded employees' identical experience obtained at other airlines.<sup>39</sup>

### KEY INFRINGEMENT PROCEEDINGS

- Rights of the public to challenge decisions on environmental impact assessments
- Restricting extended family members' rights granted by the Free Movement Directive<sup>40</sup>
- Inaccurate transposition of the Railway Safety Directive<sup>41</sup> as regards its scope and definitions)

31 Directive [2009/50/EC](#) and [IP/12/167](#) on the earlier reasoned opinion

32 Directive [2009/81/EC](#) and [IP/12/533](#) on the earlier reasoned opinion

33 *Commission v Austria*, [C-614/10](#)

34 Directive [2004/38/EC](#)

35 *Commission v Austria*, [C-75/11](#)

36 Directive [2008/1/EC](#)

37 *Commission v Austria*, [C-352/11](#)

38 Directive [2000/78/EC](#)

39 *Tyrolean Airways Tiroler Luftfahrt*, [C-132/11](#)

40 Directive [2004/38/EC](#)

41 Directive [2004/49/EC](#)

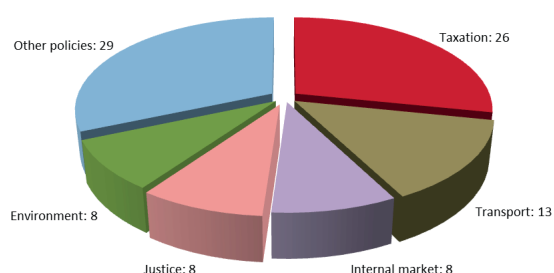
## BELGIUM

### GENERAL STATISTICS

With 92 open infringement cases at the end of 2012, Belgium had the second worst result in the EU-27. In 2012, the Commission launched 29 new infringement procedures against Belgium by sending letters of formal notice.

Belgium's performance was below average in its reference group: the Czech Republic Romania had 36 open infringement cases, the Netherlands had 41, Hungary 42, Romania 44, Portugal 67 and Greece 81. However, Belgium closed the year with fewer infringements than in 2011 (117) and 2010 (126). The following chart shows the policy areas in which Belgium was most frequently subject to infringement procedures:

#### 92 INFRINGEMENT CASES AGAINST BELGIUM



The Commission decided to bring six cases against Belgium before the Court in 2012 (there were six in 2011). It contested in particular Belgium's non-compliance with the obligation to issue passports containing fingerprint strips.<sup>42</sup> There were four referrals each against the Netherlands, Portugal and Hungary, two against Greece but none against the Czech Republic and Romania.

The Commission filed one case to the Court against Belgium under Article 260(2) TFEU with a proposal for financial sanctions, due to Belgium's incorrect implementation of the first judgment<sup>43</sup> on awarding 'must-carry' status to content broadcast in the Brussels region.<sup>44</sup>

### TRANSPOSITION OF DIRECTIVES

The Commission opened 21 infringement procedures against Belgium for late transposition of various directives in 2012 (there were 45 in 2011). In the reference group, Belgium's performance was better than that of Greece (22 new late transposition infringements), Hungary (26) and Portugal (34) but worse than that of the Netherlands (six), Romania (15), and the Czech Republic (13). With 34 late transposition infringements open at the end of 2012, Belgium ranked last in the EU-27 (with Poland). Belgium faced significant challenges in transposing directives in the areas of transport (six new late transposition infringement cases), health & consumers (four), and internal market (three).

Due to the late transposition of the E-money Directive and two telecom directives, the Commission referred Belgium to the Court with a proposal for financial sanctions (Article 260(3) TFEU).<sup>45</sup>

### COMPLAINTS

In 2012, the Commission received 108 complaints against Belgium, which ranks Belgium sixteenth in the EU-27.

Most complaints were received in the areas of taxation (31 complaints, mainly discriminatory taxation of foreign financial service providers, cross-border workers and individuals' securities income); justice (20, in relation to free movement of persons and the European Arrest Warrant); and environment (17, impact assessments and nature protection). Other complaints concerned e.g. airport charges, public procurement and the recognition of professional qualifications.

### EARLY RESOLUTION OF INFRINGEMENTS

In 2012, 54 new EU Pilot files were sent to Belgium. The Commission and the Belgian authorities were working on 49 open files at the end of the year (42 in 2011). Belgium's average EU Pilot response time (75 days, in 2011: 71) was above the 10-week target.

Belgium aligned several of its disputed laws with EU rules, so the Commission was able to close several infringement cases in 2012. For example, Belgium made it possible for beneficiaries to receive pension payments in bank accounts anywhere in the EU;<sup>46</sup> it eliminated delays to payments for workers' paid annual leave;<sup>47</sup> it complied with the Directive on the recognition of professional qualifications; it notified the Commission of measures put in place to improve waste management;<sup>48</sup> and it ensured that its laying hens would be kept in enriched cages.<sup>49</sup>

### IMPORTANT JUDGMENTS

In 2012, the Court delivered six judgments against Belgium under Article 258 TFEU. In one of the two taxation-related judgments, it declared that the structure of taxation on income from capital and immovable property unjustifiably favoured resident companies.<sup>50</sup> The Court also found that requiring systematically the certificate of conformity to carry out roadworthiness test on vehicles already registered in another Member State, by ignoring the results of such tests performed in another Member State, went against the free movement of goods,<sup>51</sup> and that the prior declaration requirement for self-employed service providers from countries other than Belgium<sup>52</sup> went against the freedom to provide services. Finally, the Court ruled that the Brussels and Walloon regions had failed to implement the EU water legislation ensuring and improving water quality in river basins.<sup>53</sup>

### KEY INFRINGEMENT PROCEEDINGS

- **Non-transposition of the e-money directive<sup>54</sup>**
- **Discrimination in company and inheritance tax<sup>55</sup>, and in the notional interest deduction<sup>56</sup> ; excluding non-residents from personal income tax deductions<sup>57</sup>**
- **Non-transposition of the Directive facilitating intra-EU transfers of defence products<sup>58</sup>**

<sup>46</sup> [IP/11/419](#) on the earlier reasoned opinion

<sup>47</sup> [IP/11/1417](#) on the earlier reasoned opinion

<sup>48</sup> Directive [2008/98/EC](#)

<sup>49</sup> [IP/12/47](#) on the earlier reasoned opinion

<sup>50</sup> Commission v Belgium, [C-387/11](#)

<sup>51</sup> Commission v Belgium, [C-150/11](#)

<sup>52</sup> Commission v Belgium, [C-577/10](#)

<sup>53</sup> Commission v Belgium, [C-366/11](#)

<sup>54</sup> [IP/12/418](#)

<sup>55</sup> [IP/12/408](#)

<sup>56</sup> [IP/12/61](#)

<sup>57</sup> [IP/12/281](#)

<sup>58</sup> [IP/12/651](#)

<sup>42</sup> [IP/12/1247](#)

<sup>43</sup> Commission v Belgium, [C-134/10](#)

<sup>44</sup> [IP/12/1144](#)

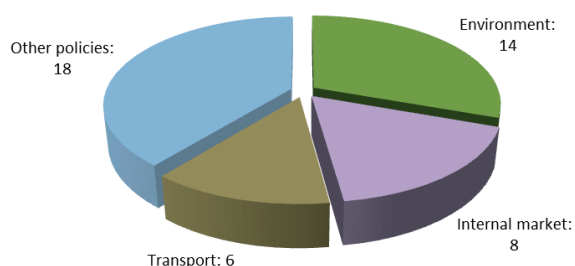
<sup>45</sup> Directive [2009/110/EC](#) and Directives [2009/140/EC](#) and [2009/136/EC](#), respectively, and [IP/12/1248](#) (E-money) and [IP/12/524](#) (telecom directives)

## BULGARIA

### GENERAL STATISTICS

With 46 infringement procedures open at the end of 2012, Bulgaria ranked 17<sup>th</sup> in the EU-27. The Commission launched 27 new infringement procedures against Bulgaria in 2012 by sending letters of formal notice. Bulgaria's performance was average in its reference group. Sweden had 36 open infringement cases, while Austria had 51. Bulgaria closed the year with fewer infringements than in 2011 (54) and slightly more than in 2010 (44). The following chart shows the main policy areas in which Bulgaria was most frequently subject to infringement procedures:

#### 46 INFRINGEMENT CASES AGAINST BULGARIA



The Commission took Bulgaria to Court once in 2012. One referral was due to its failure to fully implement the First Railway Package, specifically the part on the charges that railway companies have to pay for access to infrastructure<sup>59</sup>, the other was for late transposition of a directive (see below). Within Bulgaria's reference group, one case was submitted against Sweden and there were none against Austria.

### TRANSPPOSITION OF DIRECTIVES

The Commission launched 13 infringement procedures against Bulgaria for late transposition of various directives in 2012 (there were 36 in 2011). In the reference group, Bulgaria's performance was better than Austria's (24 new late transposition infringement cases) but worse than Sweden's (6). With 12 open late transposition infringement cases at the end of 2012, Bulgaria was ranked 11<sup>th</sup> in the EU-27 (with Spain). The policy areas in which Bulgaria faced particularly significant challenges in transposing EU directives were: environment, transport, and health & consumers (three late transposition infringement cases in each of these sectors).

The Commission referred Bulgaria to the Court with a proposal for financial sanctions under Article 260(3) TFEU due to the late transposition of the EU Waste Framework Directive<sup>60</sup>.

### COMPLAINTS

The Commission received 133 complaints against Bulgaria in 2012, the 20<sup>th</sup> highest figure in the EU-27.

The areas in which most complaints were received were: justice (23 complaints, mainly on free movement of people and consumer law), environment (21, especially on nature protection, Natura 2000, waste management and landfills); and energy (21, among other, on support schemes for renewable energy plants, grid access tariffs for electricity made from renewable energy sources, heating/hot water consumption billing and metering and protecting individuals against the dangers of ionising radiation caused by medical exposure).

Other complaints concerned e.g. the non-compliant transposition of the Data Retention Directive,<sup>61</sup> direct payments in agriculture and rural development, food safety, public procurement rules and the free movement of capital.

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Bulgarian authorities were working on 62 open files in EU Pilot at the end of 2012 (75 at the end of 2011). The Commission opened 65 new files in 2012. Bulgaria is among the 19 Member States whose average EU Pilot response time (68 days, 67 in 2011) is below or equal to the 10-week target.

Bulgaria introduced several measures to ensure compliance with EU law, so the Commission was able to close several infringement cases in 2012, including on: air pollution caused by the installation of three thermal power plants<sup>62</sup>; animal welfare (implementing the ban on "unenriched" cages for laying hens); ground handling at Sophia airport; discriminatory VAT deduction practices; and failure to notify the Commission of transposition measures for the Waste Framework Directive.<sup>63</sup>

### IMPORTANT JUDGMENTS

There were no judgments against Bulgaria in 2012.

### KEY INFRINGEMENT PROCEDURES

- Exceeding EU air quality (PM10) limit values in several zones and agglomerations<sup>64</sup>
- Lack of transparent conditions for access to natural gas transmission networks<sup>65</sup>
- Restrictive application criteria for the digital broadcasting spectrum<sup>66</sup>
- Exclusion of voluntary health insurance from the EU non-life insurance directives<sup>67</sup>
- Incorrect transposition of the GMO Directive<sup>68</sup>
- Duty and tax relief rules in a pre-accession bilateral agreement with the US<sup>69</sup>

61 Directive [2006/24/EC](#)

62 Maritza-IztoK Energy Complex

63 Directive [2008/98/EC](#)

64 [IP/13/47](#)

65 [IP/11/1437](#)

66 [IP/12/298](#)

67 [IP/12/72](#)

68 [IP/12/403](#) and Directive [2009/41/EC](#)

69 [IP/12/672](#)

59 [IP/12/53](#)

60 [IP/12/422](#) and Directive [2008/98/EC](#)

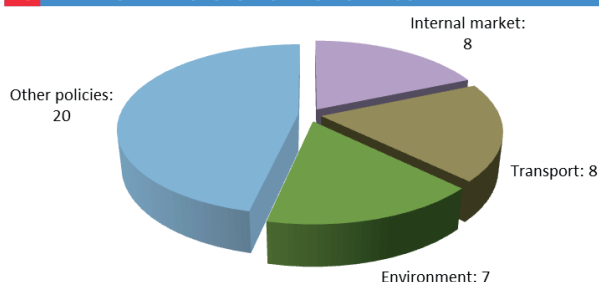
## CYPRUS

### GENERAL STATISTICS

With 43 open infringement cases against it at the end of 2012, Cyprus ranked joint 14<sup>th</sup> in the EU-27 (together with Finland). In 2012, the Commission launched 29 new infringement procedures against Cyprus by issuing letters of formal notice.

Although Cyprus ended 2012 with significantly fewer infringement cases than in 2011 (59) and almost the same number as in 2010 (44), its performance was the worst in its reference group: Latvia only had 20 open infringement cases; Estonia had 24, Malta 26, Luxembourg 34 and Slovenia 39. The following chart shows the areas in which Cyprus was most frequently subject to infringement procedures:

#### 43 INFRINGEMENT CASES AGAINST CYPRUS



The Commission brought four cases against Cyprus before the Court in 2012 (one in 2011). One of them was because two of the country's major landfills still operate without the infrastructure required by the Landfill Directive<sup>70</sup> (the three other were due to directives' late transposition, see below). Full compliance can only be expected by 2015<sup>71</sup>, despite the closing down or rehabilitation of many other landfills. In the reference group, there were no referrals against Latvia, Estonia and Malta, one was against Luxembourg and five against Slovenia.

### TRANSPOSITION OF DIRECTIVES

The Commission opened 24 infringement procedures against Cyprus for late transposition of various directives in 2012 (compared to 63 in 2011). Cyprus' performance remained the worst in its reference group (5, 10, 12, 16 and 18 new late transposition infringements against Estonia, Latvia, Luxembourg, Slovenia and Malta, respectively). With 25 open late transposition infringement cases by the end of 2012, Cyprus ranked joint 24<sup>th</sup> in the EU-27 (together with the United Kingdom).

Cyprus has found it particularly challenging to transpose EU directives in policy areas such as: health and consumers (seven new late transposition infringement cases), transport (six), and internal market and services (four).

The Commission referred Cyprus to the Court with a request for financial sanctions under Article 260(3) TFEU due to late transposition of the Mediation Directive, the directive on environmental crime and the Driving Licence Directive.<sup>72</sup>

### COMPLAINTS

The Commission received 83 complaints against Cyprus in 2012, the 13<sup>th</sup> lowest figure in the EU-27.

The areas in which most complaints were received were: home affairs (19 complaints, especially on incorrect refusal of asylum requests and restrictive admission of third-country students); internal market (17, mainly freedom to provide services and regulated professions); and justice (16, many on residence rights for EU citizens' third-country partners and unfair terms of consumer contracts). Complaints also addressed nationality-based discrimination on public transport and flaws in nature protection, urban waste-water treatment and car taxation.

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Cypriot authorities were working on 32 open EU Pilot files by the end of 2012 – a caseload that increased compared to the figure at the end of 2011 (23 files), but that was still below average. The Commission sent 38 new EU Pilot files to Cyprus in 2012. The average EU Pilot response time (60 days) improved significantly as compared to the 2011 average (70 days) and met the 10-week target. The Commission closed several infringement cases in 2012 because Cyprus: amended its laws restricting the acquisition of secondary residences by EU citizens;<sup>73</sup> modified car taxation rules, which discriminated against non-Cypriot EU citizens who brought their car into Cyprus;<sup>74</sup> designated the Oroklini lake as a specially protected area under the Habitats Directive<sup>75</sup> and put in place preservation measures; ensured that the conditions under which wild animals were kept in the Limassol Zoo were in accordance with the Zoos Directive;<sup>76</sup> and, finally, fully transposed the Waste Framework Directive<sup>77</sup> and the Blue Card Directive (on highly-skilled third-country employees).<sup>78</sup>

### IMPORTANT JUDGMENTS

In 2012, the Court delivered two judgments under Article 258 TFEU. In the first, it found Cypriot legislation non-transparent in authorising telecommunications equipment (e.g. masts and antennae) because of: (i) the overlaps between the competences of the authorities dealing with the requests and (ii) inclusion of environmental aspects into the applications' evaluation without any such requirement existing under national law.<sup>79</sup> In the second, Cyprus was found in breach of EU environmental law as it failed to designate the Paralimni Lake as a proposed Site of Community Interest under the Habitats Directive and did not take the requisite measures to protect the Cypriot grass snake population.<sup>80</sup>

### KEY INFRINGEMENT PROCEEDINGS

- Cypriot teachers' pension: taking into account service periods spent in Greece<sup>81</sup>
- Restrictions on the free movement of persons (disproportionately high fees and sanctions)
- Incomplete software assurance for air navigation service providers

70 Directive [1999/31/EC](#)

71 [IP/12/655](#)

72 Directives [2008/52/EC](#), [2008/99/CE](#) and [2006/126/EC](#), respectively and [IP/12/1016](#), [IP/12/296](#) and [IP/12/1237](#) and [IP/12/642](#)

73 [IP/11/1442](#) on the earlier Court referral

74 [IP/11/1277](#) on the earlier Court referral

75 Directive [1992/43/EC](#)

76 Directive [1999/22/EC](#)

77 Directive [2008/98/EC](#)

78 Directive [2009/50/EC](#)

79 Commission v Cyprus, [C-125/09](#)

80 Commission v Cyprus, [C-340/10](#)

81 [MEMO/13/375](#)

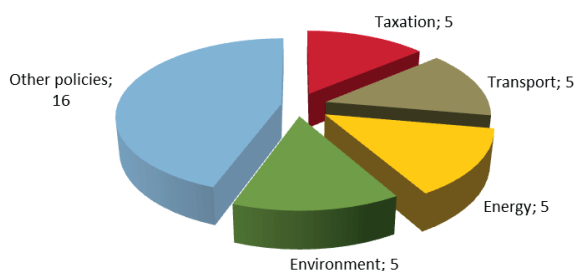
## CZECH REPUBLIC

## GENERAL STATISTICS

With 36 open infringement cases at the end of 2012, the Czech Republic had the 8<sup>th</sup> lowest number of infringements out of all the EU-27 Member States (together with Sweden). In 2012, the Commission launched 20 new infringement procedures against the Czech Republic by sending letters of formal notice.

The Czech Republic's performance was the best in its reference group: the Netherlands had 41 open infringement cases, Hungary had 42, Romania 44, Portugal 67 and Greece 81 and Belgium 92. The Czech Republic ended the year with significantly fewer infringements than in 2011 (65) and in 2010 (48). The following chart shows the policy areas in which the Czech Republic was most frequently subject to infringement procedures:

## 36 INFRINGEMENT CASES AGAINST CZECH REPUBLIC



The Commission did not bring any cases against the Czech Republic before the Court in 2012 (there had been four cases in 2011). As for the other countries in the Czech Republic's reference group, there were also no referrals against Romania. The Commission brought two cases against Greece before the Court, four each against the Netherlands, Hungary and Portugal, and six against Belgium.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 13 infringement procedures against the Czech Republic for late transposition of various directives in 2012 (there were 54 such procedures in 2011). In the reference group, only the Netherlands had fewer new late transposition infringement cases in 2012 (six). The Czech Republic performed better than Romania (15), Belgium (21), Greece (22), Hungary (26) and Portugal (34). With 11 open late transposition infringement cases by the end of 2012, the Czech Republic ranked 10<sup>th</sup> in the EU-27.

The policy areas in which the Czech Republic faced significant challenges in transposing EU directives in 2012 were: transport and health & consumers (four new late transposition infringement cases each). In addition, two directives in the area of internal market have not been transposed yet.

## COMPLAINTS

In 2012, the Commission received 57 complaints against the Czech Republic, the ninth-lowest figure in the EU-27.

The areas in which most complaints were received were: environment (13 complaints, in particular nature protection and lack of or incomplete environmental impact assessments); justice (10, e.g. sale of consumer goods, personal data protection and equal treatment in employment); and enterprise & industry (7, including obstacles to the free movement of various products).

There were also complaints concerning e.g. the national rules transposing the Data Retention Directive,<sup>82</sup> the billing and metering of hot water and heating consumption, renewable energy issues (access to the distribution grid; changes in support schemes for renewables) and a major tender procedure carried out for a nuclear power plant.

## EARLY RESOLUTION OF INFRINGEMENTS

By the end of 2012, the Commission and the Czech authorities were working on 28 open files in EU Pilot. This caseload is below average and has decreased compared to the number of files at the end of 2011 (73). The Czech Republic received 30 new EU Pilot files from the Commission in 2012. The average EU Pilot response time (71 days) improved slightly when compared to the 2011 average (72 days) and was very close to the 10-week target.

The Czech Republic took the Commission's position into account in several areas and introduced measures to ensure compliance with EU law, so the Commission was able to close a number of infringement cases in 2012. For example, the Czech authorities changed their law and practice so that entitled unemployed people would receive sickness benefits irrespective of whether they were resident in the Czech Republic or not. The Czech Republic also corrected partial non-conformity of Czech implementing laws with the Directive on waste electrical and electronic equipment<sup>83</sup> (including adjustments to the scope of electronic equipment covered by these rules and requirements for distance traders).

## IMPORTANT JUDGMENTS

The Commission requested the Court to rule on the sales designation '*pomazánkové máslo*' (butter spread), as this product's milk-fat content was not high enough to be called butter ('*máslo*') under EU law. The Court found that this butter spread did not comply with the criteria laid down in the applicable regulation,<sup>84</sup> and it was not listed among the products benefiting from a statutory derogation. The Court also ruled out automatic derogation being granted (i.e. without the Commission's prior authorisation) to certain milk products.<sup>85</sup>

## KEY INFRINGEMENT PROCEEDINGS

- Incomplete transposition of the Renewable Energy Directive<sup>86</sup>
- Undue administrative burden on EU citizens applying for residence permits<sup>87</sup>
- Obstacles to non-Czech EU citizens joining a political party or founding one
- Failure to respect air quality (PM10) limit values in several zones and agglomerations<sup>88</sup>

82 Directive [2006/24/EC](#)

83 Directive [2002/96/EC](#)

84 Regulation (EC) No [1234/2007](#)

85 Commission v the Czech Republic, [C-37/11](#)

86 [IP/11/1446](#)

87 [IP/12/75](#)

88 [IP/13/47](#)



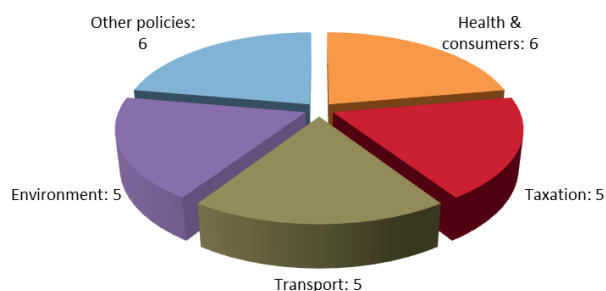
## DENMARK

## GENERAL STATISTICS

There were 27 infringement cases open against Denmark at the end of 2012, ranking Denmark's performance fifth best in the EU-27, same as in 2011. The Commission launched 22 new cases against Denmark in 2012 by sending letters of formal notice.

Denmark's performance was above average in its reference group: Slovakia had 33 open infringement cases, Ireland had 39 and Finland had 43. Only Lithuania had fewer open infringement cases (22). Denmark closed the year with fewer infringement cases than in 2011 (37) and in 2010 (29). The following chart shows the four policy areas in which Denmark was most frequently subject to infringement procedures:

## 27 INFRINGEMENT CASES AGAINST DENMARK



The Commission did not bring any cases against Denmark before the Court in 2012 (there were two cases in 2011). In Denmark's reference group, there were no cases against Lithuania or Slovakia, one case against Ireland and Slovakia, and six against Finland.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 17 infringement procedures against Denmark for late transposition of various directives in 2012 (there were 28 in 2011). Denmark's performance was better than that of Finland (21 new late transposition infringement cases) but worse than that of Slovakia (7), Ireland (8) and Lithuania (10). With nine open late transposition infringement cases at the end of 2012, Denmark ranked fifth in the EU-27.

The policy areas in which Denmark faced the most significant challenges in transposing EU directives were: health & consumers (seven new late transposition infringement cases), internal market and transport (three in each policy area).

## COMPLAINTS

The Commission received 60 complaints against Denmark in 2012, which, was the tenth lowest figure in the EU-27.

Areas in which most complaints were received were: taxation (14 complaints, mainly in relation to imported cars), environment (9, concerning e.g. wind farm developments) and social security issues (8, especially on refusal of benefits).

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Danish authorities were working on 26 files in EU Pilot at the end of 2012 (there were 84 at the end of 2011). This is a small caseload. Relatively few new files were opened in 2012 (34). Denmark's average EU Pilot response time (70 days, it was 81 days in 2011) remained within the 10-week target.

Denmark introduced a number of measures to ensure compliance with EU law, so the Commission was able to close several infringement cases in 2012, including on: transposition of the First Railway Package<sup>89</sup>; the Working Time Directive<sup>90</sup>; failure to notify the Commission of measures transposing the Waste Electrical and Electronic Equipment Directive<sup>91</sup>; the Directive on the transfer of defence products<sup>92</sup>; and provisions on driving licenses.<sup>93</sup>

## IMPORTANT JUDGMENTS

There were no judgments against Denmark in 2012.

## KEY INFRINGEMENT PROCEEDINGS

- Transposition of the Tobacco Directive — sale of loose snus<sup>94</sup>
- Incorrect application of the Single European Sky Regulations<sup>95</sup>

89 Directive [1991/440/EEC](#) and Directive [2001/14/EC](#)

90 Directive [2003/88/EC](#)

91 Directive [2002/96/EC](#)

92 Directive [2009/43/EC](#)

93 Directive [2006/126/EC](#)

94 Directive [2001/37/EC](#)

95 Regulation(EC) No [482/2008](#) and Regulation (EU) No [1034/2011](#)



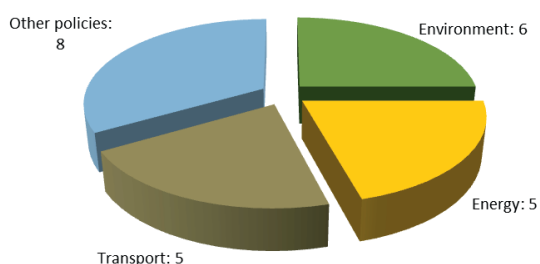
## ESTONIA

## GENERAL STATISTICS

There were 24 infringement cases open against Estonia at the end of 2012, the third best result in the EU-27 (with Latvia and Malta). The Commission launched 11 new infringement cases against Estonia in 2012 by sending letters of formal notice.

Estonia's performance (along with Latvia's) was above average in its reference group: Latvia had 20 open infringement cases, Luxembourg had 34, Slovenia 39 and Cyprus 43. Estonia ended the year with fewer infringement cases than in 2011 (36) and in 2010 (40). The following chart shows the three policy areas in which Estonia was most frequently subject to infringement procedures:

## 24 INFRINGEMENT CASES AGAINST ESTONIA



The Commission did not bring any cases against Estonia before the Court in 2012 (there was one case in 2011). In Estonia's reference group, no referrals were made against Latvia and Malta. One case was filed against Luxembourg, four against Cyprus and six against Slovenia.

## TRANSPPOSITION OF DIRECTIVES

The Commission launched five infringement procedures against Estonia for late transposition of various directives in 2012 (there were 28 in 2011). This was the best performance in Estonia's reference group and in the EU-27: 10 such cases were launched against Latvia, 12 against Luxembourg, 16 against Slovenia and 24 against Malta. With 10 open late transposition cases at the end of 2012, Estonia ranked 9<sup>th</sup> in the EU-27 (together with France).

Estonia faced some challenges in transposing EU directives in the transport area (two new late transposition infringement cases).

## COMPLAINTS

Estonia only received 11 complaints in 2012, the lowest number in all the Member States. Most complaints concerned: justice (3 complaints, especially on parent visitation rights), foreign affairs (3, mainly on free movement of people); and health & consumers (2, on marketing of medical devices).

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Estonian authorities were working on 18 open files at the end of 2012 (at the end of 2011: 30 files). This is considered a light caseload. The Commission opened 25 new EU Pilot files on Estonian issues in 2012. With this moderate caseload, Estonia's average EU Pilot response time (67 days) was below the 10-week target.

Estonia introduced several measures to ensure compliance with EU law, so the Commission was able to close quite a number of infringement cases in 2012, including on: failure to notify the Commission of measures transposing the Waste Framework Directive<sup>96</sup>; and failure to transpose the Directive on public procurement in the defence and security sector.<sup>97</sup> Estonia also completed transposition of the green vehicle procurement rules.<sup>98</sup>

## IMPORTANT JUDGMENTS

The Court delivered a judgment in which it stated that Estonia infringed the EU legislation on the free movement of workers by excluding non-resident pensioners from tax allowances when their pensions were not taxed in their country of residence because of their modest amount.<sup>99</sup>

## KEY INFRINGEMENT PROCEEDING

- Ensuring independence of national regulatory authorities in the telecommunications sector<sup>100</sup>

96 Directive [2008/98/EC](#)

97 Directive [2009/81/EC](#)

98 Directive [2009/33/EC](#)

99 Commission v Estonia, [C-39/10](#)

100 [IP/12/630](#)

## FINLAND

## GENERAL STATISTICS

There were 43 infringement cases open against Finland at the end of 2012, the fourteenth highest number in the EU-27. The Commission opened 28 new infringement cases against Finland in 2012 by sending a letter of formal notice.

Finland's performance was the worst in its reference group: Lithuania had 22 open infringement cases, Denmark had 27, Slovakia 33 and Ireland 39. Finland ended the year with fewer infringement cases than in 2011 (55), but more than in 2010 (42). The following chart shows the policy areas in which Finland was most frequently subject to infringement procedures:

## 43 INFRINGEMENT CASES AGAINST FINLAND



The Commission referred six cases against Finland to the Court in 2012 under Article 258 TFEU (there were two in 2011). Two of them concerned Finland's failure to update its minimum physical and mental requirements for drivers<sup>101</sup> (the four other referrals were due to late transposition, see next section).

In Finland's reference group, no cases were filed to the Court against Lithuania and Denmark, and one case against each of Ireland and Slovakia.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 21 infringement procedures against Finland for late transposition of various directives in 2012 (there were 62 in 2011). Finland's performance was the worst in its reference group: Sweden, Ireland, Lithuania and Denmark had fewer new infringement cases for late transposition (7, 8, 10 and 17, respectively). With 21 open late transposition infringement cases at the end of 2012, Finland ranked 21<sup>st</sup> in the EU-27.

The policy areas in which Finland faced significant challenges in transposing EU directives were: transport (seven new late transposition infringement cases) and health & consumers (five).

The Commission referred Finland to the Court with a request for financial sanctions in 2012 (Article 260(3) TFEU) due to Finland's failure to fully transpose the Directives on: the internal electricity market<sup>102</sup>, the internal market in natural gas,<sup>103</sup> the green vehicle procurement rules<sup>104</sup> and road infrastructure safety management (road safety impact assessments, safety audits, inspections and rankings).<sup>105</sup>

## COMPLAINTS

The Commission received 34 complaints against Finland in 2012, the fourth lowest figure in the EU-27.

Most complaints concerned: taxation (five complaints, especially on excise or car tax, discriminatory taxation of cross-border workers); environment, (five, mainly on waste management and nature protection); and justice (four, e.g. on ethnic discrimination). Other complaints concerned for example, public procurement and the free movement of persons.

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Finnish authorities were working on 28 open files in EU Pilot at the end of 2012 (57 at the end of 2011). This is a low caseload, including the 34 new files the Commission opened on Finnish issues in 2012. Finland is one of the Member States whose average EU Pilot response time (66 days) met the 10-week target (80 days in 2011).

Finland introduced a number of measures to ensure compliance with EU law, so the Commission could close several infringement cases in 2012. These include cases on Finland's failure to notify the Commission of measures transposing EU rules on the procurement of green vehicles,<sup>106</sup> on transferring defence products within the EU (counteracting defence market fragmentation),<sup>107</sup> on waste management,<sup>108</sup> and on end-of-life vehicles<sup>109</sup>. Moreover, Finland ensured that its coordination of social security systems was compliant with EU law<sup>110</sup> to avoid situations in which a person receiving benefits in another Member State could not be insured in Finland.

## IMPORTANT JUDGMENTS

The Court condemned Finland for a scheme under which dividends paid to non-resident pension funds were taxed in a discriminatory way (restriction of free movement of capital).<sup>111</sup>

## KEY INFRINGEMENT PROCEEDINGS

- Incomplete transposition of the Directives of the Third Energy Package<sup>112</sup>
- Non-application of the working time rules to self-employed drivers<sup>113</sup>
- Lack of adequate protection of the Saimaa ringed seal<sup>114</sup>
- Spring hunting of eiders in Åland and summer hunting of eiders in mainland Finland<sup>115</sup>

101 Directives [2009/112/EC](#) and [2009/113/EC](#) and [IP/12/56](#)

102 Directive [2009/72/EC](#) and [IP/12/1236](#)

103 Directive [2009/73/EC](#) and [IP/12/1236](#)

104 Directive [2009/33/EC](#) and [IP/12/270](#)

105 Directive [2008/96/EC](#) and [IP/12/641](#)

106 Directive [2009/33/EC](#)

107 Directive [2009/43/EC](#) and [IP/12/651](#) on the earlier reasoned opinion

108 Directive [2008/98/EC](#)

109 Directive [2000/53/EC](#)

110 Regulation (EC) No [883/2004](#)

111 Commission v Finland, [C-342/10](#)

112 [IP/12/410](#) and Directives [2009/72/EC](#) and [2009/73/EC](#)

113 Directive [2002/15/EC](#) and [IP/12/409](#)

114 This seal is a freshwater subspecies, found only in the Saimaa Lake system in south-eastern Finland. It is protected under Directive [92/43/EC](#).

115 Directive [2009/147/EC](#)

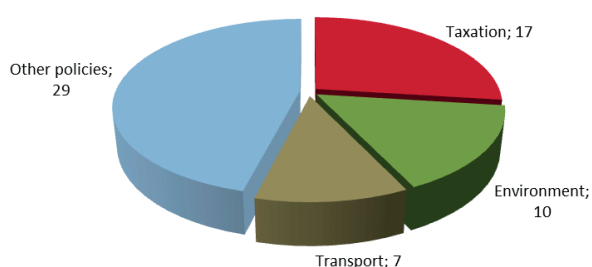
## FRANCE

## GENERAL STATISTICS

There were 63 infringement cases open against France at the end of 2012, the seventh highest number in the EU-27. The Commission launched 25 new cases in 2012.

France's performance was average in its reference group. Germany and the UK had 61 open infringement cases each, Poland had 82, Spain 91 and Italy 99. France ended 2012 with fewer infringement cases than in 2011 and 2010 (95 in both years). The chart shows the policy areas in which France was most frequently subject to infringement procedures:

## 63 INFRINGEMENT CASES AGAINST FRANCE



The Commission brought four cases against France to Court (seven in 2011), including for: insufficient designation of nitrate-vulnerable zones and lack of adequate measures to combat nitrate water pollution,<sup>116</sup> operating installations without air permits issued under the IPPC Directive<sup>117</sup> and failing to comply with the Urban Waste Water Directive.<sup>118</sup> In France's reference group, there was one referral against Spain, 3 against Italy, 6 against the UK, 7 against Germany and 12 against Poland.

## TRANSPPOSITION OF DIRECTIVES

14 infringement procedures were opened against France in 2012 for late communication of national transposition measures (42 in 2011). France's performance was second best in its reference group, after Germany (11 new late transposition cases) but before Spain (16), Poland (18), the UK (24) and Italy (36). With ten open late transposition cases by the end of 2012, France ranked 9<sup>th</sup> in the EU-27 (together with Estonia).

The policy areas in which France faced challenges in transposing EU directives were: health & consumers, transport (3 late infringement cases in each area), internal market and justice (2 in each area).

## COMPLAINTS

The Commission received 242 complaints against France in 2012, the third highest number in the EU-27 (along with Germany).

Most complaints concerned: free movement of workers (43 complaints, especially levying double social security contributions, discrimination between EU and French citizens in access to residence-based health care systems and nationality condition for certain private sector jobs), justice (37, e.g. on free movement of persons, civil justice and fundamental rights) and internal market (31, mainly free provision of services, regulated professions and public procurement). Other complaints covered e.g. the tax of foreign charities and companies' 'exit tax', VAT, wine and spirits, car registration, zootechnics (stud-books for horses, animal welfare), water protection and management, nature protection and marine equipment.

116 [IP/12/170](#)

117 Directive [2008/1/EC](#)

118 Directive [91/271/EEC](#)

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the French authorities worked on 78 EU Pilot cases at the end of 2012 (53 in 2011). 112 new French cases were launched in 2012. France's average response time (83 days) exceeded the 10-week target (84 days in 2011).

Several cases could be closed against France in 2012, including those on regulated electricity prices<sup>119</sup> and keeping laying hens in un-enriched cages.<sup>120</sup> Fiscal discrimination against certain "Schumacker"<sup>121</sup> non-residents and gender discrimination in pension benefits were eliminated. France adopted a national aviation security programme and complied with several environmental directives<sup>122</sup> and the Directive on personal protection equipment.<sup>123</sup>

## IMPORTANT JUDGMENTS

The Court condemned the French VAT-reductions for opening night receptions in theatres<sup>124</sup> and for the supply of race horses<sup>125</sup> as well as the local electricity taxes.<sup>126</sup> When France banned the marketing of certain medicinal veterinary products in a procedure falling also under EU rules<sup>127</sup>, the Court specified the role of the "reference Member State" when several Member States work together to authorise a medicinal product<sup>128</sup>.

In preliminary rulings, the Court clarified that: a Member State that receives an asylum request must meet the minimum conditions for receiving asylum seekers even if it considers that another Member State should examine the application;<sup>129</sup> France could not have different tax rules for nationally-sourced dividends received by resident and non-resident UCITS;<sup>130</sup> and a minimum of 10 days' work or one month's actual work during the reference period cannot be the condition of paid annual leave.<sup>131</sup>

## KEY INFRINGEMENT PROCEEDINGS

- VAT: reduction on e-books<sup>132</sup> and race horses,<sup>133</sup> exemption for pleasure boat leases<sup>134</sup> and for boats navigating on the high seas<sup>135</sup>
- Non-compliance with the Gas Directive<sup>136</sup>
- Application of the Working Time Directive<sup>137</sup> to doctors and fire-fighters
- Taxing milk producers even if the national quota is not exceeded
- Additional requirements on EC-marked construction products<sup>138</sup>
- Inadequate protection of the brown bear in the Pyrenees (Habitats Directive<sup>139</sup>)
- Late transposition of the E-money Directive<sup>140</sup>

119 [IP/06/1768](#)

120 Directive [1999/74/EC](#)

121 Persons who receive part of their income in a Member State where they are not resident

122 Directives [94/62/EC](#), [2002/96/EC](#) and [2011/92/EU](#)

123 Directive [89/686/EC](#) and [IP/11/610](#)

124 Commission v France, [C-119/11](#)

125 Commission v France, [C-596/10](#)

126 Commission v France, [C-164/11](#)

127 Directive [2001/82/EC](#)

128 Commission v France, [C-145/11](#)

129 Cimade & GISTI, [C-179/11](#)

130 Undertakings for collective investments in transferable securities; Santander Asset Management SGIC, [C-338/11](#)

131 Dominguez, [C-282/10](#)

132 [MEMO/12/794](#)

133 [IP/09/1459](#)

134 [MEMO/12/876](#)

135 Commission v France, [C-197/12](#)

136 [IP/06/1768](#)

137 Directive [2003/88/EC](#)

138 [MEMO/12/708](#)

139 Directive [92/43/EEC](#)

140 [IP/12/418](#)

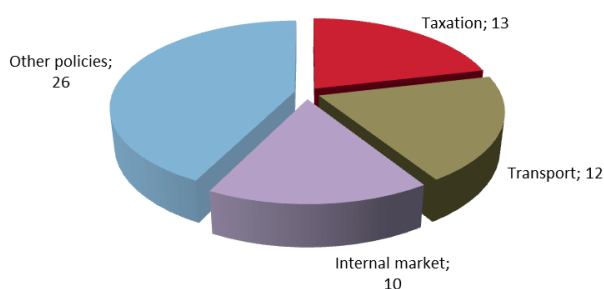
## GERMANY

### GENERAL STATISTICS

There were 61 infringement cases open against Germany at the end of 2012, the eighth highest number in the EU-27 (same as the UK). The Commission launched 23 new cases against Germany in 2012 by sending a letter of formal notice.

Germany (and the UK) had the fewest infringements cases in its reference group: France had 63 open infringement cases, Poland had 85, Spain 91 and Italy 99. Germany ended the year with fewer infringement cases than in 2010 (79) and 2011 (76). The following chart shows the policy areas in which Germany was most frequently subject to infringement procedures:

#### 61 INFRINGEMENT CASES AGAINST GERMANY



The Commission brought seven cases against Germany before the Court in 2012 (there were no referrals in 2011). Three out of Germany's seven referrals related to tax discrimination. They concerned: lower tax-free allowances for non-residents in the area of inheritance tax<sup>141</sup>, hidden reserves (e.g. favourable fiscal treatment made conditional on gains being reinvested in domestic permanent establishments)<sup>142</sup> and tax treatment of group companies being reserved for companies with statutory seats and effective management in Germany<sup>143</sup>. Two other referrals concerned single market rules in the construction sector<sup>144</sup> (discrimination against 'EC'-marked products if they do not have the national 'Ü' mark), and one concerned the incorrect transposition of the Water Framework Directive<sup>145</sup> (the seventh was due to late transposition, see below). In its reference group, there was one case against Spain, three against Italy, four against France, six against the UK and twelve against Poland.

### TRANSPPOSITION OF DIRECTIVES

The Commission opened 11 infringement procedures against Germany because it was late in informing the Commission about national implementing measures for various directives (there were 31 in 2011). Germany's performance was the best in its reference group: 14 new late transposition infringements were initiated against France; 16, 18, 24 and 36 against Spain, Poland, the UK and Italy, respectively. With 14 open late transposition cases by the end of 2012, Germany ranked 16<sup>th</sup> in the EU-27.

The policy area in which Germany faced the most significant challenges in transposing EU directives was transport (5 new late transposition infringement cases).

The Commission referred Germany to the Court with a proposal for financial sanctions (Article 260(3) TFEU) due to late transposition of the Data Retention Directive.<sup>146</sup>

141 [IP/12/1018](#)

142 [IP/12/1019](#)

143 [IP/12/83](#)

144 Directive [89/106/EEC](#)

145 Directive [2000/60/EC](#)

146 Directive [2006/24/EC](#)

### COMPLAINTS

Germany (and France) had the third highest number of complaints in the EU-27 in 2012 (242).

The areas in which most complaints were received were: internal market (47 complaints, mainly public procurement, freedom to provide services and regulated professions), environment (36, e.g. violation of the Habitats Directive<sup>147</sup>) and taxation (36, especially discrimination against non-German companies, pension taxation and double taxation). Several complaints concerned shortcomings in the social security area (e.g. problems with granting family benefits for migrant workers and healthcare for pensioners), the free movement of non-EU family members and application of the Family Reunification Directive.<sup>148</sup>

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the German authorities were working on 65 open files in EU Pilot at the end of 2012. The caseload has considerably decreased since 2011 (193 open files). The Commission opened 64 new EU Pilot files on German issues in 2012. Germany's average EU Pilot response time improved to 61 days, which is below the 10-week target (65 days in 2011).

Germany introduced several measures to ensure compliance with EU law, so the Commission was able to close a number of infringement cases in 2012. For example, Germany completed transposing the Waste Framework Directive<sup>149</sup> and opened Frankfurt airport's ground handling services up to competition.<sup>150</sup>

### IMPORTANT JUDGMENTS

The Court delivered a number of preliminary judgments which guided the German judiciary. These included the following clarifications: even private-law bodies must respect the free movement of goods principle, if the law consider the products they certify as compliant with national legislation and this restricts the marketing of products they did not certify;<sup>151</sup> the exclusive right to distribute copies of a licensed computer programme expires with its first sale;<sup>152</sup> compensation that is paid to a severely disabled worker in the context of early retirement and is lower than the amount paid to a non-disabled worker is considered discrimination.<sup>153</sup>

### KEY INFRINGEMENT PROCEEDINGS

- Trade barriers on EC-marked construction products<sup>154</sup>
- Incorrect transposition of the Water Framework Directive<sup>155</sup>

147 Directive [92/43/EEC](#)

148 Directive [2003/86/EC](#)

149 Directive [2008/98/EC](#)

150 Directive [96/67/EC](#)

151 *Fra-bo v DVGW*, [C-171/11](#)

152 *UsedSoft GmbH v Oracle International Corp.*, [C-128/11](#), Court press release No [94/12](#)

153 *Dr Johann Odar v Baxter Deutschland GmbH*, [C-152/11](#), Court press release No [161/12](#)

154 [IP/12/648](#)

155 [IP/12/536](#) and Directive [2000/60/EC](#)

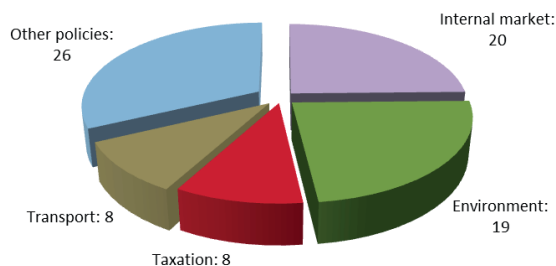
## GREECE

## GENERAL STATISTICS

There were 81 infringement cases open against Greece at the end of 2012, the fifth worst result in the EU-27. The Commission launched 34 new cases in 2012 by sending a letter of formal notice.

Greece's performance was second worst in its reference group: Romania had 44 open infringement cases, Hungary had 42, the Czech Republic 36, the Netherlands 41, Portugal 67 and Belgium 92. However, Greece ended the year with fewer infringements than in 2011 (123) and in 2010 (125). The following chart shows the policy areas in which Greece was most frequently subject to infringement procedures.

## 81 INFRINGEMENT CASES AGAINST GREECE



The Commission brought two cases against Greece before the Court in 2012 (there were four referrals in 2011). They concerned: the landfill in Zakynthos not being compliant with the Landfill Directive, the Waste Framework Directive and the Habitats Directive<sup>156</sup>, and public tender procedures<sup>157</sup>. In Greece's reference group, there were no referrals against the Czech Republic and Romania. There were four referrals each against Portugal, Hungary and the Netherlands, and six against Belgium.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 22 infringement procedures against Greece for late transposition of various directives in 2012 (there were 55 in 2011). Greece's performance was average in its reference group: better than that of Hungary and Portugal (26 and 34 new late transposition cases, respectively) but worse than that of the Netherlands, the Czech Republic, Romania and Belgium (6, 13, 15 and 21, respectively). With 13 open late transposition cases by the end of 2012, Greece ranked 13<sup>th</sup> in the EU-27. The policy areas in which Greece faced particularly significant challenges in transposing EU directives were: environment (six new late transposition infringement cases), transport (five) and internal market (four).

## COMPLAINTS

The Commission received 188 complaints against Greece in 2012, the fourth highest figure in the EU-27.

Most complaints concerned the following areas: internal market (46 complaints, mainly on public procurement, regulated professions and freedom to provide services); taxation (30, e.g. car taxation) and environment (26, many on waste management and nature protection). Other complaints concerned among other, discriminatory airport charges and failure to take into account professional experience gained in another Member State before being authorised to practice a profession in Greece.

156 [IP/12/1023](#) and Directives [1999/31/EC](#), [2008/98/EC](#) and [92/43/EC](#)

157 [IP/12/1249](#) and Directive [2004/18/EC](#)

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Greek authorities were working on 82 new EU Pilot files at the end of 2012 (there were 43 at the end of 2011). There were 92 new Greek files opened in EU Pilot during 2012. Greece was among the Member States whose average EU Pilot response time (65 days) met the 10-week target (63 days in 2011).

Greece corrected a number of its national rules to comply with EU law, so the Commission was able to close several cases in 2012. These include cases on: Greece not informing the Commission of its measures transposing the new EU waste regime; the impact of motorway E 65 on Natura 2000 sites and protected species<sup>158</sup>; obstacles to the free movement of bake-off products<sup>159</sup>; the entry into service of certain gas installations<sup>160</sup>; and the allocation and use of rights of way for electronic communications networks.<sup>161</sup>

## IMPORTANT JUDGMENTS

The Court condemned Greece for incorrectly transposing the First Railway Package, because Greece did not put in place incentives to reduce access charges.<sup>162</sup> The Court also ruled against Greece for failing to adopt and notify the Commission of river basin management plans<sup>163</sup> and because Greece set up investment restrictions in so-called 'strategic companies', which created a risk of discrimination.<sup>164</sup>

The Court also issued preliminary rulings related to Greece, including on a deadline for publishing river management plans<sup>165</sup> and a margin for assessing projects' impact on plans and programmes, at the discretion of Member States.<sup>166</sup>

## KEY INFRINGEMENT PROCEDURES

- Excessive working time for doctors in public hospitals<sup>167</sup>
- Operation of illegal landfills<sup>168</sup>
- Restrictions on free movement of capital and the right of establishment<sup>169</sup>

158 Directives [2008/98/EC](#) and [92/43/EC](#)

159 [IP/11/1415](#)

160 Directives [97/23/EC](#) and [2009/142/EC](#)

161 Directives [2002/20/EC](#) and [2002/21/EC](#)

162 Directives [1991/440/EEC](#) and [2001/14/EC](#), and Commission v Greece, [C-528/10](#)

163 Directive [2000/60/EC](#) and Commission v Greece, [C-297/11](#)

164 Commission v Greece, [C-244/11](#)

165 Nomarchiaki Aftodioikisi Aitolokarnanias and others, [C-43/10](#)

166 Syllagos Ellinon Poleodomonkaichorotakton, [C-177/11](#)

167 [IP/11/1121](#) and Directive [2003/88/EC](#)

168 [IP/12/1023](#)

169 [IP/12/420](#)



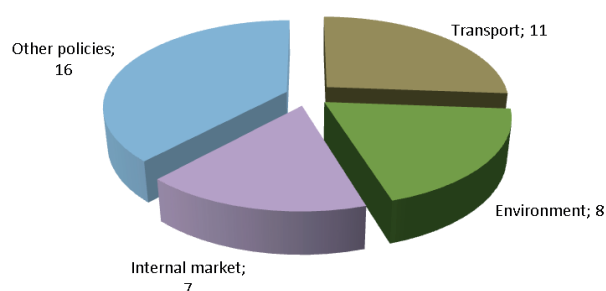
## HUNGARY

### GENERAL STATISTICS

With 42 open infringement cases at the end of 2012, Hungary had the 13<sup>th</sup> best performance out of all the EU-27 Member States. In 2012, the Commission launched 36 new infringement procedures against Hungary by sending letters of formal notice.

In its reference group, Hungary's performance was slightly above average; Romania had 44 open infringement cases, Portugal had 67, Greece 81 and Belgium 92. However, there were only 36 open infringement procedures against the Czech Republic and 41 against the Netherlands. Hungary ended the year with fewer infringements than in 2011 (54) and 2010 (53). The following chart shows the policy areas in which Hungary was most frequently subject to infringement procedures:

#### 42 INFRINGEMENT CASES AGAINST HUNGARY



The Commission referred Hungary to the Court four times in 2012, as it maintained its concerns as regards: (i) Hungary's new laws on the retirement age of judges, prosecutors and public notaries being compatible with the Equal Treatment Directive<sup>170</sup> (see also the last section); (ii) the independence of Hungary's data protection supervisory authority<sup>171</sup>; and (iii) Hungary's sector-specific tax levied on telecommunication companies being compliant with the Authorisation Directive<sup>172</sup> (the fourth referral was due to late transposition, see below). In Hungary's reference group, two cases against Greece, four each against Portugal and the Netherlands, and six against Belgium reached the Court (there were no referrals for the Czech Republic and Romania).

### TRANSPOSITION OF DIRECTIVES

The Commission launched 26 infringement cases against Hungary for late transposition of directives in 2012 (in 2011: 70 such cases). In the reference group, Hungary's performance was worse than that of the Netherlands, the Czech Republic, Romania, Belgium and Greece (6, 13, 15, 21 and 22 new late transposition cases, respectively) but better than that of Portugal (34). With 18 open late transposition cases by the end of 2012, Hungary ranked 19<sup>th</sup> in the EU-27.

The policy areas in which Hungary faced significant challenges in transposing EU directives in 2012 were: transport (eight new late transposition cases), health and consumers (seven) and environment (four).

The late transposition of the Waste Framework Directive<sup>173</sup> resulted in the Commission referring Hungary to the Court with a proposal for financial sanctions under Article 260(3) TFEU.<sup>174</sup>

### COMPLAINTS

In 2012, the Commission received 79 complaints against Hungary, the twelfth-lowest figure in the EU-27.

The areas in which most complaints were received were: internal market and services (15 complaints, mainly freedom to provide services and intellectual property); taxation (14, especially on sector-specific taxes); and justice (13, e.g. on free movement of people, equal treatment, consumer protection and civil justice). There were also complaints about the so-called 'study grant contracts' (it requires recipients to work in Hungary for a period equal to the duration of financed studies and could limit future workers' free movement), environment (on impact assessment, nature protection and waste management), labelling (origin and quality of foodstuffs) and air services rules.

### EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2012, the Commission and Hungary were working on 46 open files in EU Pilot at the end of 2011: 87 files). The Commission opened 53 new EU Pilot files on Hungarian issues in 2012. Hungary's average response time (65 days) met the 10-week target (66 days in 2011).

Hungary eliminated a number of inconsistencies between national and EU law, so the Commission was able to close several infringement cases in 2012. For example: Hungary amended its laws to address shortcomings in the transposition of the Mining Waste Directive,<sup>175</sup> and it extended the scope of its national flood management rules to comply with the Floods Directive.<sup>176</sup> In addition, Hungarian rules now effectively forbid keeping laying hens in unenriched cages, as required by the corresponding directive.<sup>177</sup> Hungary also withdrew rules that restricted lessees in deducting VAT from fees paid on open-ended car lease contracts. Finally, Hungary completed transposition of the Directive on the re-use of public sector information<sup>178</sup>, in particular by more clearly explaining individuals' rights.

### IMPORTANT JUDGMENTS

The Court confirmed unjustified age discrimination in the claim contesting the new mandatory retirement age for judges, prosecutors and public notaries when they reach the age of 62.<sup>179</sup>

A preliminary ruling to Hungarian courts interpreted the freedom of establishment (in principle, a national law that only governs the conversion of companies based in Hungary and not cross border conversion is considered an unjustifiable restriction).<sup>180</sup>

### KEY INFRINGEMENT PROCEEDINGS

- Restrictions on issuers of luncheon, leisure and holiday vouchers<sup>181</sup>
- Exemption from excise duties for fruit distillates ('pálinka')<sup>182</sup>
- Sector-specific taxes on telecommunications and retail companies<sup>183</sup>
- Restrictive application of the Environmental Impact Assessment Directive<sup>184</sup>

170 Directive [2000/78/EC](#)

171 [IP/12/395](#) (on both cases)

172 Directive [2002/20/EC](#) and [IP/12/286](#)

173 Directive [2008/98/EC](#)

174 [IP/12/422](#)

175 Directive [2006/21/EC](#)

176 Directive [2007/60/EC](#)

177 Directive [1999/74/EC](#)

178 Directive [2003/98/EC](#)

179 Commission v Hungary, [C-286/12](#)

180 VALE Építési Kft., [C-378/10](#)

181 [MEMO/12/876](#)

182 [IP/12/674](#)

183 [MEMO/12/876](#)

184 [IP/12/656](#)

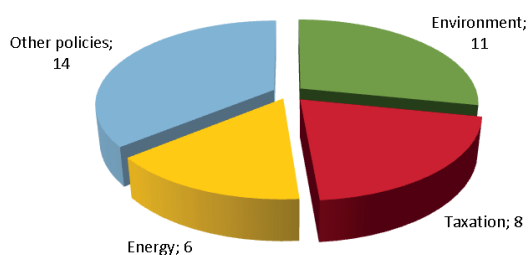
## IRELAND

## GENERAL STATISTICS

There were 39 infringement cases open against Ireland at the end of 2012, so Ireland's performance was seventeenth best in the EU-27 (with Slovenia). The Commission launched 14 new infringement cases against Ireland in 2012 by sending a letter of formal notice.

Ireland's performance was below average in its reference group: Lithuania had 22 open infringement cases, Denmark had 27, Slovakia 30. However, it was better than Finland's (43). Ireland ended the year with fewer infringement cases than in 2010 (58) and 2011 (42). The following chart shows the policy areas in which Ireland was most frequently subject to infringement procedures:

## 39 INFRINGEMENT CASES AGAINST IRELAND



The Commission brought one case against Ireland before the Court in 2012 (there were two referrals in 2011), because the conditions for accessing the natural gas transmission networks were not transparent enough and because Ireland failed to take effective remedial action<sup>185</sup>. In Ireland's reference group, there were no referrals against Lithuania and Denmark. There was one referral against Slovakia and six against Finland.

The Commission referred Ireland to the Court with a request for financial sanctions under Article 260(2) TFEU because it failed to remedy its non-compliance with EU rules on assessing various projects' environmental effects.<sup>186</sup>

## TRANSPOSITION OF DIRECTIVES

The Commission opened eight infringement procedures against Ireland for late transposition of various directives in 2012 (there were 28 in 2011), which shows significant improvement in this area. Ireland's performance was the very good in its reference group: better than that of Lithuania, Denmark and Finland (10, 17 and 21 new late transposition cases, respectively), only Slovakia performed better (7). With 8 open late transposition cases by the end of 2012, Ireland ranked 3<sup>rd</sup> in the EU-27.

The policy area in which Ireland faced challenges in transposing EU directives was health and consumers (three late transposition cases).

## COMPLAINTS

The Commission received 110 complaints against Ireland in 2012, the eleventh-lowest figure in the EU-27.

The areas in which most complaints were received were: environment (43 complaints, mainly on environmental impact assessment, waste water treatment, nature protection – Natura 2000); justice (28, especially on free movement of people); and internal market (11, many on public procurement, regulated professions).

Other complaints concerned amongst others, the principle of free movement of goods (use of label of origin) and direct taxation (termination of payments).

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Irish authorities were working on 43 open files in EU Pilot at the end of 2012, a much lower number than at the end of 2011 (118 open files). The Commission opened 40 new files on Irish issues in 2012. Ireland's average EU Pilot response time (78 days) did not meet the 10-week target (75 days in 2011).

Ireland introduced several measures to ensure compliance with EU law in 2012. For example, it put in place measures to ensure that the National Development Plan conforms to the relevant environmental legislation<sup>187</sup>; it implemented the First Railway Package<sup>188</sup>; and it brought its direct taxation legislation in line with EU law by eliminating the discriminatory aspects of agricultural tax relief. Accordingly, these cases were closed.

## IMPORTANT JUDGMENTS

The Court imposed financial penalties on Ireland for failure to comply with two judgments on environmental laws. The first judgment concerned projects that were likely to have an impact on the environment, but which were not subject to any prior environmental assessment.<sup>189</sup> In its other judgment, the Court found that Ireland had failed to fully adopt the measures necessary to implement the previous judgment on the incorrect transposition of waste legislation.<sup>190</sup> The Court took into account the economic situation and in particular the recent trends in inflation and the GDP at the time of the Court's examination of the facts when it calculated Ireland's penalty.

## KEY INFRINGEMENT PROCEEDINGS

- Lack of transparency of conditions for access to the natural gas transmission networks<sup>191</sup>
- Alleged failure to protect peat bogs<sup>192</sup>
- Restrictions on foreign travel agencies irrespective of their country of establishment
- Separation of accounts of railway undertakings and railway infrastructure managers<sup>193</sup>
- Restrictive exit tax for companies when they cease to be tax residents<sup>194</sup>
- Discriminatory tax exemption of termination payments
- Reduced VAT rate on race horses and greyhounds

187 Directive [2001/42/EC](#)

188 Directive [91/440/EEC](#)

189 Commission v Ireland, [C-279/11](#) and Court press release No [171/12](#)

190 Commission v Ireland, [C-374/11](#) and Court press release No [171/12](#)

191 [IP/12/52](#)

192 [IP/11/730](#)

193 Directive [91/440/EEC](#)

194 [IP/11/78](#)

185 [IP 12/52](#)

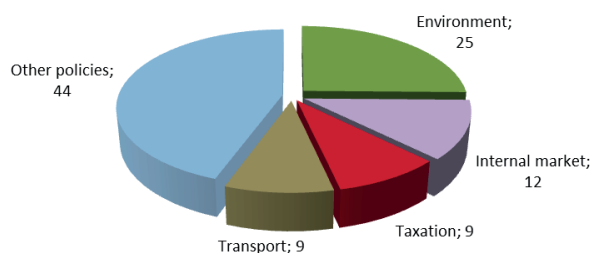
186 [IP/12/657](#)

## ITALY

### GENERAL STATISTICS

99 infringement cases were open against Italy at the end of 2012, the worst result in the EU-27. The Commission launched 58 cases in 2012. In Italy's reference group, Spain had 91 open cases, Poland had 82, France 63, and Germany and the UK 61 each. Italy closed the year with fewer infringements than in 2011 (135) and 2010 (128) and was most often subject to infringement procedures in the following policy areas:

#### 99 INFRINGEMENT CASES AGAINST ITALY



Three cases were brought against Italy to the Court in 2012 (4 in 2011) due to its non-compliance with EU rules on buildings' energy performance certificates and on air-conditioning systems' inspections;<sup>195</sup> incorrect implementation of the Directive on collective redundancies;<sup>196</sup> and inadequate urban waste-water treatment in some areas.<sup>197</sup> In the reference group, there was 1 referral against Spain, 4 against France, 6 against the UK, 7 against Germany and 12 against Poland. Italy had one second referral proposing fines under Article 260(2) TFEU because it had failed to clean up hundreds of illegal landfills.<sup>198</sup>

### TRANSPPOSITION OF DIRECTIVES

The Commission opened 36 infringement procedures against Italy for late transposition of directives (73 in 2011). Italy's performance was the worst in its reference group: 11, 14, 16, 18, and 24 new late transposition cases were launched against Germany, France, Spain, Poland and the UK, respectively. With 17 open late transposition cases by the end of 2012, Italy ranked 18<sup>th</sup> in the EU-27.

Environment (11 new late transposition cases), health & consumers (10) and transport (7) directives posed the main challenges to Italy.

### COMPLAINTS

438 complaints were received against Italy in 2012, the highest figure in the EU-27.

Most concerned environment (124 complaints, many on waste, nature protection and impact assessment), internal market (72, mainly public procurement, regulated professions and provision of services) and taxation (64, e.g. companies' 'exit tax' and foreign real estates).

Other complaints dealt with taking into account working periods acquired in other Member States, home-grown sport players, legal migration,<sup>199</sup> equality, civil justice, labour law<sup>200</sup>, health and safety, organic farming, biofuels, air passenger rights and discrimination on public transport.

### EARLY RESOLUTION OF INFRINGEMENTS

There were 135 open files in EU Pilot at the end of 2012, the highest caseload in the EU-27. Italy received 107 new EU Pilot files in 2012. Its average EU Pilot response time was 69 days, meeting the 10-week target (72 days in 2011).

<sup>195</sup> [IP/12/411](#)

<sup>196</sup> [IP/12/1145](#)

<sup>197</sup> [IP/12/658](#)

<sup>198</sup> [IP/12/1140](#)

<sup>199</sup> Application of Directive [2003/109/EC](#) to long-term residents.

<sup>200</sup> Fixed-term employment in schools and for university language teachers.

The Commission could close several cases in 2012 because Italy: corrected its tax on port dues and vessels' VAT exemption; respected EU marketing authorisation laws for generic drugs<sup>201</sup>; removed unjustified trade obstacles on amusement machines and bottled drinking water<sup>202</sup>; duly transposed the SEA Directive<sup>203</sup>; and granted family allowances to frontier and migrant workers.

### IMPORTANT JUDGMENTS

The Court condemned Italy for inadequate urban waste water treatment in specific areas<sup>204</sup> and for the excessive PM10 concentrations in ambient air in 55 agglomerations during the years 2006 and 2007.<sup>205</sup> The Court also ruled that: when establishing employees' seniority, the duration of fixed-term contracts at the same public authority should also be taken into account unless deduction is justified on 'objective grounds'<sup>206</sup>; long-term resident, third-country nationals should be treated similarly to EU citizens in allocating housing benefits;<sup>207</sup> the rule that allowed the taxpayer to close a pending case before the court of last resort by paying 5% of the claim, if such case had been initiated for more than 10 years ago and the taxpayer's claim was upheld by both at the first and second instance is compatible with EU law;<sup>208</sup> cultivating GMOs already authorised by the EU could not be made conditional on national authorisation and that even if Member States may adopt coexistence measures, this cannot extend to a general ban of GMOs authorised under EU law.<sup>209</sup>

### KEY INFRINGEMENT PROCEEDINGS

- Waste pre-treatment in Malagrotta and other Lazio landfills<sup>210</sup>
- Bad application of certain EU asylum laws
- Doctors' working time in public hospitals
- Limited discretion of the national authority regulating electronic communications<sup>211</sup>
- Non-compliance with the Directives on buildings' energy performance<sup>212</sup>, on health & safety at work<sup>213</sup> and laying hens' keeping conditions<sup>214</sup>
- Visa exemption for Chinese diplomatic passports
- Discriminating cheaper tobacco products<sup>215</sup>
- Restrictions on non-Italian water-polo players
- Lack of monitoring and proper enforcement of EU rules on using drift nets
- Access of Italian vessels to third country waters (EU exclusive competence)
- Awarding public service contracts to regional shipping companies without public tenders<sup>216</sup>
- Non-recovery of illegal state aid for firms investing in municipalities affected by natural disasters

<sup>201</sup> [IP/12/48](#)

<sup>202</sup> [IP/10/1220](#)

<sup>203</sup> Directive [2001/42/EC](#)

<sup>204</sup> Commission v Italy, [C-565/10](#)

<sup>205</sup> Commission v Italy, [C-68/11](#)

<sup>206</sup> Valenza and Others, [C-302/11](#)

<sup>207</sup> Kamberaj, [C-571/10](#)

<sup>208</sup> 3M Italia, [C-417/10](#)

<sup>209</sup> Pioneer Hi Bred Italia, [C-36/11](#) and Directive [2001/18/EC](#)

<sup>210</sup> [IP/12/538](#)

<sup>211</sup> [MEMO/13/122](#)

<sup>212</sup> Directive [2002/91/EC](#) and [IP/12/411](#)

<sup>213</sup> Directive [89/391/EC](#)

<sup>214</sup> [IP/12/629](#)

<sup>215</sup> [MEMO/12/794](#)

<sup>216</sup> [IP/12/637](#)



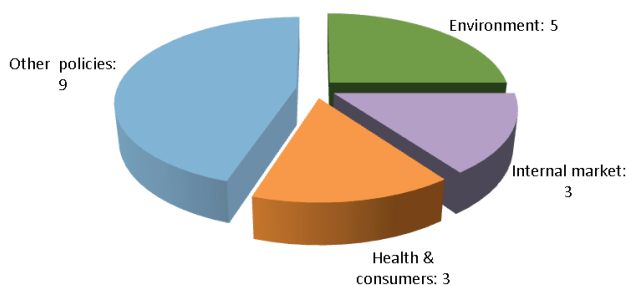
## LATVIA

## GENERAL STATISTICS

With 20 infringement cases open at the end of 2012, Latvia had the best performance in the EU-27. The Commission launched 17 new infringement cases against Latvia in 2012.

Latvia's performance was also the best in its reference group: Estonia had 24 open infringement cases, Malta had 24, Slovenia 39, Luxembourg 34 and Cyprus 43. Latvia ended the year with fewer infringement cases than in 2011 (23) and 2010 (26). The following chart shows the policy areas in which Latvia was most frequently subject to infringement procedures:

## 20 INFRINGEMENT CASES AGAINST LATVIA



The Commission did not refer any cases against Latvia to the Court in 2012 (this situation remains unchanged since 2009). In Latvia's reference group, there was one referral against Luxembourg, four against Cyprus and five against Slovenia.

## TRANSPOSITION OF DIRECTIVES

The Commission opened 10 infringement procedures against Latvia for late transposition of various directives in 2012 (there were 24 such cases in 2011, Latvia's performance was second best in its reference group: Estonia had fewer new late transposition cases (5), Luxembourg, Slovenia, Malta and Cyprus had more (12, 16, 18 and 24, respectively). With 9 open late transposition cases by the end of 2012, Latvia ranked 5<sup>th</sup> in the EU-27. Latvia faced significant challenges in transposing EU directives in the health and consumers area (four new late transposition cases).

## COMPLAINTS

The Commission received only 17 complaints against Latvia in 2012. Latvia ranked second in the EU-27.

Most complaints concerned: international affairs (three complaints, such as the entry of third country nationals into the territory of the EU: three complaints), justice (three, e.g. on the right of establishment); and environment (three, mainly on nature protection: three).

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Latvian authorities were working on 28 EU Pilot files at the end of 2012, one of the lowest caseloads in the EU-27 (there were 30 files at the end of 2011). The Commission opened 35 new Latvian files during 2012. Latvia's average EU Pilot response time (81 days) was over the 10 week target (in 2011, it was 62 days).

Latvia aligned a number of its national measures and practices with EU law, so the Commission was able to close a number of cases, including on the wrong application of the directive on protecting laying hens<sup>217</sup> and the directive on airport charges.<sup>218</sup> Latvia also solved the problem of not designating enough Special Protection Areas for bird species in danger of extinction, bird species considered vulnerable or migratory birds.<sup>219</sup>

## IMPORTANT JUDGMENTS

There were no such judgments.

## KEY INFRINGEMENT PROCEEDINGS

- Non-compliance with EU legislation on Tetraourogallus hunting<sup>220</sup>
- Non-compliance with EU rules on separating accounts in railway financing<sup>221</sup>

217 Directive [1999/74/EC](#) and [IP/12/47](#)

218 Directive [2009/12/EC](#)

219 Directive [2009/147/EC](#)

220 This bird, also known as the wood grouse, is the largest member of the grouse family and is protected by Directive [2009/147/EC](#).

221 Directive [1991/440/EEC](#)

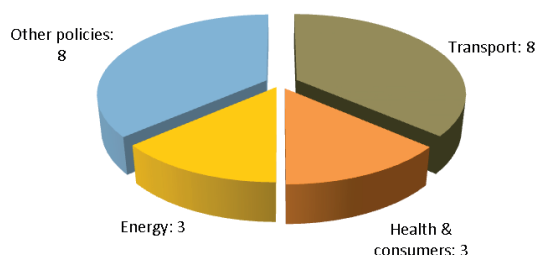
## LITHUANIA

### GENERAL STATISTICS

With 22 infringement cases open at the end of 2012, Lithuania ranked second best in the EU-27. The Commission launched eleven new cases against Lithuania in 2012 by sending a letter of formal notice.

Lithuania's performance was the best in its reference group: Denmark had 27 open infringement cases, Slovakia had 33, Ireland 39, and Finland 43. Lithuania ended the year with fewer infringement cases than in 2011 (36) and 2010 (24). The following chart shows the policy areas in which Lithuania was most frequently subject to infringement procedures:

#### 22 INFRINGEMENT CASES AGAINST LITHUANIA



The Commission did not refer any cases against Lithuania to the Court in 2012 (this situation remains unchanged since 2009). In Lithuania's reference group, there was one referral each against Ireland and Slovakia, and six against Finland but none against Denmark.

### TRANSPPOSITION OF DIRECTIVES

The Commission opened ten infringement procedures against Lithuania for late transposition of various directives in 2012 (there were 34 in 2011). In its reference group, Lithuania performed better than Finland and Denmark (21 and 17 new late transposition cases, respectively), but worse than that of Slovakia and Ireland (7 and 8 cases, respectively). The policy areas in which Lithuania faced the most significant challenges in transposing EU directives were: transport (three new late transposition infringement cases) and health and consumers (three).

### COMPLAINTS

The Commission received 36 complaints against Lithuania in 2012, the seventh lowest figure in the EU-27.

The areas in which most complaints were received were: justice (six complaints), internal market (five, mainly public procurement); and regional policy (five). Other complaints concerned transposition of the Directive on package travel, package holidays and package tours<sup>222</sup> and EU funding.

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Lithuanian authorities were working on 30 open files in EU Pilot at the end of 2012 (at the end of 2011: 65 files), an average caseload. The Commission opened 32 new files on Lithuanian issues in 2012. Lithuania respected the 10-week target for providing replies in EU Pilot; it submitted its responses within an average of 63 days (62 days in 2011).

The Lithuanian authorities actively sought to settle their infringement cases in 2012 by ensuring that national legislation complied with the Directive on packaging and packaging waste.<sup>223</sup> In addition, Lithuania transposed provisions on geological storage of carbon dioxide<sup>224</sup> and on energy labelling.<sup>225</sup> As a result, the Commission closed these infringement procedures.

### IMPORTANT JUDGMENTS

There were no such judgments in 2012.

### KEY INFRINGEMENT PROCEEDINGS

- Ban on registering right-hand drive cars<sup>226</sup>
- Klaipėda state seaport — priority for current cargo handling operators renewing their port land lease<sup>227</sup>
- Expelling or denying entry to people in cases that are not sufficiently serious or do not present a danger to public security<sup>228</sup>
- Insufficient designation of Special Protection Areas (SPAs) for birds<sup>229</sup>

222 Directive [1990/314/EEC](#)

223 Directive [1994/62/EC](#)

224 Directive [2009/31/EC](#)

225 Directive [2010/30/EU](#)

226 Directives [1970/311/EEC](#) and [2007/46/EC](#) and [IP/11/1251](#)

227 [IP/12/636](#)

228 Directive [2004/38/EC](#)

229 Directive [2009/147/EC](#) and [IP/07/938](#)

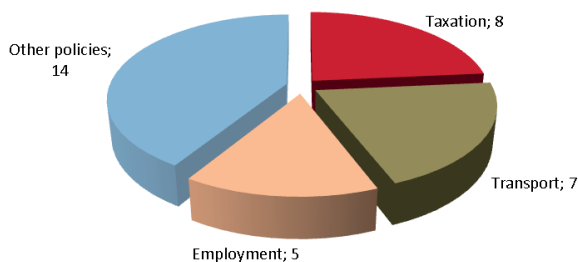
## LUXEMBOURG

## GENERAL STATISTICS

With 34 infringement cases open against Luxembourg at the end of 2012, Luxembourg's performance was seventh best in the EU-27. The Commission launched 21 new infringement cases against Luxembourg in 2012 by sending letters of formal notice.

Luxembourg's performance was average in its reference group: Latvia had 22 open infringement cases, Estonia had 24, Malta 26, Slovenia 39 and Cyprus 43. Luxembourg ended the year with fewer infringement cases than in 2010 (41) and 2011 (76). The following chart shows the policy areas in which Luxembourg was most frequently subject to infringement procedures:

## 34 INFRINGEMENT CASES AGAINST LUXEMBOURG



Like in 2011, the Commission referred one case to the Court against Luxembourg in 2012 (see the section on the transposition of directives). In Luxembourg's reference group, there were four referrals against Cyprus and five against Slovenia but none against Latvia, Estonia or Malta.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 12 infringement procedures against Luxembourg for late transposition of various directives in 2012 (there were 44 in 2011). Luxembourg ranked 19<sup>th</sup> in the EU-27, and its performance was above average in its reference group: worse than that of Estonia (five new late transposition cases) and Latvia (ten), but better than that of Slovenia (16), Malta (18) and Cyprus (24). With 13 open late transposition cases by the end of 2012, Luxembourg ranked 13<sup>th</sup> in the EU-27.

The policy areas in which Luxembourg faced significant challenges in transposing EU directives were: transport (five new late transposition infringement cases) and health and consumers (three).

The Commission referred Luxembourg to the Court with a request for financial sanctions under Article 260(3) TFEU due to late transposition of the Directive on public procurement in the defence and security sector.<sup>230</sup>

## COMPLAINTS

The Commission received 20 complaints against Luxembourg in 2012, the third lowest figure in the EU-27.

Most of the complaints concerned: taxation (five complaints, mostly on discriminatory taxation on transfer of residence ('exit tax') and discriminatory treatment of capital gains); external relations (three, especially the free movement of people in the context of the EU/Switzerland Agreement); and social security (three, e.g. on family benefits for migrant workers). Other complaints concerned for example, inadequate environmental impact assessments.

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission sent Luxembourg 17 files since Luxembourg joined EU Pilot in June 2012. It was working with Luxembourg's national authorities on 12 open files at the end of 2012. Luxembourg's average EU Pilot response time (67 days) met the 10-week target.

The Commission was able to close some infringement cases in 2012, because amongst others, Luxembourg ensured compliance with EU rules on water (the Quality Assurance Quality Control Directive<sup>231</sup>) and chemicals (the Classification, Labelling and Packaging Regulation<sup>232</sup>).

## IMPORTANT JUDGMENTS

The Court clarified in a preliminary ruling that restricting a Member State's recruitment subsidies for employment placements to people registered in that Member State goes against EU law.<sup>233</sup>

## KEY INFRINGEMENT PROCEEDINGS

- Reduced VAT rates on e-books
- Restrictive access to study grants for family members of migrant workers
- Failure to bring urban waste water treatment up to EU standards despite Court judgment<sup>234</sup>
- Non-transposition of the Directive on public procurement in the defence and security sector<sup>235</sup>

231 Directive [2009/90/EC](#)

232 Regulation (EC) No [1272/2008](#)

233 Caves Krier Frères Sàrl, [C-379/11](#), Court press release No [167/12](#)

234 Commission v Luxembourg, [C-576/11](#)

235 Directive [2009/81/EC](#)

230 Directive [2009/81/EC](#)

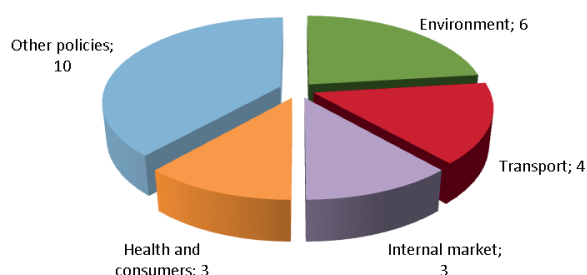
## MALTA

## GENERAL STATISTICS

With 26 open infringement cases at the end of 2012, Malta had the fourth-best performance out of all the EU-27 Member States. In 2012, the Commission launched 22 new infringement procedures against Malta by sending letters of formal notice.

In its reference group, Malta's performance remained above average; only Latvia and Estonia had fewer open infringement cases (20 and 24 respectively). Luxembourg had 34, Slovenia 39 and Cyprus 43. Although Malta ended the year with fewer infringements than in 2011 (36), its 2010 result was even better (22). The following chart shows the policy areas in which Malta was most frequently subject to infringement procedures:

## 26 INFRINGEMENT CASES AGAINST MALTA



The Commission did not bring any cases against Malta before the Court in 2012, (there had been one referral in 2011). In Malta's reference group, there was one referral against Luxembourg, four against Cyprus and five against Slovenia but none against Estonia and Latvia.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 18 infringement procedures against Malta for late transposition of various directives in 2012 (there were 40 such procedures in 2011). In Malta's reference group, only Cyprus had more new late transposition infringement cases in 2012 (24). Estonia, Latvia, Luxembourg, and Slovenia performed better than Malta (with five, 10, 12 and 16 such infringements, respectively). With only nine open late transposition infringement cases by the end of 2012, Malta ranked 5<sup>th</sup> in the EU-27 (together with Latvia and Denmark).

The policy areas in which Malta faced significant challenges in transposing EU directives in 2012 were: health and consumers (6 new late transposition infringements) and environment (4). In addition, three infringement cases were still open in 2012 due to the late transposition of transport-related directives.

## COMPLAINTS

In 2012, the Commission received 35 complaints against Malta, the fifth-lowest figure in the EU-27.

The areas in which most complaints from citizens and businesses were received were: justice (eight complaints, especially on the free movement of people and non-residents' energy tariffs) and taxation (four, e.g. registration tax and VAT on used vehicles imported from other Member States, taxation of internet bills). There were also complaints concerning e.g. nationality-based discrimination on public transport and in relation to child allowance, the illegal killing and hunting of birds, and inadequate waste management. In addition, the Commission learnt of a case in which the Maltese authorities demanded a proof of earning average wage (instead of the statutory minimum amount) from a third-country national in order to grant her long-term resident status.

## EARLY RESOLUTION OF INFRINGEMENTS

Malta joined EU Pilot in June 2012. By the end of the year, the Commission and the Maltese authorities were working on 27 open files in EU Pilot – a workload that rose rapidly but is still below average. The Commission opened 28 new files on Maltese issues by the end of 2012. The Maltese authorities' average EU Pilot response time (87 days) was above the 10-week target.

Malta eliminated a number of inconsistencies between national and EU law in 2012. For example, it established noise maps for its major roads, made them publicly available and informed the Commission about them as required by the Environmental Noise Directive.<sup>236</sup> Malta also put in place measures that ensure competitive ground-handling services (such as aircraft refuelling services) at Luqa airport, as requested by the Commission<sup>237</sup>. Lastly, Malta removed the nationality requirement for public notaries.<sup>238</sup>

## IMPORTANT JUDGEMENTS

There were no Court judgments concerning the Malta.

## KEY INFRINGEMENT PROCEEDINGS

- Reducing Maltese pensions for beneficiaries who also receive a pension from another Member State<sup>239</sup>
- Incomplete transposition of the Omnibus I and Prospectus Directives<sup>240</sup>
- Nationality-based discrimination in charging fees for water and electricity
- Marsa Power Station: operating hours in excess of the limits set by the Large Combustion Plant Directive<sup>241</sup>

236 Directive [2002/49/EC](#) and [IP/10/1416](#) on the earlier Court referral

237 [IP/11/188](#) on the earlier Court referral

238 [IP/07/1510](#) on the earlier reasoned opinion

239 [IP/13/249](#)

240 Directives [2010/78/EU](#) and [2010/73/EU](#)

241 Directive [2001/80/EC](#) and [IP/12/660](#)

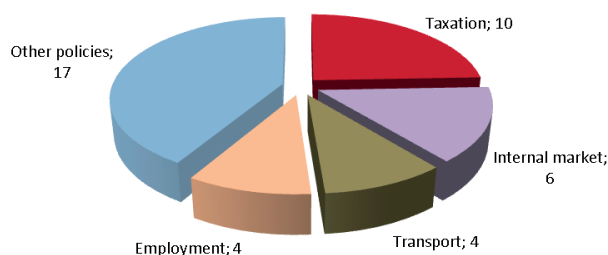
## THE NETHERLANDS

### GENERAL STATISTICS

There were 41 infringement cases open against the Netherlands at the end of 2012, the sixteenth highest number in the EU-27. The Commission launched 14 new cases in 2012 by sending letters of formal notice.

The Netherlands' performance was above average in its reference group: Romania had 44 open infringement cases, Hungary had 42, the Czech Republic 36, Portugal 67, Belgium 92 and Greece 81. The Netherlands ended the year with fewer infringement cases than in 2010 (62) and 2011 (71). The following chart shows the policy areas most frequently subject to infringement procedures:

#### 41 INFRINGEMENT CASES AGAINST THE NETHERLANDS



The Commission referred four cases against the Netherlands to the Court in 2012 (there were also four in 2011), all of them were due to late transposition of directives (see below). In the Netherlands' reference group, there were no referrals against Romania or the Czech Republic, two against Greece and four each against Hungary and Portugal, and six against Belgium.

### TRANSPOSITION OF DIRECTIVES

The Commission opened six infringement procedures against the Netherlands for late transposition of various directives in 2012 (there were 32 in 2011). Its performance was best in its reference group: the Czech Republic had 13 new late transposition cases, Romania had 15, Belgium 21, Greece 22, Hungary 26 and Portugal 34.

The Netherlands faced significant challenges in transposing EU directives in the area of transport (three late transposition infringement cases).

The Commission referred the Netherlands to the Court with a proposal for financial sanctions under Article 260(3) TFEU due to late transposition of: the Directive on defence procurement<sup>242</sup>; the Mediation Directive<sup>243</sup>; the Citizens' Rights Directive<sup>244</sup>; and the Better Regulation Directive.<sup>245</sup> With 6 open late transposition cases by the end of 2012, the Netherlands ranked 1<sup>st</sup> in the EU-27.

### COMPLAINTS

The Commission received 100 complaints against the Netherlands in 2012, the 14<sup>th</sup> highest figure in the EU-27.

Complaints concerned especially: environment (17 complaints, many on nature protection and air quality); internal market (16, mainly public procurement, freedom to provide services and regulated professions); justice and free movement of workers (16, e.g. free movement of people and social security issues).

Other complaints focused on nationality-based discrimination on public transport, discrimination in the taxation group relief regime and tax obstacles to the cross-border provision of pensions.

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Dutch authorities were working on 38 open files in EU Pilot at the end of 2012 (2011: 98). The Commission opened 38 new EU Pilot files on Dutch issues in 2012. The Netherlands' average EU Pilot response time (64 days) met the 10-week target (67 days in 2011).

Due to the measures of the Dutch authorities put in place to improve compliance with EU law, the Commission could close a number of cases in 2012. The Netherlands revoked the discriminatory taxation of capital held by foreign charities, made their national legislation compliant with the Racial Equality Directive<sup>246</sup> and brought the Dutch Crisis and Recovery Act in line with the Environment Impact Assessment Directive.<sup>247</sup>

### IMPORTANT JUDGMENTS

Three judgments of the Court found that the Netherlands failed to comply with its obligations under EU law. First, it found that the Dutch authorities were imposing disproportionate charges for granting residence permits to third-country nationals, in breach of the Long-Term Resident Directive.<sup>248</sup> Second, it ruled that according to EU rules,<sup>249</sup> if a contracting authority requires that certain products it orders be derived from organic agriculture or fair trade, it must provide detailed specifications instead of referring to eco-labels or specific labels.<sup>250</sup> Finally, the Court ruled that making study abroad funding subject to a Dutch residence permit gives rise to unequal treatment of Dutch and migrant workers, which is incompatible with the free movement of workers.<sup>251</sup>

Among the preliminary rulings addressed to the Dutch judiciary, the Court ruled that work carried out on drilling platforms at sea, on the continental shelf adjacent to a Member State, must be regarded as work carried out on the territory of that country (so that invalidity benefits are due).<sup>252</sup>

### KEY INFRINGEMENT PROCEEDINGS

- Failure to halt the on-going deterioration of the Western Schelde estuary (Natura 2000 site)<sup>253</sup>
- Non-transposition of the directive on public procurement in the defence and security sector<sup>254</sup>
- Discriminatory tax rules on cross-border pensions<sup>255</sup>
- Reduced VAT rate on race horses
- Failure to comply with the Court ruling addressing residence conditions being attached to payment of study grants for children of migrant workers

246 Directive [2000/43/EC](#)

247 Directive [85/337/EEC](#) now repealed by Directive [2001/42/EC](#)

248 Commission v Netherlands, [C-508/10](#), Court press release No [52/12](#) and Directive [2003/109/EC](#)

249 Directive [2004/18/EC](#)

250 Commission v Netherlands, [C-368/10](#) and Court press release No [60/12](#)

251 Article 45 TFEU and Regulation (EC) No [1612/68](#) as amended, now codified in Regulation (EU) No [492/2011](#)

252 A. Salemink, [C-347/10](#) and Court press release No [1/12](#)

253 [MEMO/12/794](#)

254 Directive [2009/81/EC](#) and [IP/12/76](#)

255 [MEMO/12/876](#)

242 [IP/12/1020](#) and Directive [2009/81/EC](#)

243 [MEMO/12/708](#) and Directive [2008/52/EC](#)

244 [IP/12/524](#) and Directive [2009/136/EC](#)

245 [IP/12/1016](#) and Directive [2009/140/EC](#)

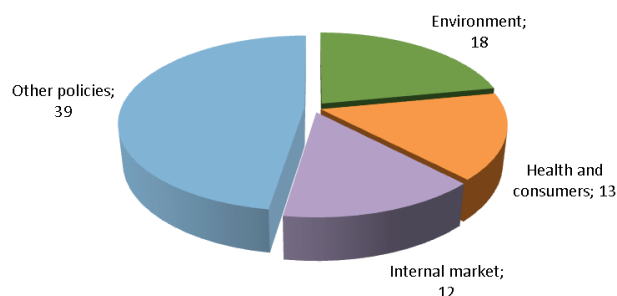
## POLAND

## GENERAL STATISTICS

82 infringement cases were open against Poland at the end of 2012, the 4<sup>th</sup> worst performance in the EU-27. The Commission launched 28 cases in 2012 by sending letters of formal notice.

Poland's performance was average in its reference group: Germany and the UK each had 61 open infringement cases, France had 63, Spain 91 and Italy 99. Poland ended the year with fewer cases than in 2011 (95) and 2010 (91). Poland was most frequently subject to infringement procedures in the following policy areas:

## 82 INFRINGEMENT CASES AGAINST POLAND



The Commission brought 12 cases against Poland to the Court in 2012 (seven in 2011). All were due to late transposition of directives (see next section). In Poland's reference group, there was one referral against Spain, three against Italy, four against France and six against the UK and seven against Germany.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 18 infringement cases against Poland for late transposition of EU directives in 2012 (44 in 2011). In its reference group, Poland's performance was better than the UK (24) and Italy (36), but worse than Germany (11), France (14) and Spain (16). With 34 open late transposition cases by the end of 2012, Poland ranked last in the EU-27 (with Belgium).

Poland faced the most challenges in transposing EU directives in the areas of transport and health & consumers (5 new late transposition cases each) and internal market (3).

Poland was referred to the Court with a proposal for financial sanctions under Article 260(3) TFEU due to late transposition of the Audiovisual Media Services Directive,<sup>256</sup> the Marine Strategy Framework Directive,<sup>257</sup> the Waste Framework Directive,<sup>258</sup> the Airport Charges Directive,<sup>259</sup> the Maritime Accident Investigation Directive,<sup>260</sup> the Citizens' Rights Directive,<sup>261</sup> the Better Regulation Directive,<sup>262</sup> the Defence Procurement Directive<sup>263</sup> and the Third Energy Package.<sup>264</sup> Referrals without a proposal for financial sanctions<sup>265</sup> were due to late transposition of the Railway Interoperability Directive<sup>266</sup> and the Conservation and Amateur Vegetable Varieties Directive<sup>267</sup>.

## COMPLAINTS

The Commission received 156 complaints against Poland in 2012, the 7<sup>th</sup> highest figure in the EU-27. Most complaints concerned: environment (37 complaints, many on water management, impact assessment and nature protection); justice (30, including equal treatment in work, residence rights

of third-country spouses of EU citizens); and taxation (18, cars' excise tax, electricity and energy taxes, VAT Directive<sup>268</sup>).

Other complaints targeted e.g., the transposition of the Data Retention Directive,<sup>269</sup> marketing of medical devices, free provision of services and public procurement, limitations on direct payments from the EU's agricultural support schemes, and a nationality condition for public sector jobs.

## EARLY RESOLUTION OF INFRINGEMENTS

There were 64 files open in EU Pilot at the end of 2012, an above-average caseload that decreased since 2011 (78). Poland received 59 new files in 2012. Its average EU Pilot response time was 69 days, which met the 10-week target.

Cases were closed against Poland at an early stage as it complied with EU law on, for example: environment (impact assessment of the EU-co-financed S3 motorway that crosses Natura 2000 sites, which led to Poland adopting a package of compensatory measures); transport (adoption of the national aviation security programme); and equal treatment of men and women in access to employment.

## IMPORTANT JUDGMENTS

The Court ruled that Polish legislation violated EU rules<sup>270</sup> by allowing in certain circumstances foreign medicinal products to be placed on the market without EU market authorisation,<sup>271</sup> and Poland had failed to protect wild birds as required by the Birds Directive.<sup>272</sup>

The Court also made clear that parts of the Polish gambling law may constitute 'technical regulations' under the directive on technical standards<sup>273</sup>. So Poland should have sent the draft measures to the Commission before their adoption in so far as it is established that those provisions constitute conditions which can significantly influence the nature or the marketing of the product concerned, which is a matter for the referring court to determine.<sup>274</sup>

## KEY INFRINGEMENT PROCEEDINGS

- Incomplete transposition of the Directives of the Third Energy Package<sup>275</sup>
- Incorrect implementation of the Laying Hens Directive<sup>276</sup>
- Non-transposition of the Waste Framework Directive<sup>277</sup>
- Failure to implement the Court judgment<sup>278</sup> on incomplete transposition of the Automotive Framework Directive<sup>279</sup>
- Non-transposition of the Directive on public procurement in the defence and security sector<sup>280</sup>

256 Directive [2007/65/EC](#)

257 Directive [2008/56/EC](#)

258 Directive [2008/98/EC](#)

259 Directive [2009/12/EC](#)

260 Directive [2009/18/EC](#)

261 Directive [2009/136/EC](#)

262 Directive [2009/140/EC](#)

263 Directive [2009/81/EC](#)

264 Directives [2009/72/EC](#) and [2009/73/EC](#)

265 These directives do not fall under Article 260(3) TFEU.

266 Directive [2011/18/EU](#)

267 Directive [2009/145/EC](#)

268 Directive [2006/112/EC](#)

269 Directive [2006/24/EC](#)

270 Directive [2001/83/EC](#)

271 Commission v Poland, [C-185/10](#) and Court press release No [36/12](#)

272 Directive [2009/147/EC](#) and Commission v Poland, [C-192/11](#) and [C-46/11](#)

273 Directive [98/34/EC](#)

274 Fortuna sp. z o.o. and others, [C-213/11](#), [C-214/11](#) and [C-217/11](#)

275 Directives [2009/73/EC](#) and [2009/72/EC](#), and [IP/12/1139](#) and [IP/12/1236](#)

276 Directive [1999/74/EC](#) and [IP/12/629](#)

277 Directive [2008/98/EC](#), and [IP/12/422](#)

278 Commission v Poland, [C-311/10](#)

279 Directive [2007/46/EC](#)

280 Directive [2009/81/EC](#)

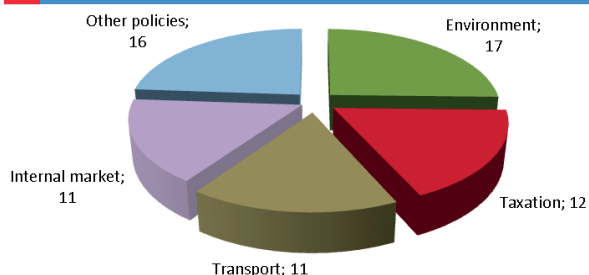


# PORTUGAL

## GENERAL STATISTICS

With 67 infringement cases open at the end of 2012, Portugal's performance was the 6<sup>th</sup> worst in the EU-27. The Commission launched 46 new cases against Portugal in 2012 by sending letters of formal notice. Portugal's performance was below average in its reference group: the Czech Republic had 36 infringement cases, the Netherlands had 41, Hungary 42, Romania 44, Greece 81 and Belgium 92. Portugal ended the year with fewer infringement cases than in 2011 (84) and 2010 (98). Portugal was most frequently subject to infringement procedures in the following policy areas:

### 67 INFRINGEMENT CASES AGAINST PORTUGAL



Four cases were brought before the Court against Portugal in 2012 (3 in 2011). They challenged: Portugal's refusal to pay duties on un-exported sugar surplus stocks; its missing transposition measures of the Directive updating driving licence requirements<sup>281</sup>; and the incorrect transposition of EU law<sup>282</sup> on distance marketing of consumer financial services.<sup>283</sup> The fourth referral was due to late transposition (see below). In Portugal's reference group, there were no cases against the Czech Republic and Romania. Greece had two referrals, Hungary had four and Belgium six. Portugal was referred to the Court with a proposal for financial sanctions under Article 260(2) TFEU, because it had not designated a universal service provider in the telecom sector as required by the Universal Service Directive.<sup>284</sup>

## TRANSPPOSITION OF DIRECTIVES

34 infringement procedures were launched against Portugal for late transposition of various directives in 2012 (50 in 2011). Portugal's performance was the worst in its reference group: 6, 15, 21, 22, 24 and 26 new late transposition cases were launched against the Netherlands, Romania, Belgium, Greece, the Czech Republic and Hungary, respectively. With 34 open late transposition cases by the end of 2012, Portugal ranked last in the EU-27 (with Belgium).

Portugal faced challenges in transposing EU directives in the policy areas of environment (10 new late transposition cases), transport (8) and health and consumers (6).

Portugal was referred to the Court with a proposal for financial sanctions under Article 260(3) TFEU due to its late transposition of EU telecommunications rules under the Citizens' Rights Directive.<sup>285</sup>

## COMPLAINTS

67 complaints were received against Portugal in 2012, the 11<sup>th</sup> highest figure in the EU-27. Most complaints concerned environment (12 complaints, e.g. nature protection, water protection and management, waste management), taxation (10) and internal market (seven, for example, public procurement). Other complaints concerned transport (air passenger rights and registration of documents for vehicles), agriculture (organic farming) and employment (aggregation of insurance periods, fixed-term employment of teachers).

281 [IP/12/56](#)

282 Directive [2002/65/EC](#)

283 [IP/12/50](#)

284 [IP/12/287](#) and Directive [2002/22/EC](#)

285 [IP/12/524](#) and Directive [2009/136/EC](#)

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Portuguese authorities were working on 52 open EU Pilot files at the end of 2012 (153 at the end of 2011). 62 new files were opened on Portuguese issues in 2012. Portugal's average EU Pilot response time (68 days) remained within the 10-week target (60 days in 2011).

Portugal aligned a number of its national laws with EU law in 2012, so several cases could be closed. For example, Portugal: implemented correctly the ban on un-enriched cages for laying hens; gave consumers who exercise the right to withdraw from a service contract the right to automatically cancel any additional contracts; complied with the Equal Treatment Directive<sup>286</sup>; applied working time rules to self-employed drivers; and fixed bird hunting periods to respect EU rules on wild birds' conservation, to avoid overlaps with reproduction/pre-nuptial migration periods.

## IMPORTANT JUDGMENTS

The Court ruled that Portugal: failed to publish and transmit to the Commission the river basin management plans required under the Water Framework Directive;<sup>287</sup> exceeded for the years 2005 to 2007 the PM10 values for air quality required under the Air Quality Directive;<sup>288</sup> breached the VAT Directive by applying a special scheme exempting farmers from paying VAT and involving the application of a flat-rate compensation percentage at a nil rate;<sup>289</sup> violated EU rules by taxing immediately the unrealized capital gains, if a Portuguese company removed its seat and management to another Member State or if a parent company relocated the assets of its Portuguese subsidiary to another Member State when purely national operations were not subject to such tax;<sup>290</sup> failed to fully transpose Directives from the First Railway Package by requiring the government to approve decisions on acquiring or transferring holdings in the capital of Comboios de Portugal (the public rail transport company) and by not ensuring that the accounts of the infrastructure manager REFER were balanced.<sup>291</sup>

## KEY INFRINGEMENT PROCEEDINGS

- Automatic exclusion of projects covered by a land-use plan from Portuguese environmental impact assessment law<sup>292</sup>
- Lack of independence of the Portuguese airport slot coordinator<sup>293</sup>
- Restrictions on tobacco products (excise duties-tax marks)<sup>294</sup>
- Restrictive exit taxes for individuals<sup>295</sup>
- Late transposition of the "e-money" Directive,<sup>296</sup> the Directive on the type-approval of tractors<sup>297</sup> and the Employers Sanctions Directive<sup>298</sup>
- Excessive fixed-term employment contracts for state-sector teachers without measures preventing abuse by employers

286 Directive [2000/43/EC](#)

287 Commission v Portugal, [C-223/11](#) and Directive [2000/60/EC](#)

288 Commission v Portugal, [C-34/11](#) and Directive [2008/50/EC](#)

289 Commission v Portugal, [C-524/10](#)

290 Commission v Portugal, [C-38/10](#)

291 Commission v Portugal, [C-557/10](#)

292 [MEMO/12/876](#)

293 [MEMO/13/22](#)

294 [IP/12/675](#)

295 [IP/09/1635](#)

296 [IP/12/418](#) and Directive [2009/109/EC](#)

297 [MEMO/12/876](#) Directive [2010/62/EU](#)

298 [IP/12/531](#) and Directive [2009/52/EC](#)

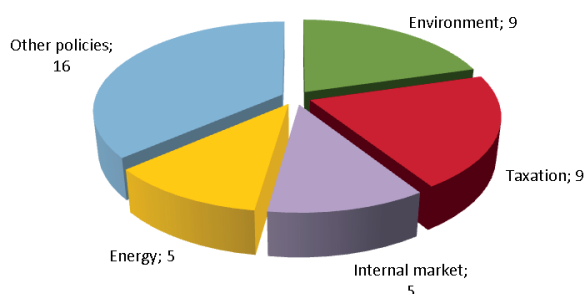
## ROMANIA

## GENERAL STATISTICS

With 44 infringement cases open at the end of 2012, Romania ranked 16<sup>th</sup> in the EU-27. The Commission launched 30 new infringement cases against Romania in 2012.

Romania's performance was average in its reference group: the Czech Republic had 36 infringement cases, the Netherlands had 41, Hungary 42, Portugal 67, Greece 81 and Belgium 92. Romania ended the year with fewer infringement cases than in 2011 (47), but more than in 2010 (36). The following chart shows the policy areas in which Romania was most frequently subject to infringement procedures:

## 44 INFRINGEMENT CASES AGAINST ROMANIA



The Commission did not bring any cases against Romania before the Court in 2012 (like in 2011). In Romania's reference group, there were no referrals against the Czech Republic, there was two against Greece four each against the Netherlands, Portugal and Hungary, and six against Belgium.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 15 infringement procedures against Romania for late transposition of various directives in 2012 (there were 46 in 2011). Romania's performance was worse than that of the Czech Republic (13 new late transposition cases) and the Netherlands (6), but better than that of Belgium (21), Greece (22), Hungary (26) and Portugal (34). With 13 open late transposition cases by the end of 2012, Romania ranked 13<sup>th</sup> in the EU-27 (together with Greece and Luxembourg).

The policy area in which Romania faced challenges in transposing EU directives was transport (four new late transposition infringement cases).

## COMPLAINTS

The Commission received 105 complaints against Romania in 2012, the 13<sup>th</sup> highest figure in the EU-27.

Most complaints concerned the following areas: taxation (23 complaints, especially on excise duties and discriminatory treatment of permanent establishments); internal market (19, mainly public procurement); and justice (19, mainly on civil and criminal law, the functioning of the judiciary, fundamental rights).

Other complaints concerned: energy (including consumer provisions on the internal energy market, billing and metering of heating/hot water consumption); environment (e.g. inadequate impact assessment, industrial emissions, nature protection – Natura 2000); agriculture (for example, rural development, direct payments and organic farming); health and consumers (particularly food safety); and transport (such as public service obligations).

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Romanian authorities were working on 51 cases at the end of 2012. The Commission opened 57 new cases in 2012. With an average EU Pilot response time of 77 days, Romania was among the Member States that did not respect the 10-week target. Romania put in place a number of measures to ensure compliance with EU law. For example, it removed the Romanian nationality condition for becoming a public notary, changed its end-user price regulation schemes to give consumers the freedom of choice (by phasing-out regulated electricity end-user prices),<sup>299</sup> addressed its inadequate transposition of the Waste Electrical and Electronic Equipment Directive (especially on financial guarantees incumbent to individual producers),<sup>300</sup> and modernised/replaced laying-hen cages to fully implement the ban on un-enriched cages.<sup>301</sup>

## IMPORTANT JUDGMENTS

There were no such judgments.

## KEY INFRINGEMENT PROCEEDINGS

- Inadequate nature protection in the Sulina Danube Delta beach development project<sup>302</sup>
- Gas export ban
- Lack of transparency in the conditions for accessing the natural gas transmission networks<sup>303</sup>
- Non-transposition of the Data Retention Directive<sup>304</sup>, the Directive on simplified reporting of rules on mergers and divisions<sup>305</sup> and the Directive on the transfer of defence-related products within the EU<sup>306</sup>
- Transparency and equal treatment concerns when awarding a public works contract for modernising Bucharest's road infrastructure<sup>307</sup>
- Non-compliance with the Racial Equality Directive<sup>308</sup> (direct and indirect discrimination, burden of proof)
- Disadvantageous tax treatment of permanent foreign legal companies established in Romania
- Failure to correctly implement the ban on un-enriched cages for laying hens<sup>309</sup>

299 [IP/11/414](#)

300 Directive [2002/96/EC](#)

301 [IP/12/47](#)

302 [IP/12/539](#)

303 [IP/11/1437](#)

304 Directive [2006/24/EC](#)

305 [IP/12/74](#)

306 [IP/12/532](#)

307 [IP/12/73](#)

308 Directive [2000/43/EC](#)

309 [IP/12/47](#)



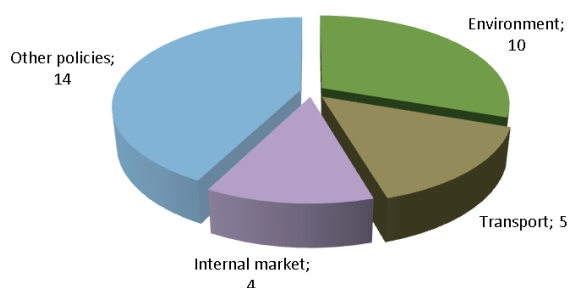
## SLOVAKIA

## GENERAL STATISTICS

With 33 open infringement cases at the end of 2012, Slovakia had the sixth-best performance out of the EU-27. In 2012, the Commission launched 18 new infringement procedures against Slovakia by sending letters of formal notice.

Slovakia's performance was average in its reference group: Lithuania had 22 open infringement cases, Denmark had 27, Ireland 39 and Finland 43. Slovakia ended the year with fewer infringement cases than in the two preceding years (41 cases in 2011 and 38 in 2010). The following chart shows the policy areas in which Slovakia was most frequently subject to infringement procedures:

## 33 INFRINGEMENT CASES AGAINST SLOVAKIA



The Commission brought one case against Slovakia before the Court in 2012 (there was one in 2011) because of late transposition of a directive (see below). In Slovakia's reference group, no cases against Denmark and Lithuania were brought before the Court, and the Commission decided on one referral against Ireland and six against Finland.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened seven infringement procedures against Slovakia for late transposition of various directives in 2012 (there were 36 such procedures in 2011). This result is better than for the other Member States in Slovakia's reference group: Ireland had 8 new late transposition cases, Lithuania had 10, Denmark 17 and Finland 21. With only eight open late transposition cases by the end of 2012, Slovakia ranked joint 3<sup>rd</sup> in the EU-27 (with Ireland).

This significant improvement means that, apart from the two new late transposition infringement cases in the area of transport, Slovakia did not face major challenges in transposing EU directives prior to the end of 2012. The Commission referred Slovakia to the Court with a request for financial sanctions (Article 260(3) TFEU) due to the late transposition of the Waste Framework Directive.<sup>310</sup>

## COMPLAINTS

The Commission received 55 complaints against Slovakia in 2012, the eighth-lowest figure in the EU-27.

The areas in which most complaints were received were: environment (12 complaints, especially waste management, nature protection and missing environmental impact assessments); free movement of workers (10, particularly as regards the nationality and residence conditions for taking up certain posts in the public sector); and justice (eight, for example, equal opportunities and equal treatment of men and women in employment matters). Other complaints concerned e.g. public procurement.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2012, the Commission and Slovak authorities were working on 33 EU Pilot open files – a caseload that is lower than the number of open files at the end of 2011 (42). In 2012, the Commission invited Slovakia to give its opinion on 39 new EU Pilot files. As in 2011 with 57 days, Slovakia had the best average EU Pilot response time (51 days) in the EU-27.

The Slovak authorities eliminated a number of inconsistencies between national and EU law, so the Commission was able to close a number of infringement cases in 2012. Slovakia clarified the scope of its rules transposing the End of Life Vehicle Directive<sup>311</sup> and these now include improved measures that encourage carmakers to avoid using hazardous materials.<sup>312</sup> It ensured the independence of the infrastructure manager and the regulatory body in implementing the First Railway Package.<sup>313</sup> Lastly, it allowed consumer associations to claim injunctions against firms based in other Member States that applied unfair marketing techniques.<sup>314</sup>

## IMPORTANT JUDGMENTS

In 2012, the Court delivered an important preliminary ruling on public procurement. In a legal dispute related to a tender for motorway toll collection services, the Court confirmed that the Public Procurement Directive<sup>315</sup> obliges contracting authorities to request an explanation from tenderers who offer abnormally low prices, and that contracting authorities may not waive this obligation. The Court also clarified that national provisions might allow contracting authorities to ask tenderers to clarify their offers but in doing so, they must treat all tenderers equally.<sup>316</sup>

## KEY INFRINGEMENT PROCEEDINGS

- Denial of Christmas pension supplement (vianočný príspevok) to non-residents<sup>317</sup>
- Denial of carers', disability and cash allowances to non-residents<sup>318</sup>
- Obstacles on car rug market (e.g. a requirement for type approval and for appointment of a local representative)
- Failure to respect air quality (PM10) limit values in several zones and agglomerations<sup>319</sup>
- Removing health insurance firms from the scope of the Non-life Insurance Directives<sup>320</sup>

311 Directive [2000/53/EC](#)

312 [IP/11/93](#) on the earlier reasoned opinion

313 [IP/09/1438](#) on the earlier reasoned opinion

314 [IP/12/184](#) on the earlier reasoned opinion

315 Directive [2004/18/EC](#)

316 SAG ELV Slovensko and Others, [C-599/10](#)

317 [MEMO/12/876](#)

318 [MEMO/12/794](#)

319 [IP/13/47](#)

320 Directives [73/239/EEC](#) and [92/49/EEC](#)

310 [IP/12/422](#) and Directive [2008/98/CE](#)

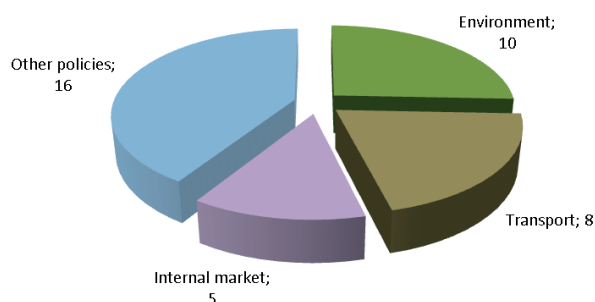
## SLOVENIA

## GENERAL STATISTICS

With 39 open infringement cases at the end of 2012, Slovenia had the tenth-best performance out of all the EU-27 Member States, together with Ireland. In 2012, the Commission launched 27 new infringement cases against Slovenia by sending letters of formal notice.

However, Slovenia's performance was below average in its reference group; Latvia had 20 open infringement cases, Estonia had 24, Malta 26, Luxembourg 34 and Cyprus 43. Slovenia ended the year with fewer infringement cases than in 2011 (46), but more than in 2010 (33). The following chart shows the policy areas in which Slovenia was most frequently subject to infringement procedures:

## 39 INFRINGEMENT CASES AGAINST SLOVENIA



The Commission brought five cases against Slovenia before the Court in 2012 (there had been one referral in 2011). In Slovenia's reference group, there was one referral against Luxembourg, four against Cyprus but none against Estonia, Malta and Latvia.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 16 infringement procedures against Slovenia for late transposition of various directives in 2012 (there were 43 such procedures in 2011). In Slovenia's reference group, this result is better than that of Malta (18 new late transposition cases) and Cyprus (18) but Luxembourg, Latvia and Estonia performed better (with 12, 10 and five such infringement cases, respectively). With 19 open late transposition infringements by the end of 2012, Slovenia ranked 20<sup>th</sup> in the EU-27.

The policy areas in which Slovenia faced major challenges in transposing EU directives were health and consumers (6 new late transposition cases) and transport (4).

The Commission referred Slovenia to the Court with a proposal for financial sanctions under Article 260(3) TFEU due to late transposition of five directives: the Better Regulation Directive,<sup>321</sup> the Directive on users' rights in electronic communications networks,<sup>322</sup> the Directive on defence procurement<sup>323</sup> and the Gas and the Electricity Directives<sup>324</sup> in the Third Energy Package.

## COMPLAINTS

The Commission received 35 complaints against Slovenia in 2012, the fifth-lowest figure in the EU-27.

The areas in which most complaints were received were: internal market and services (11 complaints, mainly free movement of services and public procurement); environment (nine, most on nature protection,

environmental impact assessment and waste management); and justice (six, on free movement of people). There were also complaints about the system of study grants, which requires recipients to work in Slovenia for a period equal to the duration of financed studies, and about nationality-based discrimination on public transport.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2012, the Commission and the Slovene authorities were working on 33 open files in EU Pilot – a caseload that is below average and has substantially decreased compared to the number of files at the end of 2011 (67). The Commission opened 37 new EU Pilot files on Slovene issues in 2012. Slovenia's average EU Pilot response time, 64 days, remains below the 10-week target and shows a slight improvement as compared with the year before (67 days).

Out of the open infringement cases, the Slovene authorities could finish transposing the Waste Framework Directive<sup>325</sup>. As regards the municipal land use plan in Rova-South, Slovenia repeated the assessment procedure required by national rules implementing the Strategic Environmental Assessment Directive.<sup>326</sup> The Commission also received the Slovenian implementing measures for the Blue Card Directive<sup>327</sup> (designed to facilitate the admission of highly-skilled workers from third countries into the EU).<sup>328</sup> As a result, the corresponding cases were closed in 2012.

## IMPORTANT JUDGMENTS

The Court ruled on the compatibility of the Slovenian complementary health insurance laws with the First and Third Non-Life Insurance Directives<sup>329</sup> and found that these directives do not allow the national supervisory authority to request insurers to regularly submit their current insurance terms and conditions for prior approval (including cases in which they decide to raise premiums).<sup>330</sup>

## KEY INFRINGEMENT PROCEEDINGS

- Disregard of other Member States' transitional periods under the Directive on drivers' certificates of professional competence<sup>331</sup>
- Deficiencies in the transposition of the Environmental Impact Assessment Directive<sup>332</sup>
- Incomplete transposition of the Directives of the Third Energy Package<sup>333</sup>

321 Directive [2009/140/EC](#) and [IP/12/524](#)

322 Directive [2009/136/EC](#) and [IP/12/524](#)

323 Directive [2009/81/EC](#) and [IP/12/1020](#)

324 Directives [2009/72/EC](#) and [2009/73/EC](#) and [IP/12/1139](#)

325 Directive [2008/98/EC](#)

326 Directive [2001/42/EC](#)

327 Directive [2009/50/EC](#)

328 [IP/12/529](#)

329 Directives [73/239/EEC](#) and [92/49/EEC](#)

330 Commission v Slovenia, [C-185/11](#)

331 Directive [2003/59/EC](#)

332 Directive [2011/92/EU](#)

333 Directives [2009/72/EC](#) and [2009/73/EC](#), and [IP/12/1139](#)

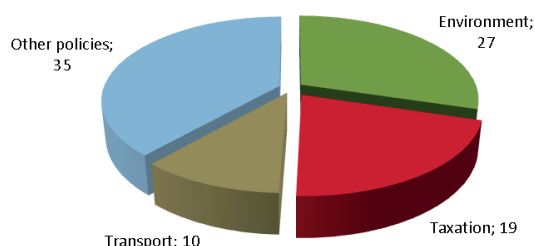
## SPAIN

### GENERAL STATISTICS

With 91 infringement cases open at the end of 2012, Spain's performance was third worst in the EU-27. The Commission launched 32 new infringement cases against Spain in 2012.

Spain's performance was below average in its reference group: Germany and the UK had 61 infringement cases each, France had 63, Poland 82 and Italy 99. However, Spain ended the year with fewer infringement cases than in 2011 (99) and 2010 (109). The following chart shows the policy areas in which Spain was most frequently subject to infringement procedures:

#### 91 INFRINGEMENT CASES AGAINST SPAIN



The Commission referred Spain to the Court once in 2012 (there were 6 referrals in 2011), because of barriers to importing heavy goods vehicles. Spain refused to allow road haulage operators to use the first vehicle in their fleet for commercial purposes, if it was over five months old.<sup>334</sup> Spain had the lowest number of referrals in its reference group. There were twelve referrals against Poland, seven against Germany, six against the UK, four against France and three against Italy.

### TRANSPOSITION OF DIRECTIVES

The Commission opened 16 infringement cases against Spain for late transposition of various directives in 2012 (43 in 2011). Spain performed better than Poland (18), the UK (24) and Italy (36), but worse than Germany (11) and France (14). With 12 open late transposition cases by the end of 2012, Spain ranked 11th in the EU-27 (together with Bulgaria).

The policy areas in which Spain faced challenges to transposing EU directives were: environment (six new late transposition cases), health and consumers (four) and transport (three).

### COMPLAINTS

The Commission received 306 complaints against Spain in 2012. Spain ranked second in the EU-27.

Most complaints concerned: environment (73 complaints, many on inadequate water protection and management, waste management, nature protection); internal market (43, mainly public procurement, freedom to provide services and regulated professions); and protection of workers (35, non-implementation of the rules on health and safety at work,<sup>335</sup> non-acceptance of European Health Insurance Cards (EHIC) of citizens from other Member States, refusal to treat citizens based on their EHIC, if covered by private health insurance, minimum right to paid annual leave for police forces in the Basque Autonomous Region: 35). Other complaints concerned for example, the automotive sector, direct payments and quality schemes in agriculture, zootechnics (stud-books for horses), airport charges, free movement of people and civil justice.

### EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2012, 107 files on Spanish issues were open in EU Pilot (at the end of 2011: 365), the second highest caseload in the EU-27. Spain had the second highest number of new EU Pilot files in 2012 (110). Its average EU Pilot response time (74 days) was above the 10-week target (it was 82 days in 2011). The Commission closed a number of infringement cases after Spain introduced measures to comply with EU law. The Spanish authorities removed: obstacles to exporting pharmaceutical products (requirement to notify them about medicines to be exported to other Member States); discrimination in access to the security guard and archaeologist professions; discrimination of people with work experience in other Member States and applying for public sector jobs; and excessive conditions for approving associations that maintain stud-books for registered horses.<sup>336</sup>

### IMPORTANT JUDGMENTS

The Court ordered Spain to pay a lump sum of €20 million and a daily penalty of €50 000 for failing to comply with its 2002 judgment under Article 108 TFEU, ordering compliance with the Commission's decision on recovering unlawful state aid paid to companies part of the Magefesa group.<sup>337</sup> In another ruling, the Court held that Spain did not adopt and notify to the Commission and the other concerned Member States a number of river basin management plans, and failed to initiate public consultations on these plans in several areas.<sup>338</sup> The Court also found that Spain's restrictive tax provisions for individuals moving to another Member State went against the freedom of movement of workers and the freedom of establishment.<sup>339</sup> In a preliminary ruling, the Court clarified the calculation of pension contributions for part-time workers and found Spain's legislation to be discriminatory because it required a proportionally longer contribution period for part-time workers, mostly women.<sup>340</sup>

### KEY INFRINGEMENT PROCEEDINGS

- Failure to bring urban waste water treatment up to EU standards in small agglomerations
- Monopoly in the system for recruiting port workers (dockers)<sup>341</sup>
- Discriminatory taxation of investments in non-Spanish EU public bonds
- Real estate tax regime discriminatory against non-residents<sup>342</sup>
- Unlawful VAT-exemption of notary services connected with financial transactions<sup>343</sup>
- Wrong application of the Framework Directive on health and safety at work to workers of the Guardia Civil (in particular as preventive services)
- Restrictions on film distribution in Catalonia<sup>344</sup>
- Failure to correctly implement the ban on un-enriched cages for laying hens<sup>345</sup>
- Failure to take into account employment in international organisations when calculating pensions rights
- Incomplete transposition of the Directive on energy performance of buildings

336 [IP/11/708](#)

337 Commission v Spain, [C-610/10](#)

338 Commission v Spain, [C-403/11](#) and Directive [2000/60/EC](#)

339 Commission v Spain, [C-269/09](#)

340 Elbal Moreno, [C-385/11](#)

341 [IP/12/1022](#)

342 [MEMO/12/708](#)

343 [MEMO/12/794](#)

344 [IP/12/663](#)

345 [IP/12/629](#)

334 [IP/12/649](#)

335 Directive [89/391/EC](#)

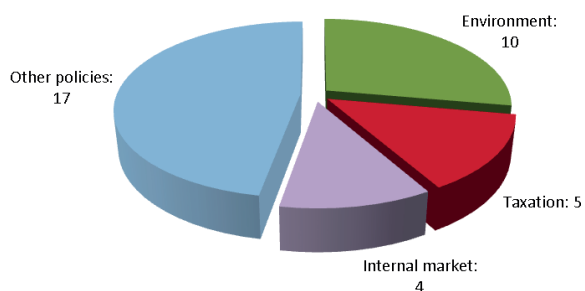
## SWEDEN

### GENERAL STATISTICS

With 36 infringement cases open at the end of 2012, Sweden's performance was eighth best in the EU-27. The Commission opened nine new infringement cases against Sweden in 2012.

Sweden's performance was best in its reference group: Bulgaria had 46 open infringement cases and Austria had 51. Sweden ended the year with fewer infringement cases than in 2011 (60) and 2010 (53). The following chart shows the policy areas in which Sweden was most frequently subject to infringement procedures:

#### 36 INFRINGEMENT CASES AGAINST SWEDEN



The Commission referred one case against Sweden to the Court in 2012, because Sweden's national legislation did not comply with the Directive on Waste Electrical and Electronic Equipment (specifically waste storage sites).<sup>346</sup> In Sweden's reference group, there were two referrals against Bulgaria but none against Austria.

### TRANSPOSITION OF DIRECTIVES

The Commission opened six infringement procedures against Sweden for late transposition of various directives in 2012 (there were 31 in 2011). Sweden's performance was the best in its reference group: 13 new late transposition infringements were initiated against Bulgaria and 24 against Austria. With 7 open late transposition cases by the end of 2012, Sweden ranked 2nd in the EU-27.

Sweden faced some challenges in transposing EU directives in the area of transport (two new late transposition infringement cases).

### COMPLAINTS

The Commission received 111 complaints against Sweden in 2012, the 18<sup>th</sup> highest figure in the EU-27.

Most complaints concerned: health and consumers (22 complaints, especially on the reimbursement of medical costs); justice (18, most on the free movement and residence rights); and taxation (14, limitation of deduction rights for company groups and congestion tax). Other complaints concerned, for example, nature protection (in particular wolf hunting) and public procurement.

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the Swedish authorities were working on 34 open files in EU Pilot at the end of 2012 (at the end of 2011: 84 files), which is an average caseload. The Commission opened 38 new files on Swedish issues in 2012. Sweden met the 10-week target for providing replies in EU Pilot and submitted its responses within an average of 61 days (it was 81 days in 2011).

The Swedish authorities actively sought to settle infringement procedures, so the Commission could close a number of cases in 2012. For example, Sweden transposed provisions on the recovery of petrol vapour that would otherwise be emitted into the air during vehicle refuelling<sup>347</sup> and common rules for the internal market in electricity and in natural gas. It also rectified the incorrect application of EU legislation on the working time of self-employed drivers.<sup>348</sup> It put national legislation in line with the directive on strategic environmental assessment<sup>349</sup> and with the directive on recognising professional qualifications.<sup>350</sup> It also allowed registration of double surnames for children of dual nationality.<sup>351</sup>

### IMPORTANT JUDGMENTS

The Court established that Sweden had failed to respect the Directive on integrated pollution prevention and control because there remained some industrial installations in Sweden that had not yet received new or renewed permits in accordance with the above directive.<sup>352</sup>

### KEY INFRINGEMENT PROCEDURES

- Wolf hunting practices inconsistent with EU nature protection provisions<sup>353</sup>
- Full implementation of the judgment on licensing high polluting installations<sup>354</sup>
- Possibly abusive extensions of fixed-term employment contracts<sup>355</sup>
- Failure to transpose the Data Retention Directive<sup>356</sup>
- Infringement of rules on free movement of people<sup>357</sup>
- Discriminatory taxation of foreign pension funds<sup>358</sup>

<sup>347</sup> Directive [2009/126/EC](#)

<sup>348</sup> Directive [2002/15/EC](#)

<sup>349</sup> Directive [2001/42/EC](#)

<sup>350</sup> Directive [2005/36/EC](#)

<sup>351</sup> [IP/12/644](#) and Directive [2004/38/EC](#)

<sup>352</sup> *Commission v Sweden*, [C-607/10](#) and Directive [2008/1/EC](#)

<sup>353</sup> [IP/11/732](#) and Directive [1992/43/EC](#)

<sup>354</sup> Directive [2008/1/EC](#)

<sup>355</sup> Directive [1999/70/EC](#)

<sup>356</sup> Directive [2006/24/EC](#) and [IP/12/530](#) on the partial withdrawal

<sup>357</sup> Directive [2004/38/EC](#) and [IP/12/646](#)

<sup>358</sup> [IP/12/284](#)

<sup>346</sup> Directive [2002/96/EC](#) and [IP/12/1024](#)

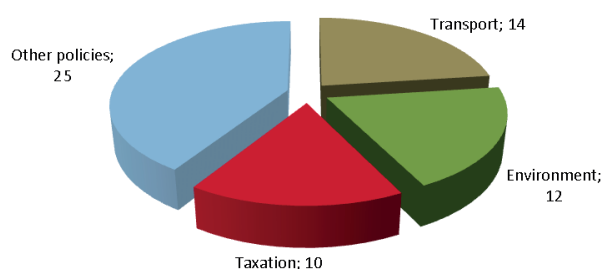
## UNITED KINGDOM

## GENERAL STATISTICS

There were 61 infringement cases open against the UK at the end of 2012, the eighth-highest number in the EU-27 (equal with Germany). The Commission launched 34 new infringement cases against the UK in 2012 by sending a letter of formal notice.

The UK's performance (along with that of Germany) was the best in its reference group: France had 63 open infringement cases, Poland had 82, Spain 91, and Italy 99. The UK ended the year with fewer infringement cases than in 2010 (72) and 2011 (76). The following chart shows the policy areas in which the UK was most frequently subject to infringement procedures:

## 39 INFRINGEMENT CASES AGAINST THE UNITED KINGDOM



The Commission brought six cases against the UK before the Court in 2012 (only two in 2011). Four of these concerned taxation, and more specifically: (i) UK legislation making it excessively difficult for undertakings to benefit from cross-border loss relief<sup>359</sup> (against the 'Marks & Spencer' Court ruling<sup>360</sup>);<sup>361</sup> (ii) UK taxation of assets transferred abroad<sup>362</sup> (iii) discriminatory attribution of capital gains to members of non-resident undertakings<sup>363</sup>; and (iv) UK legislation making it excessively difficult for taxpayers to exercise their right to be paid back taxes that had been levied in breach of EU rules.<sup>364</sup> Another referral concerned the UK's refusal to compensate for duties that its customs authorities failed to collect in the past and that should have been paid into the EU budget.<sup>365</sup> The UK was also referred to the Court for not offering maximum interconnection capacity in its gas market.<sup>366</sup> Within the UK's reference group, there were twelve referrals against Poland, seven against Germany, four against France, three against Italy and one against Spain.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 24 infringement procedures against the UK for late transposition of various directives in 2012 (there were 57 in 2011). The UK's performance was worse than that of Germany, France, Spain and Poland (11, 14, 16 and 18 new late transposition cases, respectively) but better than that of Italy (36). With 25 open late transposition cases by the end of 2012, the UK ranked 24<sup>th</sup> in the EU-27.

The policy areas in which the UK faced significant challenges in transposing EU directives were: transport (six new late transposition cases), health and consumers (four), internal market (three) and enterprise and industry (three).

## COMPLAINTS

The Commission received 197 complaints against the UK in 2012, the fifth highest number in the EU-27.

Most complaints concerned: the free movement of people (60 complaints, in particular difficulties in obtaining residence cards, requiring a visa from family members of EU citizens, refusing visas for reasons prohibited by EU law<sup>367</sup>). Other complaints concerned the following areas: internal market (32, mainly public procurement, regulated professions and freedom to provide services) and environment (44, especially on nature protection<sup>368</sup> and air quality). There were also many complaints about the residence requirement for certain posts.

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission and the UK authorities were working on 67 open files at the end of 2012 (at the end of 2011: 192), the third highest caseload in the EU-27. The Commission sent the UK 64 new EU Pilot files in 2012. The UK kept its average EU Pilot response time (70 days) within the 10-week target (it was 66 days in 2011).

The Commission was able to close a number of infringement cases in 2012 because the UK complied with its obligations. For instance, the UK: modified its legislation to allow EU-qualified pharmacists to be responsible for new pharmacies; accepted that family members of pensioners who lived abroad could independently claim sickness benefits; correctly applied the Landfill Directive<sup>369</sup> with regard to site closure and aftercare. The UK also conducted a comprehensive reform of its anti-avoidance regime (CFC-legislation) to prevent tax abuse while not compromising the intra-EU establishment.<sup>370</sup>

## IMPORTANT JUDGMENTS

The Court found that the UK violated its obligations under the Urban Waste Water Directive<sup>371</sup> by failing to ensure: appropriate urban waste water collection in certain parts of London and Whitburn and proper urban waste water treatment in the plants at Beckton, Crossness and Mogden.<sup>372</sup>

The Court also issued a number of preliminary rulings in 2012. For example, it clarified in a landmark judgment concerning avoidance of double economic taxation of dividends, in particular dividends paid by third countries subsidiaries of EU companies.<sup>373</sup>

## KEY INFRINGEMENT PROCEEDINGS

- Discriminatory taxation of assets transferred abroad and of capital gains attributed to members of non-resident undertakings
- Violation of free movement of people (rights of family members, exemptions from the visa requirement, permanent residence of EU citizens from countries that have recently joined the EU)<sup>374</sup>

359 The possibility for a parent company to deduct the losses of its subsidiary established in another Member State, if all other possibilities have been exhausted.

360 Marks & Spencer plc v David Halsey, [C-446/03](#)

361 [IP/12/1017](#)

362 [IP/12/1147](#)

363 [IP/12/1146](#)

364 [IP/12/64](#)

365 [IP/12/632](#)

366 [IP/12/52](#)

367 Directive [2004/38/EC](#)

368 Directive [92/43/EEC](#)

369 Directive [1999/31/EC](#)

370 [IP/11/606](#)

371 Directive [91/271/EEC](#)

372 Commission v United Kingdom, [C-301/10](#) and [IP/09/1488](#)

373 Test Claimants in the FII Group Litigation, [C-35/11](#)

374 [IP/12/646](#)

PART II  
POLICIES

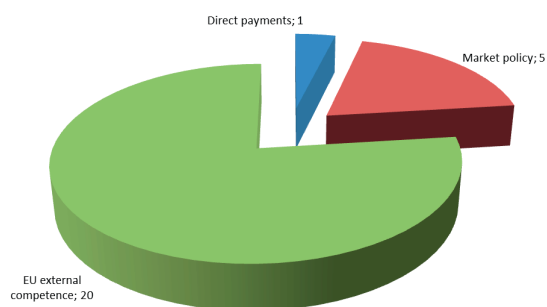


## AGRICULTURE & RURAL DEVELOPMENT

### GENERAL STATISTICS

There were 26 open infringement cases in the area of agriculture & rural development at the end of 2012. This was the 11<sup>th</sup> highest number of cases in the Commission's 21 reporting policy areas. They can be broken down as follows:

#### 26 INFRINGEMENT CASES ON AGRICULTURE & RURAL DEVELOPMENT



The Commission launched one infringement procedure in the area of agriculture in 2012 by sending a letter of formal notice. The case was against France for imposing a tax on milk producers who exceeded their individual milk quotas, although the national quota had not been exceeded. The French tax significantly interferes with the functioning of the system of milk quotas and surplus levies, as established by the Single CMO.<sup>375</sup>

### TRANSPOSITION OF DIRECTIVES

The Commission did not open any late transposition infringement cases in the area of agriculture in 2012.

### COMPLAINTS

The Commission received 59 complaints in the agricultural area in 2012, substantially fewer than in 2011 (86). It fully closed 45 of these and transferred 11 to EU Pilot for pre-infringement discussions with Member States.

Complaints mainly concerned: wine and spirits (use of protected designations, membership in a producers' group, respecting the Single CMO rules and principles); quality schemes; and organic farming. The Commission received many complaints about a new piece of Polish legislation on state-owned agricultural estate management, which limited the size of agricultural land leased to farmers and obliged leaseholders to purchase farms within a certain timeframe. As in previous years, many complaints concerned the granting of direct payments and national authorities' selection of rural development support beneficiaries.

Petitions received from the European Parliament resulted in EU-Pilot files being sent to: Ireland (for using the "Farmed in the Republic of Ireland" logo on milk and cream products); and Greece (on single payment deductions made by the Agricultural Bank of Greece).

### OWN-INITIATIVE CASES

The Commission launched cases in the wine sector and on the compulsory use of language in labelling. It opened many own-initiative EU Pilot files on organic farming. The press had revealed serious cases of fraud in labelling non-biological products as organic ones in two Member States. Information collected showed significant deficiencies in the monitoring of organic production in these Member States. The Commission had to ensure that national authorities adopted or were about to adopt measures to improve and strengthen their monitoring systems and to take measures in relation to the fraudulently-labelled products still in circulation. One of these cases is still pending, as the replies to certain questions were not satisfactory.

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened and processed 22 new EU Pilot files on agricultural issues in 2012. In 21 cases, it accepted the Member State's explanation or commitments (95 % acceptance rate). At the end of 2012, 17 files were still open.

The Commission closed the Italian case on fraudulently-labelled organic products because the Italian national authorities provided accurate and detailed information, seriously addressed the problem and took appropriate remedial measures (legislative or other).

### IMPORTANT JUDGMENTS

In 2012, the Court delivered one judgment under Article 258 TFEU in the area of EU agricultural law. It confirmed<sup>376</sup> that the Czech Republic had failed to fulfil its obligations under the Single CMO Regulation<sup>377</sup> by allowing a milk product that cannot be classified as "butter" to be marketed under the '*pomazánkové máslo*' (butter spread) sales designation.

In a preliminary ruling on the nature of sanctions in the CAP area, the Court confirmed the view of the Commission<sup>378</sup> and judged that sanctions on direct payments were of an administrative nature. Therefore, a sanction imposed by a national paying agency due to over-declaration of areas does not prevent the farmer's prosecution under national criminal law.

## OUTLOOK

Important implementation work in 2013 includes:

- Cases in which Member States do not apply common rules and therefore jeopardise the common agricultural policy's effectiveness
- Pursuing infringement cases under the reformed CMO rules in the wine sector and those affecting the direct payment regime
- Use of the clearance of accounts procedure to ensure that Member States maintain proper management and control systems

Further information is available at:  
[http://ec.europa.eu/dgs/agriculture/index\\_en.htm](http://ec.europa.eu/dgs/agriculture/index_en.htm)

<sup>376</sup> Commission v the Czech Republic, [C-37/11](#)

<sup>377</sup> Regulation (EC) No [1234/2007](#)

<sup>378</sup> Bonda, [C-489/10](#)

<sup>375</sup> Common organisation of the markets in agricultural products



## FINANCIAL PROGRAMING AND BUDGET

In 2012, the Commission detected only 138 anomalies in the area of traditional own resources (there were 309 in 2011) and set 56 value added tax (VAT) and 255 gross national income (GNI) reservations.<sup>379</sup> Correspondingly, 680 accounting actions for traditional own resources (844 in 2011) and 465 for VAT/GNI (185 in 2011) were chosen for potential corrective payments, which would have included principal amounts and belated interest to be paid by Member States. Most of

379 Regulation (EC) No [1553/1989](#) and Regulation (EC) No [1150/2000](#).

the newly detected anomalies were solved at an early stage in bilateral discussions with Member States, including senior-level management meetings, or in the Advisory Committee on Own Resources.<sup>380</sup>

*Further information is available at:*  
[http://ec.europa.eu/dgs/budget/index\\_en.htm](http://ec.europa.eu/dgs/budget/index_en.htm)

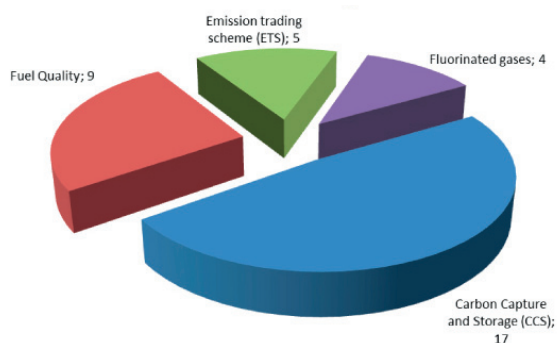
380 The two above-mentioned Regulations establish a conciliation mechanism, whose function is similar to that of EU Pilot.

## CLIMATE ACTION

### GENERAL STATISTICS

There were 35 open infringement cases in the climate action area at the end of 2012, the tenth highest caseload in the Commission's 21 reporting policy areas. The cases can be broken down as follows:

#### 35 INFRINGEMENT CASES ON CLIMATE ACTION



The Commission opened 19 infringement cases in the climate action area in 2012, mostly due to late transposition. These included in particular cases against Greece and Poland for failure to notify the Commission about putting in place certification and training systems for companies and personnel working with fluorinated gases, as required by the Regulation on certain fluorinated greenhouse gases.<sup>381</sup> None of the climate action cases were referred to the Court in 2012. There were also no Court judgments under Article 258 TFEU in the field of climate action.

### TRANSDITION OF DIRECTIVES

The Commission launched 11 infringement cases in 2012 because of missing or partial national implementing rules. It launched six late transposition cases due to delays in communicating national implementing measures for the directive on fuel quality.<sup>382</sup> Several Member States notified the Commission of their implementing rules, so some of these cases were closed by the end of 2012. Still, there remained 31 open late transposition cases in the area of climate action by the end of 2012.

381 Regulation (EC) No [842/2006](#)

382 Directive [2011/63/EC](#)

### COMPLAINTS

The Commission received six complaints on climate issues in 2012 (there were 6 cases in 2011, too). It handled eight and transferred three to EU Pilot for discussion with Member States.

### OWN-INITIATIVE CASES

In addition to launching the infringement cases against Greece and Poland (mentioned above), the Commission also sent reasoned opinions to Malta and Italy for incorrectly applying the regulation on fluorinated greenhouse gases.<sup>383</sup>

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 17 files on climate action in EU Pilot in 2012. It assessed 30 files in 2012 and accepted 16 Member State replies (53% success rate). There remained five open EU Pilot files in this area by the end of 2012.

### IMPORTANT JUDGMENTS

The Court did not deliver any judgments or preliminary rulings in the area of climate action in 2012.

## OUTLOOK

Important implementation work in 2013 includes:

- Verifying that national transposition measures comply with the four flagship directives (aviation in emissions trading,<sup>384</sup> extension of the emissions trading system,<sup>385</sup> fuel quality rules<sup>386</sup> and geological storage of CO<sub>2</sub><sup>387</sup>)
- Continuing to monitor the correct application of the regulations on fluorinated greenhouse gases and ozone depleting substances<sup>388</sup>

*Further information is available at:*  
[http://ec.europa.eu/clima/news/index\\_en.htm](http://ec.europa.eu/clima/news/index_en.htm)

383 [IP/12/415](#)

384 Directive [2008/101/EC](#)

385 Directive [2009/29/EC](#)

386 Directives [2011/63/EC](#) and [2009/30/EC](#)

387 Directive [2009/31/EC](#)

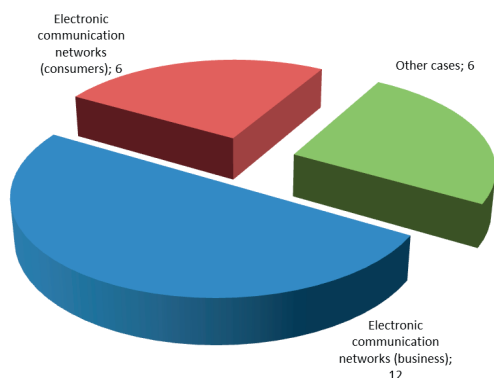
388 Regulations (EC) Nos [842/2006](#) and [1005/2009](#)

## COMMUNICATIONS NETWORKS, CONTENT & TECHNOLOGY

### GENERAL STATISTICS

There were 24 open infringement cases in the area of communications networks, content & technology at the end of 2012. This was the 12<sup>th</sup> highest number of cases in the Commission's 21 reporting policy areas. The cases can be broken down as follows:

#### 24 INFRINGEMENT CASES ON COMMUNICATIONS NETWORKS, CONTENT & TECHNOLOGY



The Commission launched four new infringement cases in this area in 2012 by sending letters of formal notice. In addition, it sent reasoned opinions to the Netherlands and Italy for non-compliance with the requirements of the Framework Directive<sup>389</sup> and the Access Directive<sup>390</sup> (Dutch legislation interferes with the National Regulatory Authority's independence, tasks and responsibilities, while Italian legislation pre-empted the National Regulatory Authority's margin of discretion in using its regulatory powers to ensure that the measure adopted is appropriate to tackle the competitive problems reported in the market analysis).

The Commission referred 13 cases to the Court in 2012 in relation to telecommunication issues. It contested Hungary's special tax on telecom operators.<sup>391</sup> There were two referrals under Article 260(2) TFEU (see next paragraph) and ten under Article 260(3) TFEU (see next section).

At the end of 2012, five cases that were launched due to non-compliance with a Court judgment under Article 258 TFEU were still open. For two of them, a letter of formal notice was sent to Belgium and Portugal under Article 260(2) TFEU and then the cases were referred to the Court. The Commission asked the Court to fine Portugal for not respecting a 2010 Court judgment<sup>392</sup> requiring compliance with EU telecoms rules when deciding who should provide universal service in Portugal.<sup>393</sup>

### TRANSPOSITION OF DIRECTIVES

No infringement cases caused by late transposition in the area of communications networks, content and technology were launched in 2012 (39 in 2011). Seven on-going late transposition infringement cases were still open at the end of 2012.

The Commission referred ten cases to the Court under Article 260(3) TFEU, proposing financial sanctions because of late transposition of: the Citizens' Rights Directive<sup>394</sup> (Belgium, the Netherlands, Poland, Portugal and Slovenia); the Better Regulation Directive<sup>395</sup> (Belgium, the Netherlands, Poland and Slovenia); and a Directive amending the Audiovisual Media Services Directive<sup>396</sup> (Poland).

389 Directive [2002/21/EC](#)

390 Directive [2002/19/EC](#)

391 [IP/12/286](#)

392 Commission v Portugal, [C-154/09](#)

393 [IP/12/287](#)

394 Directive [2009/136/EC](#)

395 Directive [2009/140/EC](#)

396 Directive [2007/65/EC](#)

### COMPLAINTS

The Commission received 28 complaints relating to communication networks in 2012 (32 in 2011). Of the 34 complaints the Commission processed in 2012, it fully closed 13 and transferred 17 to EU Pilot for discussion with Member States. As in previous years, most complaints received in 2012 concerned national telecommunications rules.

### OWN-INITIATIVE CASES

The Commission assessed Member States' compliance with the Audiovisual Media Services Directive and identified issues with implementing EU laws on electronic communications (e.g. independence of the national regulators). It sent Estonia a reasoned opinion and urged it to ensure the national regulator's independence, as required by the Framework Directive.<sup>397</sup>

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 34 new EU Pilot files on electronic communications issues and processed 49 in 2012. In 29 cases, it accepted the Member State's explanations or actions (59% success rate). At the end of 2012, 54 files were still open.

Several cases of non-conformity with EU electronic communications rules were closed in 2012 before the Court issued a judgment because Member States complied with EU law. They included cases against Greece, Hungary, the United Kingdom and Denmark. A case against Hungary on the incorrect transposition of the directive on re-using public sector information<sup>398</sup> was also closed because Hungary complied with EU rules.

### IMPORTANT JUDGMENTS

There were no particularly important judgments in the area of communications networks, content and technology in 2012.

## OUTLOOK

Important implementation work in 2013 includes:

- Monitoring correct transposition of the 'revised framework for electronic communications' (Citizens' Rights and Better Regulation Directives); priorities include: independence of national regulators, respect for consultation procedures and consumer protection.
- Monitoring the correct implementation of the Audiovisual Media Services Directive

Further information is available at:  
[http://ec.europa.eu/dgs/connect/index\\_en.htm](http://ec.europa.eu/dgs/connect/index_en.htm)

397 [IP/12/630](#)

398 Directive [2003/98/EC](#)

## COMPETITION

### PRIORITY AREAS

In 2012, the Commission focused on monitoring the non-discriminatory assignment of broadcasting spectrum freed by the introduction of digital terrestrial television broadcasting (the so called 'digital dividend'). It investigated several Member States to establish whether they have assigned parts or all of the 'digital dividend' by using open and transparent procedures, which are based on proportionate, objective and non-discriminatory criteria.

In particular, the Commission sent a reasoned opinion to Bulgaria because of the limitations and prohibitions laid down in its legislation on tenders for assigning the digital terrestrial broadcasting spectrum appeared to be in breach of the Competition Directive,<sup>399</sup> the Framework Directive<sup>400</sup> and the Directive on authorising electronic communications networks<sup>401,402</sup>

The Commission also handled a number of complaints concerning the postal sector, as 2012 was the last year before the Postal Directives<sup>403</sup> full liberalisation obligation entered into force. For example, the Commission's action resolved a situation where a Member State attempted to protect the incumbent by imposing excessive registration requirements for alternative postal operators.

### FOLLOW-UP OF STATE AID DECISIONS

The Commission launched two infringement proceedings against Italy for failure to implement two Court judgments, which ordered the

recovery of incompatible state aid provided to enterprises that invested in the communities hit by the 2002 natural disasters and to those located in the Venice and Chioggia areas.

Proceedings under Article 260 TFEU, which obliges a Member State to recover incompatible state aid following a Commission Decision, remain an important part of the Commission's infringement work in this area. In 2013, the Commission will continue to refer long standing non-recovery cases to the Court to ensure effective recovery.

### IMPORTANT JUDGMENTS

The Court annulled the 2008 Commission Decision that found Greece to be infringing Articles 106 and 102 TFEU by giving the Public Power Corporation (PPC) privileged access to lignite,<sup>404</sup> which created unequal opportunities in electricity production and enabled PPC to maintain or reinforce its dominant position on the Greek wholesale market. In a parallel dispute between the same parties, the Court has also annulled the 2009 Commission Decision that imposed specific remedies proposed by Greece to resolve this competition problem. The Commission has appealed both judgments.<sup>405</sup>

The Court condemned Spain under Article 260(2) TFEU for failing to recover aid granted to Magefesa and imposed a lump sum and daily penalty payments.<sup>406</sup>

*Further information is available at:*  
[http://ec.europa.eu/dgs/competition/index\\_en.htm](http://ec.europa.eu/dgs/competition/index_en.htm)

399 Directive [2002/77/EC](#)

400 Directive [2002/21/EC](#)

401 Directive [2002/20/EC](#)

402 [IP/12/298](#)

403 Directive [97/67/EC](#)

404 Dimosia Epicheirisi Ilektrismou AE (DEI) v Commission, [T-169/08](#)

405 Commission v DEI, [C-553/12 P](#) and Commission v DEI, [C-554/12 P](#)

406 Commission v Spain, [C-610/10](#)

## EDUCATION AND CULTURE

There were eight open infringement cases on education and culture issues at the end of 2012.

The Commission launched three new infringement cases in this area in 2012 by sending letters of formal notice. One was against the Netherlands for discriminating against students from other Member States in matters of access to higher education. The second was also against the Netherlands, for applying residence requirements to eligibility for lower statutory tuition fees at Dutch universities. The third was against Slovakia for indirectly discriminating against nationals of other Member States by making the examination requirements for the traditional academic title most easily met by Slovak nationals.

The Commission received 34 complaints relating to education and culture in 2012. Out of the five complaints it assessed, three were closed and two were transferred to Member States for discussion within the framework of EU Pilot.

The Court issued one judgment in 2012, against Austria.<sup>407</sup> It found that Austria was in breach of its obligations under the Treaty (Articles 18, 20 and 21 TFEU) and the Free Movement Directive<sup>408</sup>, because it granted reduced public transport fares only to students whose parents received Austrian family allowances.

*Further information is available at:*  
[http://ec.europa.eu/dgs/education\\_culture/index\\_en.htm](http://ec.europa.eu/dgs/education_culture/index_en.htm)

407 Commission v Austria, [C-75/11](#)

408 Directive [2004/38/EC](#)

## ECONOMIC AND FINANCIAL AFFAIRS

In January 2012, the Commission opened an infringement procedure against Hungary for an alleged breach of the Central Bank's independence under Article 130 TFEU. It voiced concerns about national legislation amendments that provided for various possibilities to influence the Hungarian Central Bank. The Commission closed this infringement procedure when the Hungarian Central Bank statute and transitional provisions of the Fundamental Law were put in line with Article 130 TFEU. Moreover, the Ministry of Finance stopped issuing press releases that aimed to influence the Hungarian Central Bank's monetary policy.

However, shortly afterwards, Hungary adopted the Law on the Financial Transaction Duty, which affected the independence of the Hungarian Central Bank. It was to come into force on 1 January 2013 and would

have restricted the Bank's ability to freely select the monetary policy instruments needed to reach its primary objective of price stability, thereby hampering its independence. In addition, the financial transaction duty to be paid by the Bank would have been equivalent to 0.4% of Hungary's Gross Domestic Product, 10 times higher than the bank's annual operational budget. This kind of credit to the public sector would have been a breach of the prohibition of monetary financing under Article 123 TFEU. Therefore, another infringement case on the Bank's independence was planned for 2012, but Hungary amended the law after discussions with the Commission.

*Further information is available at:*  
[http://ec.europa.eu/dgs/economy\\_finance/index\\_en.htm](http://ec.europa.eu/dgs/economy_finance/index_en.htm)

## ENLARGEMENT

An earlier judgment of the Court in this area condemned the Netherlands for charging disproportionately high fees when issuing residence permits to Turkish nationals who acquired the right of residence.<sup>409</sup> The Dutch authorities aligned the fees with those charged for similar documents issued to EU citizens, but the question of possible reimbursement of Turkish citizens who had paid disproportionately high fees in the past remains. The Commission is in contact with the Dutch government on this issue.

The Court issued a number of judgments in 2012 on interpretation of the EU-Turkey association law referred by national jurisdictions for preliminary ruling. The Commission continues to receive complaints on the application and interpretation of certain provisions of the EU-Turkey association law, in particular on the alleged violation by a number of Member States of the standstill clauses set out in the instruments governing the relations between Turkey and the EU.<sup>410</sup>

*Further information is available at:*  
[http://ec.europa.eu/enlargement/index\\_en.htm](http://ec.europa.eu/enlargement/index_en.htm)

<sup>409</sup> Commission v the Netherlands, [C-92/07](#)

<sup>410</sup> In particular, the 1970 [Additional Protocol](#) and Decision No [1/80](#) of the Association Council.

## STATISTICS ON EUROPE

The infringement procedure on Greece's violation of statistical principles is on-going. The Commission is analysing the current situation and progress made in Greece with a view to determining the actions to take. The Commission launched two EU Pilot investigations on statistical issues in 2012. One of them concerned national accounts; the other dealt with a farm structure survey.

The Commission made progress on investigations launched in the following statistical fields: tourism, carriage of goods by road, science and technology, and structure and activity of foreign affiliates.

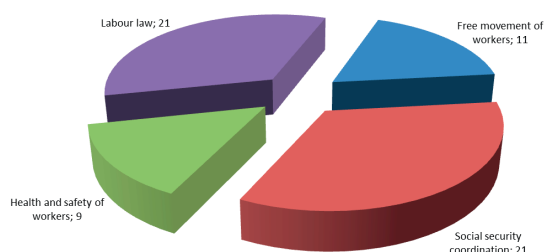
*Further information is available at:*  
<http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home>

# EMPLOYMENT, SOCIAL AFFAIRS & INCLUSION

## GENERAL STATISTICS

There were 62 open infringement cases in the area of employment in 2012. This was the seventh highest number of cases in the Commission's 21 reporting policy areas. The areas can be broken down as follows:

### 62 INFRINGEMENT CASES ON EMPLOYMENT, SOCIAL AFFAIRS & INCLUSION



The Commission launched 41 infringement cases in the employment area in 2012. For example: Slovakia refused to pay certain disability allowances to eligible people residing in another Member State<sup>411</sup>; Luxembourg limited to 12 years the duration of foreign professional experience that could be taken into account in determining public sector employees' working conditions; in France, doctors' working time in public hospitals did not respect the minimum rest periods under the Working Time Directive<sup>412</sup> and the conditions for using the 'opt-out' clause.

The Commission referred Italy to the Court in 2012 because its legislation and practice excluded managers from procedural guarantees (information and consultation of workers' representatives) in case of collective layoffs.<sup>413</sup>

By the end of 2012, Germany and the Netherlands had not complied with Court judgments made under Article 258 TFEU, which condemned the residence conditions when granting benefits for the blind, deaf and disabled<sup>414</sup> and for migrant workers and dependent family members to pursue higher education abroad, respectively.<sup>415</sup>

## TRANSPOSITION OF DIRECTIVES

The Commission launched 25 infringement cases in 2012 because of failure to transpose of the Temporary Agency Work Directive<sup>416</sup> (15 cases) and the directive on occupational limit values for chemical agents.<sup>417</sup> (10 cases) Only six late transposition cases were still open at the end of 2012.

## COMPLAINTS

The Commission received 309 complaints on employment issues in 2012, more than in 2011 (269).

In the area of the free movement of workers, most complaints concerned: access to and working conditions in the public sector (especially recognition of professional experience and qualifications acquired in other Member States); access to study grants (restrictive criteria for providing study grants, employment obligation for graduates); and obstacles to the free movement of professional sports players. There were several complaints on social security coordination rules, including on determining the applicable legislation, levying social security contributions, refusal to issue or accept the European Health Insurance Cards, granting healthcare to pensioners, non-export of long-term care

benefits, access to special non-contributory benefits, entitlement to and calculation of pensions. Health and safety complaints mainly concerned the incorrect or bad application of the Framework Directive,<sup>418</sup> the Construction Sites Directive<sup>419</sup> and the Asbestos Directive.<sup>420</sup> There were 33 labour law complaints on breaches of the Working Time Directive, including on paid annual leave for police forces in the Basque Region. Numerous complaints concerned fixed-term employment in the education sector, especially in schools.

The Commission handled 298 complaints in 2012. It closed 193 and transferred 44 to EU Pilot for discussion with Member States.

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 61 files in EU Pilot and processed 50 in 2012. In 32 cases, it accepted the Member State's explanations or commitments (64% success rate). At the end of 2012, 42 files were still open.

Potential cases were resolved early in several areas, including: the free movement of workers (Greece started to recognise post-graduate diplomas acquired abroad when deciding on workers' salaries and promotions) health and safety (the UK complied with the Asbestos Directive); and labour law (Belgium removed rules under which certain workers were obliged to postpone their right to annual leave for up to 12 months, which goes against the Working Time Directive).

## IMPORTANT JUDGMENTS

The Court ruled that: a Member State can grant family benefits to posted or seasonal workers who are resident in another Member State. If they do this, they cannot exclude workers entitled to comparable benefits in another Member State;<sup>421</sup> study grants for children of migrant workers could not be dependent on the country of residence;<sup>422</sup> frontier workers' working conditions could not be less favourable than those of national workers and accordingly, the salary top-up paid to frontier workers who work part time before retiring cannot be calculated in a way that penalises them in comparison with national workers;<sup>423</sup> and according to the Working Time Directive, Member States cannot make paid annual leave conditional on a minimum period of 10 days' work or one month's actual work during the reference period and the paid annual leave cannot be affected by an employee's sick leave.<sup>424</sup>

## OUTLOOK

Important implementation work in 2013 includes:

- Access to benefits based on residence, public sector posts and study grants for workers and their families
- Issuance and acceptance of the European Health Insurance Card
- Occupational health and safety: implementation of the directive on sharp injuries<sup>425</sup>
- Correct transposition of the Temporary Agency Work Directive<sup>426</sup>

Further information is available at:  
<http://ec.europa.eu/social/home.jsp>

411 MEMO/12/794

412 Directive 2003/88/EC

413 IP/12/1145

414 Commission v Germany, C-206/10

415 Commission v the Netherlands, C-542/09

416 Directive 2008/104/EC

417 Directive 2009/161/EU

418 Directive 89/391/EEC

419 Directive 92/57/EEC

420 Directive 2009/148/EC

421 Hudziński and Wawrzyniak, C-611/10 and C-612/10

422 Commission v Netherlands, C-542/09

423 Emy, C-172/11

424 Dominguez, C-282/10

425 Directive 2010/32/EU

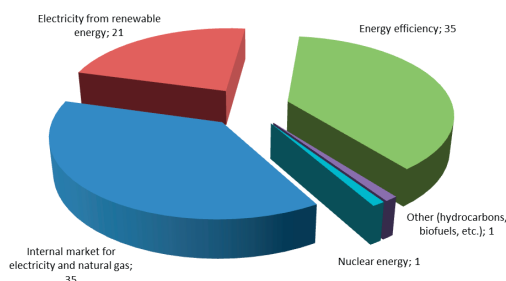
426 Directive 2008/104/EC

## ENERGY

## GENERAL STATISTICS

There were 93 open infringement cases in the area of energy at the end of 2012 (as compared to 149 in 2011). This was the sixth highest number of cases in the Commission's 21 reporting policy areas. The Commission's total caseload was broken down as follows:

## 93 INFRINGEMENT CASES ON ENERGY



In 2012, the Commission launched 27 new energy infringement procedures by sending letters of formal notice. Most of these cases were launched because of the Member States not or only partially transposing directives by the transposition deadlines (see below). Romania and the Czech Republic received a letter of formal notice due to insufficient reporting under the Gas Supply Regulation<sup>427</sup> and the Renewable Energy Directive,<sup>428</sup> respectively.

The Commission referred nine energy infringement cases to the Court in 2012. Italy was referred because it did not correctly implement the former Directive on buildings' energy performance<sup>429</sup> as regards energy performance certificates and inspections of air-conditioning systems.<sup>430</sup> The UK and Ireland failed to make the necessary arrangements to ensure the maximum interconnection capacity between their gas transmission systems, as the pipeline connecting Northern Ireland and Ireland was not open to the market.<sup>431</sup> The other six referrals were because of incomplete transposition of two energy directives (see below).

## TRANSPPOSITION OF DIRECTIVES

The Commission launched 24 new late transposition infringements in the area of energy in 2012 (121 in 2011). By the end of 2012, there were 75 open late transposition infringement procedures in this area.

All 24 new late transposition infringement cases were due to Member States failing to transpose, entirely or partly, the new Directive on buildings' energy performance.<sup>432</sup>

As a number of Member States notified the Commission of measures fully transposing the two directives in the Third Energy Package<sup>433</sup>, many of the corresponding infringements could be closed. The Commission however, had to refer Finland, Poland and Slovenia to the Court with a proposal for penalties under Article 260(3) TFEU since these countries only partially transposed the directives.<sup>434</sup>

## COMPLAINTS

The Commission received 71 complaints on energy matters in 2012, a slight increase compared to 2011 (57 incoming complaints). Two-thirds of these complaints concerned renewable energy and the internal market in electricity and gas. The other complaints were about energy efficiency, licences for prospection and expropriation of hydrocarbons, and nuclear energy. The Commission processed 47 energy complaints. Most complainants (28) received a full response, but 17 files had to be transferred to EU Pilot for further discussion with the Member States.

## OWN-INITIATIVE CASES

The Commission launched all the new energy infringement cases in 2012 and referred others to the Court (see the 'General statistics' section above) on its own initiative. In addition to the progress made in these cases, the Commission also sent an additional reasoned opinion concerning another own-initiative case claiming that the system of regulated gas prices in France did not comply with the Gas Directive.<sup>435</sup>

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 50 new EU Pilot files on energy issues and processed 39 files during 2012. In 32 cases, the Commission accepted the Member State's explanation and/or commitments made (82% success rate). By the end of 2012, 29 energy files were still open in EU Pilot.

The Commission closed a number of cases in 2012 due to several Member States bringing their price regulation systems in compliance with EU law (adoption of legislation phasing out regulated electricity prices in France<sup>436</sup> and Greece,<sup>437</sup> adoption of legislation phasing out regulated electricity and gas prices in Portugal<sup>438</sup> and Romania<sup>439</sup>).

## IMPORTANT JUDGMENTS

The Court annulled the Council Regulation on the notification of investment projects in energy infrastructure<sup>440</sup> because its legal basis had not been selected correctly. The Court took the view that this Regulation should have been adopted under the new legal basis for energy legislation in the Treaty (Article 194(2) TFEU), which requires an ordinary legislative procedure, and not under Article 337 TFEU, which requires the Council's simple majority. The effects of the annulled Regulation are maintained until a new regulation is adopted on the correct legal basis enters into force.<sup>441</sup>

## OUTLOOK

Important implementation work in 2013 includes:

- Timely transposition of the Directive on spent nuclear fuel and radioactive waste<sup>442</sup>
- Conformity checks under the Third Energy Package and the Nuclear Safety Directive
- Conformity checks under the Directive on buildings' energy performance

Further information is available at:  
[http://ec.europa.eu/dgs/energy/index\\_en.htm](http://ec.europa.eu/dgs/energy/index_en.htm)

427 Regulation (EU) No 994/2010

428 Directive 2009/28/EC

429 Directive 2002/91/EC

430 IP/12/411

431 IP/12/52

432 Directive 2010/31/EU

433 Directives 2009/72/EC and 2009/73/EC

434 IP/12/1139 and IP/12/1236

435 Directive 2009/73/EC and IP/06/1768

436 IP/06/1768 on the earlier reasoned opinion

437 IP/09/1035 on the earlier letter of formal notice and MEMO 09/926

438 IP/11/590 on the earlier reasoned opinion

439 IP/11/414 on the earlier reasoned opinion

440 Regulation (EU, Euratom) No 617/2010

441 Parliament v Council, C-490/10

442 Directive 2011/70/Euratom

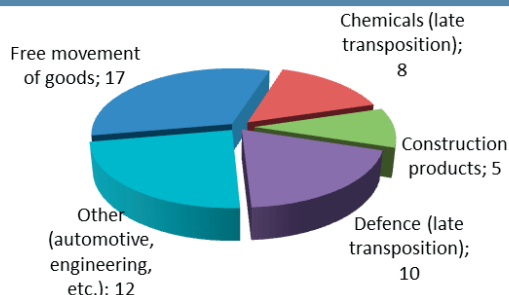


## ENTERPRISE & INDUSTRY

### GENERAL STATISTICS

There were 52 open infringement cases in the area of enterprise & industry at the end of 2012. This is the ninth highest number of cases in the Commission's 21 reporting policy areas. The caseload was broken down as follows:

#### 52 INFRINGEMENT CASES ON ENTERPRISE & INDUSTRY



The 29 new enterprise infringement cases related mostly to provisions ensuring the free movement of goods. Letters of formal notice were sent to, among others: Poland (concerning import rules on the fast-growing food supplement market); Romania (due to its gas export ban); and Germany (because it set conditions for marketing chemical substances beyond those of the REACH Regulation<sup>443</sup>).

The Commission brought three enterprise cases before the Court. Two of them contested the additional German requirements on construction products already bearing the CE-mark,<sup>444</sup> the judgment could impact the so-called Bauregellisten.<sup>445,446</sup> Spain was referred to the Court because of Spain's import barriers on heavy-goods vehicles.<sup>447</sup>

At the end of 2012, only two Court judgments made under Article 258 TFEU in this area still had to be implemented by the Member States. In one of these cases, the Commission opened the procedure under Article 260(2) TFEU as the Member State did not make sufficient progress in complying with the judgment.

### TRANSPOSITION OF DIRECTIVES

The Commission launched 19 new enterprise infringement procedures in 2012 because of Member States' missing or partial national transposition measures for various directives. In all, 24 late transposition cases were still open at the end of 2012.

Eight infringement procedures had to be launched because of missing or partial updates to the defence-related products list.<sup>448</sup> Further eight procedures were also launched under the Directive on the identification and traceability of civil explosives.<sup>449</sup>

### COMPLAINTS

The Commission received 152 new complaints concerning enterprise in 2012, a moderate increase over 2011 (124 incoming complaints). Most complaints received concerned national laws on motor vehicles (registration rules) going against the Treaty's free movement of goods provisions.<sup>450</sup> Other complaints related to pharmaceutical products, foodstuffs and food supplements, and construction products.

From the 133 processed enterprise complaints in 2012, the Commission closed most of them (63) by sending a full response to the complainant and transferred 54 to EU Pilot to be discussed with the Member States.

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 62 new EU Pilot enterprise files in 2012 and processed 37 files. 17 assessments were positive, i.e. the Commission accepted the Member State's explanation or actions (46 % success rate). In all, 60 files were still open in EU Pilot at the end of 2012.

Member States settled many major enterprise infringement cases with the Commission without litigation or before a Court judgment was delivered. For example: Spain modified its rules on the prior notification of medicines for export; the new French rules on the safety requirements for fire fighters' hoods now respect EU standards;<sup>451</sup> Italy repealed the law that restricted the import of bottled drinking water;<sup>452</sup> and Greece annulled surface area requirements for preparing 'bake-off' products.<sup>453</sup>

### IMPORTANT JUDGMENTS

The Court passed one judgment under Article 258 TFEU in the field of enterprise in 2012: The Belgian car registration laws were condemned as they were not in line with the Treaty's rules on the free movement of goods (such as the systematic requirement of the vehicle's certificate of conformity and the rejection of roadworthiness tests carried out in other Member States).

The Court's preliminary rulings confirmed that private law bodies must respect the principle of the free movement of goods, if the products these bodies certify are legally considered compliant with national law.<sup>454</sup> It also found that parts of the Polish gambling law could constitute 'technical regulations'<sup>455</sup> in so far as it established that the provisions in question constituted conditions which can significantly influence the nature or the marketing of the product concerned, which is a matter for the referring court to determine. In such a case their drafts should be cleared with the Commission before being adopted.<sup>456</sup> Finally, the Court upheld retailers' right to import tobacco from other Member States, which could impact state monopolies.<sup>457</sup>

### OUTLOOK

Important implementation work in 2013 includes:

- Ensuring timely and correct transposition of the Late Payment Directive<sup>458</sup>
- Following up the correct application of the Construction Products Regulation<sup>459</sup>
- Subject to Court judgments,<sup>460</sup> verification of registration rules for right-hand drive vehicles.

Further information is available at: [http://ec.europa.eu/enterprise/index\\_en.htm](http://ec.europa.eu/enterprise/index_en.htm)

443 Regulation (EC) No [1907/2006](#)

444 The [CE marking](#) proves that the product had been assessed before it was placed on the market.

445 Construction products list ([explanation](#)).

446 [IP/12/648](#)

447 [IP/12/649](#)

448 Directive [2012/10/EU](#)

449 Directive [2012/4/EU](#)

450 Articles 34 to 36 TFEU

451 [IP/11/610](#) on the earlier reasoned opinion

452 [IP/10/1220](#) on the earlier reasoned opinion

453 [IP/11/1415](#) on the earlier referral decision

454 [Fra.bo](#), [C-171/11](#)

455 As defined by Directive [98/34/EC](#)

456 [Fortuna and Others](#), [C-213/11](#)

457 [ANETT](#), [C-456/10](#)

458 Directive [2011/7/EU](#)

459 Regulation (EC) No [305/2011](#)

460 [Commission v Poland](#), [C-639/11](#) and [Commission v Lithuania](#), [C-61/12](#)

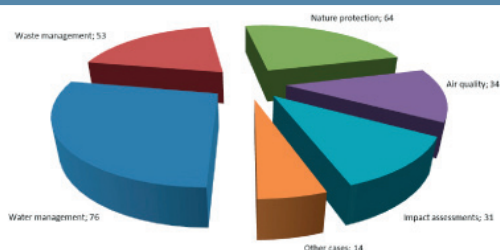


# ENVIRONMENT

## GENERAL STATISTICS

Most of the on-going infringement cases at the end of 2012 (272) concerned the environment, as in previous years. They can be broken down as follows:

### 272 INFRINGEMENT CASES ON ENVIRONMENT



The Commission launched 138 environmental infringement cases in 2012. Several concerned the incorrect transposition of the Environmental Impact Assessment Directive<sup>461</sup> (the screening procedure, interpretation of 'development consent'), failure to ensure adequate protection of species<sup>462</sup>, and Natura 2000 sites.<sup>463</sup> The Commission referred 16 environmental cases to the Court, including four for late transposition of the Waste Framework Directive,<sup>464</sup> three for operating landfills below EU standards<sup>465</sup>, and three on water, for narrow interpretation of 'water services' in the Water Framework Directive,<sup>466</sup> inadequate treatment of urban wastewater<sup>467</sup>, insufficient designation of zones vulnerable to nitrates and inadequate protection of water from nitrate pollution<sup>468</sup>. At the end of 2012, Member States had still not fully implemented 35 Court judgments. Correct implementation of EU waste law remains a main challenge. The Commission launched a second referral against Italy in 2012 due to landfill operation.<sup>469</sup> It referred Ireland to the Court for failing to assess all the matters required by the Directive on environmental impact assessment, not ensuring coordination of the authorities during the assessment, and excluding demolition works from the scope of transposing legislation.<sup>470</sup>

## TRANSPPOSITION OF DIRECTIVES

The Commission launched 63 cases in 2012 due to late transposition of environmental directives. These included cases against 11 Member States for failing to transpose the Directive on petrol vapour recovery during vehicle refuelling.<sup>471</sup> There remained 13 open late transposition cases in the area of environment by the end of 2012. The Commission referred Bulgaria, Hungary, Poland and Slovakia to the Court proposing financial sanctions under Article 260(3) TFEU for late transposition of the Waste Framework Directive.<sup>472</sup> It also referred Poland for partial transposition of the Directive on marine strategy.<sup>473</sup>

## COMPLAINTS

The Commission received 588 environment complaints in 2012, slightly fewer than in 2011 (604). Most concerned: nature protection (200); environmental impact assessment (80); waste (70); and water (60). The Commission processed 512 environmental complaints in 2012. It fully closed over half of them (293) and transferred 131 to EU Pilot for discussion with Member States. The Commission launched two infringement cases (against the United Kingdom and Greece) and 22 EU Pilot discussions with Member States following petitions and questions from the European Parliament. Most of them concerned nature protection, environmental impact assessment and waste management.

461 Directive [2011/92/EU](#)

462 Directive [2009/147/EC](#)

463 Directive [92/43/EEC](#).

464 Directive [2008/98/EC](#) and [IP/12/422](#)

465 Directive [1999/31/EC](#), [IP/12/1140](#), [IP/12/655](#) and [IP/12/1023](#)

466 Directive [2000/60/EC](#), and [IP/12/536](#)

467 [IP/12/658](#)

468 [IP/12/170](#)

469 [IP/12/1140](#)

470 Directive [1985/337/EEC](#), and [IP/12/657](#)

471 Directive [2009/126/EC](#)

472 Directive [2008/98/EC](#) and [IP/12/422](#)

473 Directive [2008/56/EC](#)

## OWN-INITIATIVE CASES

The Commission addressed incorrect transposition of key environmental directives, especially in the nature, impact assessment, waste and water sectors. It focused on the fulfilment of strategic obligations under the environmental *acquis* (e.g. waste collection, recovery and recycling targets) and focused on breaches of protection requirements and quality standards (e.g. misapplied hunting derogations, non-compliant landfills and inadequate wastewater treatment).

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 386 environment files in EU Pilot and processed 354 in 2012. In 265 cases, it accepted the Member State's response (75 % success rate). At the end of 2012, 400 files were still open. Several important environmental cases were closed in 2012 because of Member States' compliance with EU law. These included cases against 12 Member States for late transposition of the Waste Framework Directive. The Czech Republic, Romania and Denmark respected the Directive on electrical and electronic waste<sup>474</sup>. Hungary complied with the Directives on mining waste<sup>475</sup> and floods.<sup>476</sup> Lithuania and France implemented the Packaging Waste Directive<sup>477</sup> and Slovakia the End-of-life Vehicles Directive.<sup>478</sup> France complied with the Environmental Impact Assessment Directive<sup>479</sup> and Italy with the Directive on strategic environmental assessment.<sup>480</sup> The Markinch combustion plant in the UK is in line with the Large Combustion Plant Directive as its net rated thermal input has been decreased.<sup>481</sup>

## IMPORTANT JUDGMENTS

The Court delivered two judgments against Ireland and imposed financial penalties because of its failure to respect earlier judgments on impact assessment of certain agricultural projects and on setting up an inspection system for septic tanks.<sup>482</sup> It established that Belgium, Greece, Portugal and Spain did not adopt the River Basin Management Plans required by the Water Framework Directive.<sup>483</sup> The Court also delivered a number of important preliminary rulings in 2012.<sup>484</sup>

## OUTLOOK

Important implementation work in 2013 includes:

- Monitoring the adequacy of urban waste water treatment rules and adoption of the River Basin Management Plans
- Verifying the timely transposition of the new Industrial Emissions Directive<sup>485</sup>
- Monitoring the transposition of the Air Quality Directive<sup>486</sup>
- Follow-up on Member States' obligation to designate Special Areas of Conservation under the Habitats Directive
- Court judgments interpreting the Water Framework Directive, the Directive on public participation in strategic environmental assessment and the Aarhus Convention<sup>487</sup>

Further information is available at:  
[http://ec.europa.eu/dgs/environment/index\\_en.htm](http://ec.europa.eu/dgs/environment/index_en.htm)

474 Directive [2002/96/EC](#)

475 Directive [2006/21/EC](#)

476 Directive [2007/60/EC](#)

477 Directive [94/62/EC](#)

478 Directive [2000/53/EC](#)

479 Directive [2011/92/EU](#)

480 Directive [2001/42/EC](#)

481 Directive [2001/80/EC](#)

482 Commission v Ireland, [C-279/11](#) and [C-374/11](#)

483 Commission v Belgium, [C-366/11](#); Commission v Greece, [C-297/11](#); Commission v Portugal, [C-223/11](#); Commission v Spain, [C-403/11](#) and Directive [2000/60/EC](#)

484 E.g. cases Solvay and others, [C-182/10](#); Flachglas Torgau, [C-204/09](#); Syllogos Ellinon Poleodomonikaichorotakton, [C-177/11](#); Nomarchiaki Aftodioikisi Aitolokamanias and others, [C-43/10](#); and Amia, [C-97/11](#).

485 Directive [2010/75/EU](#)

486 Directive [2008/50/EC](#)

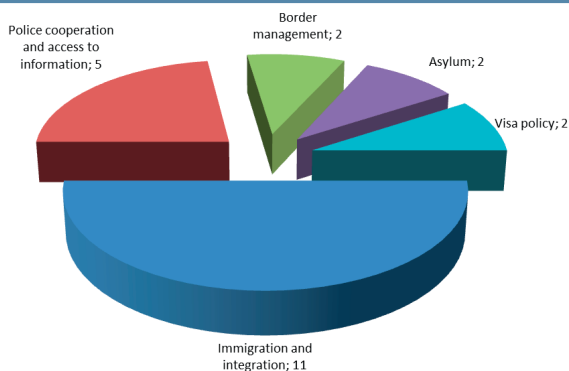
487 Directive [2003/35/EC](#) and Council Decision [2005/370/EC](#)

## HOME AFFAIRS

## GENERAL STATISTICS

There were 22 open infringement cases in the area of home affairs at the end of 2012 (60 in 2011). This is the 13<sup>th</sup> highest number of cases in the Commission's 21 reporting policy areas. They can be broken down as follows:

## 22 INFRINGEMENT CASES ON HOME AFFAIRS



The Commission launched 4 home affairs infringement cases in 2012 against: Belgium for not informing it of transposition measures for the Data Retention Directive<sup>488</sup>; Italy for incorrectly applying the 'Dublin II Regulation',<sup>489</sup> the Reception Conditions Directive,<sup>490</sup> the Asylum Procedures Directive,<sup>491</sup> the Qualification Directive<sup>492</sup>, and the Charter of Fundamental Rights; and Austria and Slovakia for obstacles to fluid traffic flow at their common border.

The Commission referred Belgium to the Court for not complying with EU law on security standards and biometrics in passports (Belgium is the last Member State to not issue biometric passports).<sup>493</sup>

At the end of 2012, two cases on non-compliance with a Court judgment made under Article 258 TFEU were still open. The Commission requested only lump sum penalty against Sweden because the transposing measures for the Data Retention Directive<sup>494</sup> were notified during the Court procedure.

## TRANSPPOSITION OF DIRECTIVES

The Commission launched one late transposition infringement case on home affairs (76 in 2011). At the end of 2012, there were 13 open cases on late transposition of directives.

Germany was referred to the Court with a proposal for financial sanctions under Article 260(3) TFEU due to its incomplete transposition of the Data Retention Directive.<sup>495</sup>

## COMPLAINTS

132 home affairs complaints were received in 2012, more than in 2011 (123). Most concerned visas, immigration, asylum, border management, and return policy. From the 104 home affairs complaints that the Commission processed in 2012, 65 were closed with full response and 9 were sent to EU Pilot for further discussion with Member States.

## OWN-INITIATIVE CASES

In 2012, the Commission used EU Pilot to address several Member States because: their bilateral local border traffic agreements with third countries did not comply with the Local Border Traffic Regulation;<sup>496</sup>

or they seem to have implemented the Visa Code<sup>497</sup>, the Family Reunification Directive<sup>498</sup> or the Long-Term Residents Directive<sup>499</sup> incorrectly; or they created obstacles to fluid traffic flow at internal borders (e.g., speed limits not based only on road-safety considerations).

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 45 home affairs files in EU Pilot and processed 23 in 2012. In 11 cases, it accepted the Member State's explanations or actions (48% success rate). At the end of 2012, 40 files were still open.

## IMPORTANT JUDGMENTS

The Court ruled against the Netherlands for imposing excessive and disproportionate charges when granting residence permits to third-country nationals seeking long-term resident status.<sup>500</sup>

In preliminary rulings, the Court held that: a Member State should allocate housing benefits also to long-term resident third-country nationals, if they are available to EU citizens;<sup>501</sup> the concept of persecution for religious reasons covers only acts which violate severely basic human rights, whether they interfere with a person's freedom to practice his faith in private or to live that faith publicly;<sup>502</sup> a Member State must grant the minimum conditions for receiving asylum seekers until the applicant's transfer, even if it considers that another Member State is responsible for examining the application;<sup>503</sup> a Member State must recognise a person as refugee, if the protection she previously received from United Nations bodies ceased due to reasons beyond her control or independently from her will;<sup>504</sup> and the Schengen Borders Code allows checks at the internal border on foreign nationals to combat illegal stay, under certain guarantees.<sup>505</sup>

## OUTLOOK

Important implementation work in 2013 includes:

- Monitoring the transposition of the Directives on the Blue Card, employer sanctions, return, critical infrastructures, long term residents and family reunification<sup>506</sup>
- Court judgments on the Data Retention Directive<sup>507</sup>
- Transposition of the Directives on extending the long-term residents Directive to beneficiaries of international protection,<sup>508</sup> preventing trafficking in human beings<sup>509</sup> and the Qualification Directive<sup>510</sup>
- National provisions on the right to appeal against visa refusals<sup>511</sup>

Further information is available at:  
[http://ec.europa.eu/dgs/home-affairs/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/index_en.htm)

488 Directive [2006/24/EC](#)

489 Regulation (EC) No [343/2003](#)

490 Directive [2003/9/EC](#)

491 Directive [2005/85/EC](#)

492 Directive [2004/83/EC](#)

493 [IP/12/1247](#)

494 Commission v Sweden, [C-270/11](#)

495 [IP/12/530](#)

496 Regulation (EC) No [1931/2006](#)

497 Regulation (EC) No [810/2009](#)

498 Directive [2003/86/EC](#)

499 Directive [2003/109/EC](#)

500 Commission v the Netherlands, [C-508/10](#), Court press release No [52/12](#)

501 Kamberaj, [C-571/10](#), Court press release No [48/12](#)

502 Y and Z, joined Cases [C-71/11](#) and [C-99/11](#), Court press release No [108/12](#)

503 Cimade and Groupe d'information et de soutien des immigrés (GISTI), [C-179/11](#), Court press release No [119/12](#)

504 Abed El Karem El Kott and Others, [C-364/11](#)

505 Atiqullah Adil v Minister voor Immigratie, Integratie en Asiel, [C-278/12](#)

506 Directives [2009/50/EC](#), [2009/52/EC](#), [2008/115/EC](#), [2008/114/EC](#), [2003/109/EC](#) and [2003/86/EC](#)

507 Commission v Sweden, [C-270/11](#) and Commission v Germany, [C-329/12](#)

508 Directive [2011/51/EU](#)

509 Directive [2011/36/EU](#)

510 Directive [2011/95/EU](#)

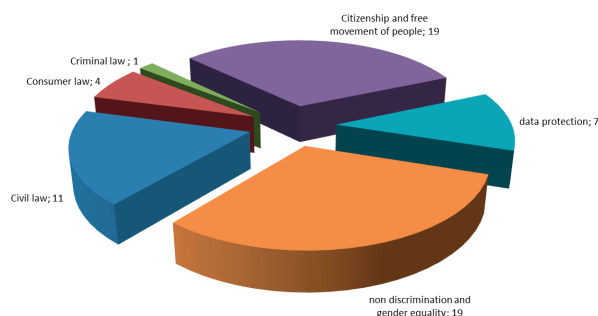
511 Regulation (EC) No [810/2009](#)

## JUSTICE, FUNDAMENTAL RIGHTS & CITIZENSHIP

### GENERAL STATISTICS

There were 61 open infringement cases in the area of justice at the end of 2012 (72 at the end of 2011). This was the eighth highest number of cases in the Commission's 21 reporting policy areas. The caseload was broken down as follows:

#### 61 INFRINGEMENT CASES ON JUSTICE, FUNDAMENTAL RIGHTS & CITIZENSHIP



In 2012, the Commission launched 26 new justice cases by sending letters of formal notice. These included: a case against Malta on discriminating non-Maltese EU citizens in their eligibility for reduced water and electricity tariffs; eight procedures caused by delayed ratification of two international agreements<sup>512</sup>; and cases against Czech Republic and Bulgaria to defend citizens' political rights (membership in political parties and non-discriminatory participation in local and European Parliament elections). The Commission referred 7 justice cases to the Court. In particular, it contested Hungary's new laws on judges' retirement age as age-based discrimination<sup>513</sup> and argued that Hungary violated the independence of its Data Protection Supervisory Authority.<sup>514</sup> Three referrals were due to late transposition (see below).

By the end of 2012, Member States had not yet complied with 3 justice judgments under Article 258 TFEU. A letter of formal notice was sent to one of them under Article 260(2) TFEU. Member States were still working on the implementation of the two other judgments, which had been passed in late 2012 (see section on important judgments).

### TRANSPOSITION OF DIRECTIVES

10 infringement cases were launched in 2012 because of missing or only partially notified national transposition rules for the Directives on parental leave<sup>515</sup> and gender equality in self-employment.<sup>516</sup> 11 late transposition cases were still pending at the end of 2012.

3 late transposition cases were referred to the Court with a request for financial sanctions under Article 260(3) TFEU because Cyprus and the Netherlands had only partially transposed the Mediation Directive<sup>517</sup> and Cyprus did the same for the Environmental Crime Directive.<sup>518</sup>

512 The [Bunker Convention](#) (Austria, the Czech Republic, Poland, Portugal, Slovakia and Sweden) and the 2004 [Protocol](#) amending the Paris Convention on third-party liability in the field of nuclear energy (Italy and Belgium).

513 [IP/12/395](#) and Directive [2000/78/EC](#)

514 [IP/12/395](#) and Directive [95/46/EC](#)

515 Directive [2010/18/EU](#)

516 Directive [2010/41/EU](#)

517 [IP/12/1016](#) and Directive [2008/52/EC](#)

518 [IP/12/296](#) and Directive [2008/99/EC](#)

### COMPLAINTS

There were 491 complaints concerning justice in 2012 (433 in 2011). Most concerned the free movement of people, citizenship rights, various forms of discrimination, fundamental rights,<sup>519</sup> civil justice and consumer law.

The Commission fully closed 312 out of the 358 justice complaints it handled in 2012 by sending a full response. It transferred 27 complaints to EU Pilot to be discussed with the Member States.

A question from the European Parliament led to an EU Pilot enquiry that in the end confirmed that Austria correctly implemented a preliminary ruling.<sup>520</sup>

### OWN-INITIATIVE CASES

The Commission's next step<sup>521</sup> was to send reasoned opinions to six Member States because of their incomplete implementation of the Free Movement Directive.<sup>522</sup>

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened most of the 103 justice files new in EU Pilot in 2012 on its own initiative, to verify the correct transposition of various directives. From the 57 processed EU Pilot files, the Commission accepted 28 Member State responses (49% success rate). 125 justice files were still open in EU Pilot at the end of 2012.

Important cases closed in 2012 include: acceptance of the registration of double surnames for Swedish children who also have another EU nationality and whose double surname was already registered by another Member State<sup>523</sup>, and alignment of the Equality Act with the Directive on equal treatment in employment in the UK.<sup>524</sup>

### IMPORTANT JUDGMENTS

The Court ruled that: the Hungarian laws on the compulsory retirement of judges, prosecutors and notaries when they reach the age of 62 constituted age-based discrimination<sup>525</sup> and the Austrian Data Protection Supervisory Authority lacked the independence required by the Data Protection Directive.<sup>526</sup>

A preliminary ruling of the Court also clarified how Member States should treat EU nationals' applications for non-EU family members to enter and stay in a Member State.<sup>527</sup>

## OUTLOOK

Important implementation work in 2013 includes:

- Full implementation of the Free Movement Directive<sup>528</sup> based on impact studies
- Enforcing citizens' political rights stemming from the Treaty and secondary law
- Verifying the correct implementation of the Gender Equality Directives<sup>529</sup>

Further information is available at:  
[http://ec.europa.eu/justice/index\\_en.htm](http://ec.europa.eu/justice/index_en.htm)

519 [Report](#) on the Application of the EU Charter of Fundamental Rights

520 Waltraud Brachner v Pensionsversicherungsanstalt, [C-123/10](#)

521 29th Annual [Report](#) on monitoring the application of EU law, p. 53.

522 [IP/12/646](#) (Austria, Germany and Sweden), [IP/12/417](#) (the United Kingdom), [IP/12/75](#) (the Czech Republic and Lithuania) and Directive [2004/38/EC](#)

523 [IP/12/644](#)

524 Directive [2000/78/EC](#)

525 Commission v Hungary, [C-286/12](#) and Directive [2000/78/EC](#)

526 Commission v Austria, [C-614/10](#) and Directive [95/46/EC](#)

527 Secretary of State for the Home Department v Muhammad Sazzadur Rahman a.o., [C-83/11](#)

528 Directive [2004/38/EC](#)

529 Directives [2004/113/EC](#) and [2006/54/EC](#)

## MARITIME AFFAIRS AND FISHERIES

### GENERAL DEVELOPMENTS

EU maritime laws ensure, inter alia, the direct electronic exchange of fisheries-related data and the monitoring of fishing vessels' engine power in order to allow the Commission to verify Member States' compliance. In this framework, the Commission addressed irregularities in the fisheries control systems of Italy and Spain, by launching an inquiry and an action plan, respectively, and monitored the implementation of the action plan adopted with Malta in 2011.

### COMPLAINTS

The Commission received four new complaints on fisheries matters during 2012 and treated 12, out of which 3 were transferred to EU Pilot to obtain clarifications from the Member State concerned.

### OWN-INITIATIVE CASE

The Commission learnt that Italy gained access to certain Mediterranean third countries' waters via bilateral agreements, which violates the EU's exclusive external competence under the Common Fisheries Policy (CFP). It sent Italy a letter of formal notice under Article 258 TFEU. By the end of 2012, the Italian authorities had responded constructively and committed to withdrawing the non-compliant provisions of the agreements. The next step will depend on Italy providing evidence of this remedial action.

### EARLY RESOLUTION OF INFRINGEMENTS

In 2012, the Commission opened 42 new EU Pilot files on matters related to the CFP, bringing the number of EU Pilot cases in the maritime field to 55. Of the 46 files treated during 2012, the Commission assessed 32 positively (70 % success rate).

### FOLLOW-UP TO COURT JUDGMENTS

The Court ruled against Italy in 2009 for failure to prohibit the use of illegal driftnets, as is required by EU rules.<sup>530</sup> Italy's remedial action was not satisfactory, so the Commission sent a letter of formal notice under Article 260(2) TFEU. In response, the Italian authorities referred to a series of adopted or planned measures that would remedy the situation. The Commission monitored the Italy's progress in 2012 also via local inspections. Due to the inconclusive results, the decision on whether to refer the case to the Court for a second time (with a proposal for financial sanctions) is still pending.

The Court ruled against Spain in 2008 for insufficient monitoring of landings and marketing of undersized fish and inadequate action against breaches of the corresponding EU rules.<sup>531</sup> The Spanish authorities notified the Commission of a number of measures they had taken in order to implement the judgment. The Commission carried out several inspections in late 2011 and in 2012 to verify whether these measures were sufficient. It found Spain's progress satisfactory and closed the case.

*Further information is available at:*  
[http://ec.europa.eu/dgs/maritimeaffairs\\_fisheries/index\\_en.htm](http://ec.europa.eu/dgs/maritimeaffairs_fisheries/index_en.htm)

<sup>530</sup> Commission v Italy, [C-249/08](#)

<sup>531</sup> Commission v Spain, [C-189/07](#)

## REGIONAL POLICY

### GENERAL STATISTICS

The Commission received considerably fewer complaints in the area of regional policy in 2012 than it did in 2011. The number of new EU Pilot files on regional policy has therefore been stable. Although the Commission handled many complaints on regional policy in 2012, it did not open any new infringement procedures in this area. One case (concerning *Puerto Punta Langosteira* in Spain) was closed in September 2012.

### COMPLAINTS

The Commission received 33 new complaints on regional policy in 2012. The number of complaints has decreased by two-thirds since 2011, when 92 complaints were received.

Most complaints concerned the selection of projects under funding programmes. As in previous years, the main reasons were: rejection of financial support, individual projects' non-compliance with EU law on environment or public procurement, and problems with specific infrastructure projects (e.g. wastewater treatment plants).

The Commission processed 106 complaints related to regional policy in 2012. It fully closed most of them (84). It transferred three to EU Pilot for discussion with Member States. The European Parliament sent the Commission seven petitions on regional policy.

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened three new files based on complaints in EU Pilot and processed 15 in 2012. In 11 cases, it accepted the Member State's explanations or commitments (73 % success rate). At the end of 2012, eight files were still open in EU Pilot.

Since 2012, files that are subject to procedures set up solely to ensure the legality of payments and/or sound financial management of resources available from EU funds are not subject to the EU Pilot procedure. Files subject to procedures that go beyond financial aspects and concern the correct application of EU law must go through EU Pilot.

### IMPORTANT JUDGMENTS

The Court made fourteen judgments on regional policy issues in 2012. In most of these cases, the Court rejected Member States' appeals against Commission decisions making financial corrections due to irregular public procurement procedures and ineligible expenditure.<sup>532</sup>

*Further information is available at:*  
[http://ec.europa.eu/regional\\_policy/index\\_en.cfm](http://ec.europa.eu/regional_policy/index_en.cfm)

<sup>532</sup> For example: Portugal v Commission, [T-111/10](#); Spain v Commission, joined cases [T-178/10](#), [T-263/10](#) and [T-265/10](#); Hungary v Commission, cases [T-89/10](#) and [T-407/10](#); Germany v Commission, cases [T-265/08](#) and [T-270/08](#); GAMP, [C-579/11](#); Portugal v Commission, [C-246/11](#); TME v Commission, [T-329/11](#); Région Poitou-Charentes v Commission, [T-31/12](#); and Spain v Commission, [T-96/12](#).

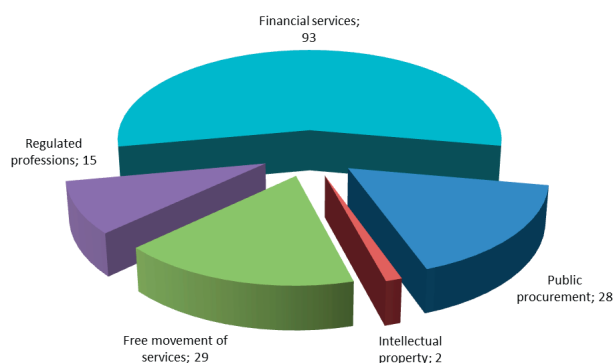


## INTERNAL MARKET AND SERVICES

### GENERAL STATISTICS

At the end of 2012, 167 internal market cases remained open, the 4<sup>th</sup> highest number in the Commission's 21 reporting policy areas. The Commission's total caseload was broken down as follows:

#### 167 INFRINGEMENT CASES ON INTERNAL MARKET AND SERVICES



The Commission's letters of formal notice launched 72 internal market infringement cases in 2012 against, for example: Italy (failure to publish tenders for public health services); Slovakia (exemption of health insurance companies from the Non-Life Insurance Directives<sup>533</sup>); and Bulgaria (charging privatised assets with state mortgages).

Amongst others, the Commission referred Greece to the Court because it had disregarded EU public procurement rules when purchasing an IT system for the Social Security Foundation (IKA)<sup>534</sup>.

At the end of 2012, 17 internal market judgments made by the Court under Article 258 TFEU had not yet been implemented by Member States. In 7 cases, the Commission started infringement procedures under Article 260(2) TFEU because Member States did not sufficiently progress in complying with the judgment. The Commission had already referred two cases to the Court requesting financial sanctions.

### TRANSPOSITION OF DIRECTIVES

53 infringement cases were launched in 2012 due to missing or only partially notified national transposition measures for internal market directives. In all, 77 such cases remained open at the end of 2012.

In particular, 18 late transposition cases were started under the Prospectus Directive.<sup>535</sup>

The Netherlands, Luxembourg, Poland and Slovenia were referred to the Court with a proposal for financial sanctions under Article 260(3) TFEU due to the late transposition of the Directive on defence procurement<sup>536</sup> and so was Belgium for the incomplete transposition of the eMoney Directive<sup>537</sup>.

### COMPLAINTS

In 2012, 462 internal market complaints were received (530 in 2011), mostly on public procurement, services and regulated professions.

The Commission closed 303 of the 469 internal market complaints it handled in 2012 by sending a full response. It transferred 130 to EU Pilot for discussion with Member States.

Upon the European Parliament's questions, electrical service providers' authorisation and the purchase of diesel trains without public tender were investigated.

<sup>533</sup> Directives [73/239/EEC](#) and [92/49/EEC](#)

<sup>534</sup> [IP/12/1249](#)

<sup>535</sup> Directive [2010/73/EU](#)

<sup>536</sup> [IP/12/1020](#) and Directive [2009/81/EC](#)

<sup>537</sup> [IP/12/1248](#) and Directive [2009/110/EC](#)

### OWN-INITIATIVE CASES

Own-initiative investigations targeted problems mostly in public procurement, services and regulated professions.

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 196 internal market files in EU Pilot in 2012, and processed 141. In 115 cases, it accepted Member States' responses (81% success rate). At the end of 2012, 176 internal market files remained open in EU Pilot.

Member States' actions settled many disputes before Court procedure. For example: Romania and Malta removed their nationality condition for public notaries; Bulgaria annulled a security services contract for its national electricity company due to misapplied EU public procurement rules;<sup>538</sup> France modified its sector-based authorisation procedure for foreign investments;<sup>539</sup> and Cyprus corrected its rules on buying secondary residences.<sup>540</sup>

### IMPORTANT JUDGMENTS

Among other, the Court ruled that: the prior authorisation system for investors' acquisitions in strategic Greek companies goes against the freedom of establishment;<sup>541</sup> and Belgium's *Limosa* system is incompatible with the free provision of services.<sup>542</sup>

The Court's preliminary rulings clarified: that hosting service providers could not be obliged to invest in filtering systems that prevent violation of audio-visual works' copyright, if these systems extended to all users and content stored, without time limits;<sup>543</sup> the circumstances in which a piece of information would be deemed precise enough to constitute insider information under the Market Abuse Directive;<sup>544</sup> that when buying dual-use military materials, public tenders may be avoided under certain conditions;<sup>545</sup> the extent to which the exception based on horizontal cooperation between public authorities can be invoked in public procurement;<sup>546</sup> whether the right of distribution also applies to software downloaded from the internet once its holder conferred the right of use;<sup>547</sup> and whether trade mark applicants may seek protection for an entire range of goods or services by referring to class headings of the Nice Classification.<sup>548</sup>

## OUTLOOK

Important implementation work in 2013 includes:

- Transposition assistance and conformity checks of key Single Market directives<sup>549</sup>
- Follow-up of the transposition of the Directive on alternative investment fund managers<sup>550</sup>

Further information is available at:  
[http://ec.europa.eu/dgs/internal\\_market/index\\_en.htm](http://ec.europa.eu/dgs/internal_market/index_en.htm)

<sup>538</sup> [IP/11/715](#) on the earlier reasoned opinion

<sup>539</sup> [IP/06/1353](#) on the earlier reasoned opinion

<sup>540</sup> [IP/11/416](#) on the earlier reasoned opinion

<sup>541</sup> Commission v Greece, [C-244/11](#)

<sup>542</sup> *Limosa* is a prior declaration scheme for all posted workers. Commission v Belgium, [C-577/10](#)

<sup>543</sup> SABAM, [C-360/10](#)

<sup>544</sup> Directive [2003/6/EC](#) and *Geltl*, [C-19/11](#)

<sup>545</sup> *Insinööritoimisto InsTiimi*, [C-615/10](#)

<sup>546</sup> *ASL Leece*, [C-159/11](#)

<sup>547</sup> *UsedSoft*, [C-128/11](#)

<sup>548</sup> The Nice Classification is a WIPO [database](#). Chartered Institute of Patent Attorneys, [C-307/10](#)

<sup>549</sup> See the annex of the Communication on 'Better Governance for the Single Market' ([COM\(2012\) 259/2](#)).

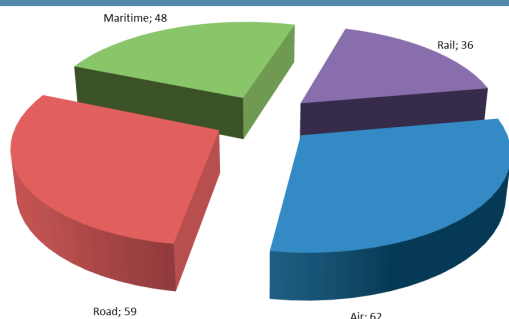
<sup>550</sup> Directive [2011/61/EU](#)

## MOBILITY & TRANSPORT

### GENERAL STATISTICS

There were 205 infringement cases open in the area of transport at the end of 2012. This is the second-highest number of cases in the Commission's 21 reporting policy areas. The cases can be broken down as follows:

#### 205 INFRINGEMENT CASES ON MOBILITY & TRANSPORT



148 transport cases were launched in 2012, including letters of formal notice against: Lithuania, Ireland, Belgium, Slovenia and Germany for failure to separate the accounts of railway undertakings and railway infrastructure managers;<sup>551</sup> Spain, Greece, Germany and the United Kingdom due to lack of port security plans;<sup>552</sup> Portugal and Spain due to lack of airport slot coordinators' independence;<sup>553</sup> Belgium and Greece for failing to ratify the Western Balkans Aviation Agreement; and Spain for increasing airport charges without the consultation required by the Airport Charges Directive.<sup>554</sup>

The Commission referred ten transport infringement cases to the Court in 2012, including a case against Bulgaria due to incorrect implementation of the First Railway Package as regards railway track access charges.<sup>555</sup> Nine referrals were due to late transposition of directives (see next section). By the end of 2012, Member States had not complied with the two Court judgments made in the transport area under Article 258 TFEU in late 2012 (see last section).

### TRANSPPOSITION OF DIRECTIVES

The Commission launched 115 late transposition infringement cases in the transport area in 2012 (240 in 2011). At the end of 2012, 99 were still open. Of the six transport-related directives with a 2012 transposition deadline, late transposition infringement cases were launched on two of them: intelligent transport systems for road transport<sup>556</sup> and ships' reporting formalities<sup>557</sup>. The Commission referred the following Member States to the Court proposing financial sanctions under Article 260(3) TFEU: Finland (late transposition of the Clean Vehicles Directive<sup>558</sup> and the Road Safety Management Directive<sup>559</sup>); Cyprus (Driving Licence Directive<sup>560</sup>); and Poland (Maritime Accident Investigation Directive<sup>561</sup> and Airport Charges Directive<sup>562</sup>). The Commission referred four other late transposition cases to the Court<sup>563</sup>, against: Finland (in connection with driving licence rules<sup>564</sup>

– two cases); Portugal (driving licence rules<sup>565</sup>); and Poland (a railway interoperability directive<sup>566</sup>).

### COMPLAINTS

The Commission received 68 complaints on transport issues in 2012, slightly more than in 2011 (65).

Most concerned violations of air and rail passenger rights. There were also numerous complaints on the road safety sector (e.g. driving licences). From the 91 transport-related complaints handled in 2012, the Commission closed 64 and transferred 20 to EU Pilot for discussion with Member States. Upon a petition from the European Parliament, the Commission investigated Malta's bus fare system and urged Austria to put in place a public service obligation and a system for differentiating toll rates.

### OWN-INITIATIVE CASES

The infringement cases discussed in the general statistics section (except for the Spanish one) were launched on the Commission's own initiative. The Commission also continued to extend the social protection afforded by the Drivers' Working Time Directive to self-employed drivers.<sup>567</sup>

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 164 new transport files in EU Pilot and processed 141 in 2012. In 96 cases, it accepted the Member State's explanations or actions (68% success rate). 117 transport files remained open in EU Pilot at the end of 2012. Important infringement cases closed in 2012 include three cases on implementing the First Railway Package in Ireland, Denmark and Slovakia.<sup>568</sup> In addition, Italy justified its lower port taxes on intra-EU sea traffic and Spain introduced a non-discriminatory port charge system following a Court judgment.<sup>569</sup>

### IMPORTANT JUDGMENTS

The Court found that Greece failed to adopt the tariff units used for calculating railway infrastructure costs<sup>570</sup> and that Portugal kept the state railway company's capital transactions under government control and failed to ensure that the infrastructure manager's accounts were balanced.<sup>571</sup>

## OUTLOOK

Important implementation work in 2013 includes:

- Analysing the impact of four key judgments relating to the First Railway Package<sup>572</sup>
- Application of the internal market principle in the port sector
- Directives on airport charges and ships' reporting formalities: conformity checks

Further information is available at:  
[http://ec.europa.eu/transport/index\\_en.htm](http://ec.europa.eu/transport/index_en.htm)

551 Directive [91/440/EEC](#)

552 Directive [2005/65/EC](#)

553 Regulation (EEC) No [95/93](#)

554 Directive [2009/12/EC](#)

555 [IP/12/53](#); a detailed description on the First Railway Package is available [here](#).

556 Directive [2010/40/EU](#)

557 Directive [2010/65/EU](#)

558 [IP/12/270](#) and Directive [2009/33/EC](#)

559 [IP/12/641](#) and Directive [2008/96/EC](#)

560 [IP/12/1237](#) and Directive [2006/126/EC](#)

561 [IP/12/643](#) and Directive [2009/18/CE](#)

562 [IP/12/1143](#) and Directive [2009/12/EC](#)

563 As the directives in question were not adopted by legislative procedure, Article 260(3) TFEU does not apply.

564 [IP/12/56](#) and Directive [2009/112/EC](#) and Directive [2009/113/EC](#)

565 [IP/12/56](#) and [2009/113/EC](#)

566 [IP/12/1136](#) and Directive [2011/18/EU](#)

567 Directive [2002/15/EC](#)

568 [IP/10/807](#)

569 Commission v Spain, [C-18/09](#)

570 Commission v Greece, [C-528/10](#)

571 Commission v Portugal, [C-557/10](#)

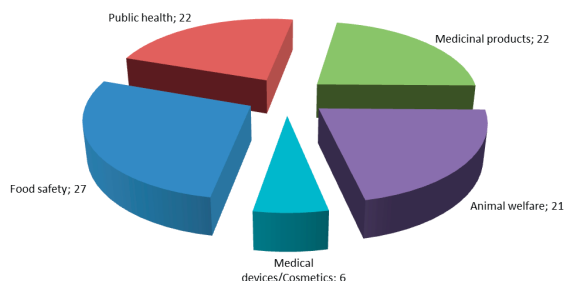
572 Commission v Hungary, [C-473/10](#), Commission v Spain, [C-483/10](#), Commission v Austria, [C-555/10](#) and Commission v Germany, [C-556/10](#); and Court Press Release [No 20/13](#)

## HEALTH & CONSUMERS

### GENERAL STATISTICS

There were 98 open infringement cases in the health and consumers area at the end of 2012. This is the fifth highest number of cases in the Commission's 21 reporting policy areas. The cases can be broken down as follows:

#### 98 INFRINGEMENT CASES ON HEALTH AND CONSUMERS



The Commission launched 132 infringement cases in the health and consumers area in 2012. These included cases on implementing the ban on 'un-enriched cages for laying hens',<sup>573</sup> a case against Latvia for not protecting sufficiently consumers' collective interests with injunctions,<sup>574</sup> and a case against Denmark for allowing the sale of loose snus.<sup>575</sup> The Commission referred two disputes on issues of EU health and consumer law to the Court in 2012. One case against Portugal concerned transposition of the directive on distance marketing of consumer products; Portuguese law does not allow a consumer withdrawing from a service contract to automatically cancel all linked contracts. Another was brought against Poland due to its failure to simplify its mechanism for putting 'old' vegetable seeds on the market.

### TRANSPOSITION OF DIRECTIVES

In 2012, the Commission opened 108 infringement cases due to missing or partial national transposition measures for directives in the health and consumer area. There remained 57 open late transposition cases in this area by the end of 2012. Of the directives with transposition deadlines in 2012, two were most problematic. The Commission launched cases against 19 Member States for failing to notify their transposition measures on pharmacovigilance<sup>576</sup> (the Directive amending the Community code relating to medicinal products for human use<sup>577</sup>). It launched cases against 17 Member States for late transposition of the Directive on standards of quality and safety of human organs intended for transplantation<sup>578</sup>.

### COMPLAINTS

The Commission received 125 complaints on health and consumers issues in 2012, which is an increase over 2011 (99 incoming complaints). Most complaints concerned public health, food safety and animal welfare. Medical devices and medicinal products were two new areas in which complaints were received in 2012. The Commission processed 106 health and consumers complaints in 2012. It fully closed more than half of them (60) and transferred 36 to EU Pilot so that Member States could react to them. At the request of the European Parliament, the Commission investigated four petitions on EU rules on animal by-products, public health and food safety.

<sup>573</sup> According to Directive [1999/74/EC](#), as from 1 January 2012 all laying hens must be kept in 'enriched cages' with extra space to nest, scratch and roost, or in alternative systems. Cages can be used only if they provide each hen with at least 750 cm<sup>2</sup> of cage area, a nest-box, litter, perches and claw-shortening devices ([IP/12/47](#)).

<sup>574</sup> Directive [2009/22/EC](#)

<sup>575</sup> Directive [2001/37/EC](#) prohibits placing 'tobacco for oral use' on the market (with an exception for Sweden), [MEMO/12/794](#)

<sup>576</sup> Directive [2010/84/EU](#)

<sup>577</sup> Directive [2001/83/EC](#)

<sup>578</sup> Directive [2010/53/EU](#)

### OWN-INITIATIVE CASES

In 2012, the Commission worked on ensuring that the directive on protection of pigs<sup>579</sup> was properly transposed and that compliance was achieved, in particular on the welfare of sows. In addition, the Commission pursued conformity assessments on the proper transposition of Human Blood Directives<sup>580</sup>. Furthermore, continued efforts were necessary to ensure proper application of other provisions on animal welfare and on genetically-modified organisms (GMOs).

### EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 72 EU Pilot files on health and consumers issues and processed 57 in 2012. In 42 cases, it accepted the Member State's explanations or commitments (74% success rate). At the end of 2012, 66 files were still open in EU Pilot.

The cases against Latvia and Slovakia for incorrect transposition of the directive on protecting consumers' interests with injunctions were closed in 2012 without being referred to the Court. The cases on protecting laying hens against Belgium, Bulgaria, France, Hungary, Latvia, the Netherlands, Portugal and Romania were closed as well.

### IMPORTANT JUDGMENTS

The Court ruled that by allowing in certain circumstances the import of non-authorised medicinal products, Poland has infringed the medicinal product code.<sup>581</sup> It also clarified the powers of a Member State validating a marketing authorisation application. It ruled that France infringed EU legislation on veterinarian medicinal products by refusing to authorise the marketing of two of them.<sup>582</sup> When France banned the marketing of certain medicinal veterinary products in a procedure falling also under EU rules<sup>583</sup>, the Court specified the role of the "reference Member State" when several Member States work together to authorise a medicinal product<sup>584</sup>.

## OUTLOOK

Important implementation work in 2013 includes:

- Follow-up of transposition of Directives on cross-border health care<sup>585</sup> and on falsified medicines<sup>586</sup>
- Pursuing Member States that fail to fully comply with the pig protection directive (to implement group housing of sows)
- Monitoring the correct transposition of the Consumer Credit Directive<sup>587</sup>

Further information is available at:  
[http://ec.europa.eu/dgs/health\\_consumer/index\\_en.htm](http://ec.europa.eu/dgs/health_consumer/index_en.htm)

<sup>579</sup> Directive [2008/120/EC](#)

<sup>580</sup> Directive [2002/98/EC](#) and Directives [2004/33/EC](#), [2005/61/EC](#) and [2005/62/EC](#)

<sup>581</sup> Commission v Poland, [C-185/10](#) and Directive [2001/83/EC](#)

<sup>582</sup> Commission v France, [C-145/11](#) and Directive [2001/82/EC](#)

<sup>583</sup> Directive [2001/82/EC](#)

<sup>584</sup> Commission v France, [C-145/11](#)

<sup>585</sup> Directive [2011/24/EU](#)

<sup>586</sup> Directive [2011/62/EU](#)

<sup>587</sup> Directive [2008/48/CE](#)

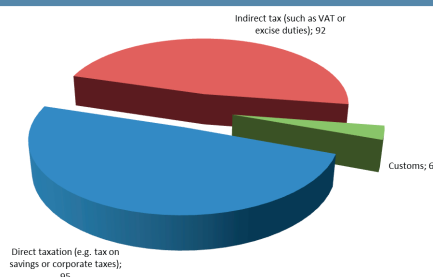


# TAXATION & CUSTOMS UNION

## GENERAL STATISTICS

There were 193 open infringement cases in the taxation area at the end of 2012. This is the third highest number of cases in the Commission's 21 reporting policy areas. The cases can be broken down as follows:

### 193 INFRINGEMENT CASES ON TAXATION & CUSTOMS UNION



The Commission launched 49 taxation cases in 2012. It delivered reasoned opinions to: France and Luxembourg on their reduced VAT rates for electronic books (e-books)<sup>588</sup>; Hungary on its retail and telecommunication taxes<sup>589</sup>; and Bulgaria on certain duty and tax relief provisions included in a bilateral agreement on technical assistance concluded with the United States.<sup>590</sup> The Commission brought seven taxation cases before the Court in 2012, including: three against the UK (tax legislation on cross-border loss relief,<sup>591</sup> taxation system for assets transferred abroad,<sup>592</sup> attribution of gains to members of non-resident companies<sup>593</sup>); and one against Germany for excluding certain non-resident companies from the benefits of its corporation tax fiscal unity regime.<sup>594</sup> At the end of 2012, Member States had still not complied with 16 Court judgments under Article 258 TFEU. They may face financial sanctions under Article 260(2) TFEU.

## TRANSPOSITION OF DIRECTIVES

The Commission opened 18 infringement cases due to partial or incomplete communication of national implementing rules in 2012. However, only four of these were still open at the end of the year, because Member States acted quickly to ensure compliance with EU law. Three tax directives had a transposition deadline in 2012. There were only three infringement cases for partial or incomplete communication on transposing the Directive on the taxation system applicable to parent companies and subsidiaries in different Member States<sup>595</sup>. The other two directives with transposition deadlines in 2012 were: the Directive on administrative cooperation in the field of taxation<sup>596</sup> and the Directive on mutual assistance for the recovery of claims relating to taxes and duties.<sup>597</sup>

## COMPLAINTS

The Commission received 384 complaints on taxation issues in 2012, slightly fewer than in 2011 (411 complaints). In the direct taxation area, most complaints concerned: the discriminatory taxation of cross-border workers; inheritance and gift taxes; and the discriminatory taxation of companies or individuals moving abroad (exit tax). In the indirect taxation area, most complaints concerned VAT and car registration taxes.<sup>598</sup> Most customs-related complaints concerned customs fees and direct representation.

<sup>588</sup> MEMO/12/794

<sup>589</sup> MEMO/12/876

<sup>590</sup> IP/12/672

<sup>591</sup> IP/12/1017

<sup>592</sup> IP/12/1147

<sup>593</sup> IP/12/1146

<sup>594</sup> IP/12/283

<sup>595</sup> Directive 2011/96/EU

<sup>596</sup> Directive 2011/16/EU

<sup>597</sup> Directive 2010/24/EU

<sup>598</sup> Member States tend to follow their own policies after the Council refused the Commission's proposal for a harmonisation directive in 2005.

The Commission processed 396 tax complaints in 2012. It fully closed 286 of them and transferred 89 to EU Pilot for discussion with Member States.

## OWN-INITIATIVE CASES

The Commission addressed the lack of import control systems. It continued to scrutinise tax exemptions and to ensure strict interpretation of the rules, because of the potential impact of tax exemptions on the EU's own resources. It also continued to monitor the correct application of the Court's case law on leasing and use of company cars. It launched several own-initiative cases on discriminatory inheritance and gift taxes and "exit taxes" (paid when companies or individuals move abroad).

## EARLY RESOLUTION OF INFRINGEMENTS

The Commission opened 132 taxation-related files in EU Pilot and processed 130 in 2012. In 74 cases, it accepted the Member State's explanations or commitments (57% success rate). At the end of 2012, 119 were still open in. Several important cases were resolved before the Court made a judgment under Article 258 TFEU because Member States complied with EU law. They included cases on discriminatory car taxation rules in Cyprus<sup>599</sup> and on taxes applied to controlled foreign corporations (CFCs) in the UK.<sup>600</sup>

## IMPORTANT JUDGMENTS

The Court of Justice ruled that the following tax regimes were discriminatory: exclusion of non-resident pensioners from tax allowances granted under Estonian law because, due to the modest amount of the pension, it was not taxable in the Member State of residence;<sup>601</sup> in Finland, taxation of dividends paid to non-resident pension funds by foreign companies based in Finland for tax purposes;<sup>602</sup> in Spain, restrictive exit tax on individuals who cease to be tax resident in Spain;<sup>603</sup> the French VAT reduction for opening night receptions in theatres<sup>604</sup> and for the supply of race horses<sup>605</sup>, as well as France's local electricity taxes<sup>606</sup>; and in Portugal, the exemption of farmers from paying VAT.<sup>607</sup> In a preliminary ruling, the Court confirmed that France cannot tax nationally-sourced dividends received by UCITS<sup>608</sup> resident abroad, while exempting such dividends from tax if they are received by UCITS resident in France.<sup>609</sup>

## OUTLOOK

Important implementation work for 2013 includes:

- EU-wide initiative to remove the discriminatory taxation of mobile persons
- Continuing EU-wide initiatives to remove discriminatory taxation of cross-border workers and cross-border inheritances
- Using the Customs Monitoring Programme to detect infringements related to Remission and Recovery, Simplified Procedure and Tariff/Taric

Further information is available at:  
[http://ec.europa.eu/taxation\\_customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/index_en.htm)

<sup>599</sup> IP/11/1277

<sup>600</sup> IP/11/606

<sup>601</sup> Commission v Estonia, C-39/10

<sup>602</sup> Commission v Finland, C-342/10

<sup>603</sup> Commission v Spain, C-269/09

<sup>604</sup> Commission v France, C-119/11

<sup>605</sup> Commission v France, C-596/10

<sup>606</sup> Commission v France, C-164/11

<sup>607</sup> Commission v Portugal, C-524/10

<sup>608</sup> UCITS: undertakings for collective investments in transferable securities.

<sup>609</sup> Santander Asset Management SGILC, joined cases C-338/11 and C-347/11

# METHODOLOGY AND EXPLANATIONS

## PART I – MEMBER STATES

### GENERAL STATISTICS

**Open infringement cases:** The figure includes all procedures that the Commission initiated against the Member State by sending a letter of formal notice under Article 258 TFEU in the reporting year or before and that the Commission has not yet closed by a formal decision, irrespective of the actual procedural phase. Accordingly, this number includes all cases that:

- (i) are in the pre-litigation phase (letter of formal notice, reasoned opinion or decision on referral to the Court under Article 258 TFEU),
- (ii) are pending before the Court under Article 258 TFEU or Article 260(3) TFEU,
- (iii) the Court had ruled on but the Commission could not yet confirm that the Member State has implemented the judgment correctly,
- (iv) are in the second pre-litigation procedure (letter of formal notice or referral decision under Article 260(2) TFEU)
- (v) are pending before the Court due to a second referral and
- (vi) the Court had ruled on for the second time but the Commission could not yet confirm that the Member State has implemented the second judgment correctly.

This figure does not include, for example, open EU Pilot files or EU Pilot files where the Commission already rejected the Member State's response in EU Pilot but has not yet sent the letter of formal notice under Article 258 TFEU. The figure reflects the status on 31 December in the reporting year.

**Ranking:** Member States are ranked according to the number of infringements that stand open against them on 31 December in the reporting year. In case two or more Member States have equal number of open infringements their ranking will be the same i.e., there is no secondary ranking criteria.

**New infringement cases:** This figure shows the number of letters of formal notice addressed by the Commission to the Member State under Article 258 TFEU (letters of formal notice under Article 260(2) TFEU are *not* included). Not all of these new infringement cases were necessarily open on 31 December of the reporting year. For example, if the Commission had opened a late transposition infringement in March 2012 by sending a letter of formal notice, the case will be added to the new infringement cases irrespective of the fact that the case was closed in October 2012 due to the Member State's full notification.

**Reference groups:** On the basis of the Member States' voting weights in the Council, the following reference groups were created:<sup>529</sup>

- (i) Germany, United Kingdom, France, Italy, Spain and Poland
- (ii) Romania, the Netherlands, Greece, Czech Republic, Belgium, Hungary and Portugal
- (iii) Sweden, Austria and Bulgaria
- (iv) Slovakia, Denmark, Finland, Lithuania and Ireland
- (v) Latvia, Slovenia, Estonia, Cyprus, Luxembourg, and Malta.

#### **Open infringement cases in the previous two years:**

These figures are defined identically with the "open infringement cases" for the reporting year except for the reference date (31 December of the previous two years) so that readers can follow a trend.

**Pie chart:** As a principal rule, the chart indicates the three policy areas where the most infringements were open on 31 December in the reporting year. Four (or more) policies are mentioned, if two (or more) policies have the third highest number of open infringements. Only two policies are highlighted, if there are too many policies with the third highest number or if this would make the chart very fragmented (might occur in Member States with relatively few infringements).

**First referrals against the Member State:** The figure includes all referral decisions that the Commission made under Article 258 TFEU or Article 260(3) TFEU in the reporting year. The subject-matter of Article 258 TFEU referrals is described shortly, that of Article 260(3) TFEU is discussed in the "Transposition of directives" section. This does not mean in all cases that the Commission had already submitted its claim to the Court by 31 December of the reporting year. In addition to these referrals, there might be other cases pending before the Court based on earlier Commission decisions.

**Second referrals against the Member State:** The figure includes all referral decisions that the Commission made under Article 260(2) TFEU in the reporting year. The subject-matter of the cases is described shortly. This does not mean in all cases that the Commission had already submitted its claim to the Court by 31 December of the reporting year. This paragraph may be missing from the Member State's page. It means that the Commission did not make any referral decision against the Member State under Article 260(2) TFEU in the reporting year (however, there might be on-going proceedings under this Article due to earlier Commission decisions).

### TRANSPPOSITION OF DIRECTIVES

#### **New infringement cases based on late transposition of directives:**

This figure shows the number of letters of formal notice addressed by the Commission to the Member State under Article 258 TFEU due to missing or partial notifications of directives' national transposition measures. This figure is part of the total number of new infringement cases initiated against the Member State in the reporting year. (So it should *not* be added to the figure shown in the first paragraph of the "General statistics" section.) Not all of these new late transposition infringement cases were necessarily open on 31 December of the reporting year. For example, if the Commission had opened a late transposition infringement procedure in March 2012 by sending a letter of formal notice it will be added to the new infringement cases even if the case was closed in October 2012 due to the Member State's full notification.

#### **Referrals against the Member State under Article 260(3) TFEU:**

The figure is a part of all referral decisions of the Commission mentioned in the previous section. The directive(s) that the Member State failed to transpose on time is mentioned. This does not mean in all cases that the Commission had already submitted its claim to the Court by 31 December of the reporting year. In addition to these referrals, there might be other cases pending before the Court based on earlier Commission decisions. If this paragraph is missing from the Member State's page, it means that the Commission did not make any referral decision against the Member State under Article 260(3) TFEU in the reporting year (however, there might be on-going proceedings under this Article due to earlier Commission decisions).

## PART II – DIRECTORATES GENERAL

### GENERAL STATISTICS

**Open infringement cases:** The figure includes all procedures that the Commission initiated in the policy field by sending a letter of formal notice under Article 258 TFEU in the reporting year or before and that the Commission has not yet closed by a formal decision, irrespective of the actual procedural phase. Accordingly, this number includes all cases that:

- (i) are in the pre-litigation phase (letter of formal notice, reasoned opinion or decision on referral to the Court under Article 258 TFEU),
- (ii) are pending before the Court under Article 258 TFEU or Article 260(3) TFEU,
- (iii) the Court had ruled on but the Commission could not yet confirm that the Member State has implemented the judgment correctly,
- (iv) are in the second pre-litigation procedure (letter of formal notice or referral decision under Article 260(2) TFEU),
- (v) are pending before the Court due to a second referral and
- (vi) the Court had ruled on for the second time but the Commission could not yet confirm that the Member State has implemented the second judgment correctly.

This figure does not include, for example, open EU Pilot files or EU Pilot files where the Commission already rejected the Member State's response in EU Pilot but has not yet sent the letter of formal notice under Article 258 TFEU. The figure reflects the status on 31 December in the reporting year.

**Ranking:** Directorates General (DGs) are ranked according to the number of open infringements they had on 31 December in the reporting year. In case two or more DGs have equal number of open infringements their ranking will be the same i.e., there is no secondary ranking criteria.

**Pie chart:** The chart indicates the main sectors within the policy areas and the number of infringements open on 31 December in the reporting year. The number of sectors varies according to the portfolio of each policy area.

**New infringement cases:** This figure shows the number of letters of formal notice sent by the Commission in the given policy area under Article 258 TFEU (letters of formal notice under Article 260(2) TFEU are *not* included). Not all of these new infringement cases were necessarily open on 31 December of the reporting year. For example, if the Commission had opened a late transposition infringement in March 2012 by sending a letter of formal notice, the case will be added to the new infringement cases irrespective of the fact that the case was closed in October 2012 due to the Member State's full notification. The subject-matter of major new infringement procedures is also added.

**First referrals in the policy area:** This paragraph contains the most important referral decisions that the Commission made under Article 258 TFEU in the policy area in the reporting year. The subject-matter of these referrals is described shortly. This does not mean in all cases that the Commission had already submitted its claim to the Court by 31 December of the reporting year. In addition to these referrals, there might be other cases pending before the Court based on earlier Commission decisions.

**Second referrals in the policy area:** This paragraph describes the developments of Article 260(2) TFEU procedures in the policy area in the reporting year. The subject-matter of the cases is described shortly, if the Commission decided on a second referral. This does not mean in all cases that the Commission had already submitted its claim to the Court by 31 December of the reporting year. If this paragraph is missing from the page of the policy area, it means that the Commission did not have any infringement procedures under Article 260(2) TFEU in the policy area.

### TRANSPOSITION OF DIRECTIVES

#### **New infringement cases based on late transposition of directives:**

This figure shows the number of letters of formal notice sent by the Commission under Article 258 TFEU due to missing or partial notifications of directives' national transposition measures in the policy field.

**Open late transposition infringement cases:** The figure indicates all procedures that were open on 31 December of the reporting year. An "open" late transposition infringement case is defined similarly to open infringement cases (see the explanation given under the "General statistics" section above). This figure is part of the total number of open infringement cases in the policy area on 31 December of the reporting year (so it should *not* be added to the figure shown in the first paragraph of the "General statistics" section).

#### **Referrals against the Member State under Article 260(3) TFEU:**

This paragraph focuses on Commission decisions referring late transposition infringement cases to the Court on the basis of Article 260(3) TFEU. The policy area's relevant directives and the Member States that failed to transpose them on time are mentioned. This does not mean in all cases that the Commission had already submitted its claim to the Court by 31 December of the reporting year. In addition to these referrals, there might be other cases pending before the Court based on earlier Commission decisions. If this paragraph is missing from the page of the policy area it means that the Commission did not make any referral decision against in this area under Article 260(3) TFEU in the reporting year (however, there might be on-going proceedings under this Article due to earlier Commission decisions).

### COMPLAINTS

#### **Assessed (or handled), closed and transferred complaints:**

The number of complaints that the Commission analysed and decided in the policy area during the reporting year. Closed complaints mean that the Commission did not intend to initiate a pre-infringement procedure (EU Pilot) and potentially an infringement procedure on the basis of the complaint. Generally, the Commission transfers a complaint to EU Pilot, if the facts suggest a potential violation of EU law. The sum of closed and transferred complaints is generally lower than the number of assessed complaints. It is because the detailed analysis of some complaints reveals that they are duplicates or merely requests for information.

### EARLY RESOLUTION OF INFRINGEMENTS

#### **Accepted and rejected responses from Member States in EU Pilot:**

The Commission either accepts or rejects the Member State's response in EU Pilot. In case of acceptance, it closes the case. In case of rejection, the Commission may send a letter of formal notice to the Member State under Article 258 TFEU.

The Commission welcomes feedbacks on this Annual Report and appreciates suggestions for future reports. Please address your questions and comments to:

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