

EUROPEAN COMMISSION

> Brussels, 23.12.2014 SWD(2014) 358 final

PART 1/3

COMMISSION STAFF WORKING DOCUMENT

MONITORING THE APPLICATION OF EU LAW IN MEMBER STATES

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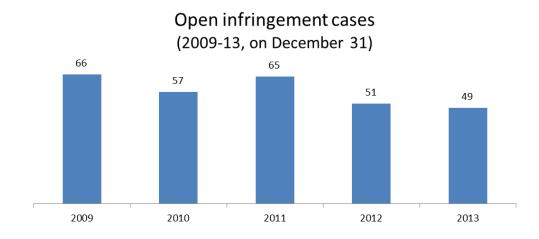
INTRODUCTION

As noted in the 31st Annual Report on monitoring the application of the EU law (<u>COM(2014) 612 final</u> page 2, footnote 2), this Staff Working Document contains detailed information in relation to complaints handling, EU Pilot files, infringement procedures and certain judgments of the Court of Justice of the European Union (the "Court") across each *EU Member State*

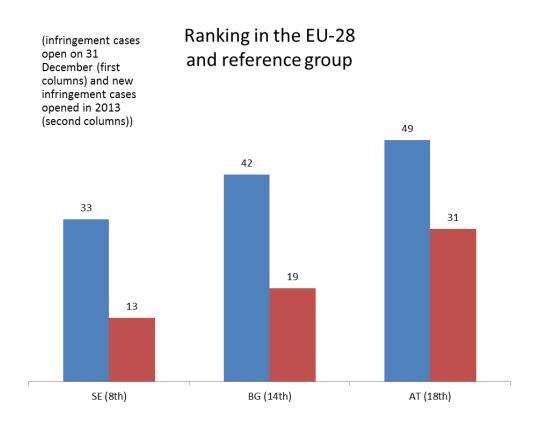
AUSTRIA

I. General statistics

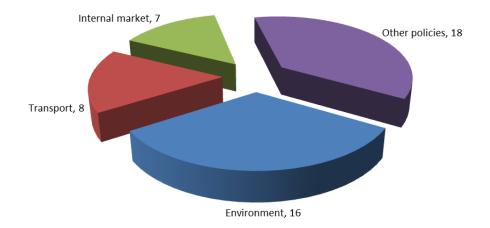
1. Open infringement cases against Austria (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group



3. **49** infringement cases against Austria



49 infringement cases against Austria

- 4. Referrals to the Court and key infringement cases
 - (a) There were 31 new infringement procedures launched against Austria in 2013. They and other major ongoing infringement cases relate to:
 - limited access for non-Austrian residents to certain courses of higher education in medicine (the procedure has been suspended until the end of 2016 to allow Austria to prove that the restrictive measures are necessary and proportionate to protect the Austrian healthcare system);¹
 - Austrian residency law and its compatibility with the rights of Turkish nationals and their families under the EU–Turkey association agreement and its standstill clauses;
 - measures transposing the directive on preventing sharp injuries in the hospital and healthcare sector;²
 - failure to comply with the Working Time Directive as regards the working conditions of hospital doctors;
 - failure to notify the Commission in good time of measures transposing the directive on combating human trafficking³ and the directive on alternative investment fund managers;⁴
 - toll charges on the *Felbertauern* crossing, which are based on the place of registration of the vehicles using the tunnel.
 - (b) One case was referred to the Court under Article 258 TFEU. It relates to:
 - Austria's failure to apply EU working time rules⁵ to self-employed drivers.⁶

¹ <u>IP/12/1388</u>

² Directive <u>2010/32/EU</u>

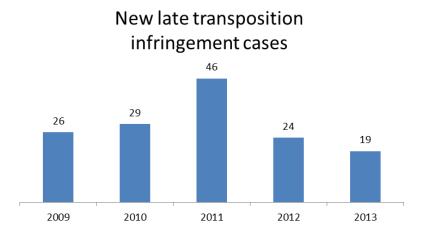
³ Directive <u>2011/36/EU</u>

⁴ Directive <u>2011/61/EU</u>

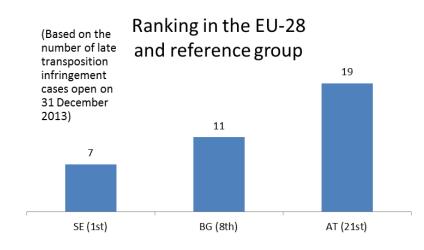
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases



2. Ranking in the EU-28 and reference group



IP/13/142. The case had been subsequently withdrawn from the Court due to Austria's compliance.

⁵ Directive <u>2002/15/EC</u>

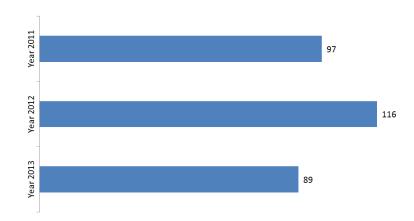
3. Policy areas in which most new late transposition infringement cases were opened

19 late transposition cases against Austria	
Environment	7
Energy	3
Other	9

- 4. Court referrals under Article 260(3) TFEU:
 - partial transposition of the Renewable Energy Directive, which had to be transposed by 5 December 2010.⁷



III. Complaints



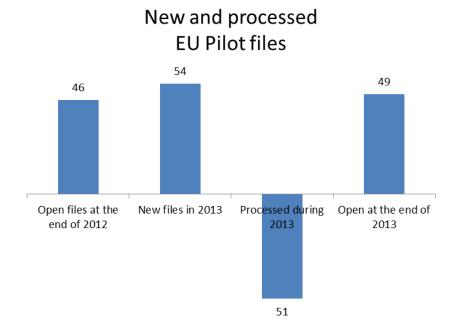
Main complaint areas

7

	AUSTRIA Total	89
Internal market	(free provision of services, free movement of professionals and public procurement)	23
Environment	(nature protection, environmental impact assessment, access to justice)	17
Taxation	(customs tariff classification)	10
Other	(Schengen Borders Code, data protection and free movement of people, free movement of workers in public service, distance sale of tobacco products and discriminatory road tolls)	39

Directive 2009/28/EC; IP/13/1113 and Commission v Austria, C-663/13

1. Progress of files relating to Austria open in EU Pilot



54 New EU Pilot files during 2013	
Transport	12
Environment	10
Internal market	7
Other	25

Average EU Pilot response	
65	days in 2013
62 days in 2012	
77 days in 2011	

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- differences in the payment frequency of family benefit top-up for EU workers residing in another Member States compared to the payment of national family benefits;
- the transposition of the directive on occupational exposure limit values for certain chemical agents;⁸
- parts of the education sector that were excluded from the scope of national measures implementing two directives on health and safety at work;⁹
- the construction of an emergency escape route for the Pitztaler Gletscher ski resort without environmental impact assessment;
- Austria's failure to ratify the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage.

VI. Important judgments

In a case concerning the First Railway Package¹⁰, the Court ruled that:

• Austria complied with existing rail legislation as regards the level of independence required for an infrastructure manager in a holding company structure¹¹.

In preliminary rulings addressed to the Austrian judiciary, the Court ruled that:

- the free movement of workers prohibits employee promotion rules that take full account of service periods completed with the promoting organisation, but only partial account of the service periods complete elsewhere; ¹²
- asylum applications should be handled by the Member State through which the asylum seeker first enters the EU, as provided for in the Dublin II Regulation,¹³ except where systemic flaws in asylum procedures and the reception conditions in that Member State would put the applicant at real risk of inhuman or degrading treatment, as defined in the Charter of Fundamental Rights;¹⁴
- national legislation cannot automatically bar (i.e. without examining the burden to the national social assistance system and the claimant's personal circumstances) the granting of a social benefit to a national of another Member State, even if this person is not economically active and not legally entitled to reside in the host Member State owing their claim for that social benefit;¹⁵

⁸ Directive <u>2009/161/EU</u>

⁹ Directives <u>89/391/EEC</u> and <u>89/654/EEC</u>

¹⁰ A brief description may be found <u>here</u>.

¹¹ Directive <u>91/440/EEC</u>, Commission v Austria, <u>C-555/10</u> and <u>IP/13/176</u>

¹² Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken Betriebs GmbH, <u>C-514/12</u>

¹³ Regulation (EC) No <u>343/2003</u>, repealed by Regulation (EU) No <u>604/2013</u>

¹⁴ Abdullahi, <u>C-394/12</u>

¹⁵ Brey, <u>C-140/12</u>

- the indiscriminate collection of a private copying levy on the first sale of recording media (such as blank CDs) may be compatible with the Copyright Directive¹⁶ provided that, where the end use does not justify such a levy, the refund procedure is effective and not overly complex;¹⁷
- the environmental impact assessment (EIA) does not assess the effects of a project on material assets, but does financial damage, does fall within the EIA Directive's¹⁸ protection remit if it is the direct result of the project's environmental effects. While failure to carry out an EIA does not give an individual the right to claim financial damages based on a decrease in value of property, , a national court can still establish a link between the failure and the damage, making a claim possible under EU compensation law;¹⁹
- Member States' discretion is limited when defining whether certain projects should be subject to an EIA. Thus, even if overly high national thresholds mean that certain projects are effectively exempt from the EIA, national authorities must still ensure it is carried out as certain provisions in the EIA Directive have direct effect in all Member States.²⁰

¹⁶ Directive <u>2001/29/EC</u>

¹⁷ Amazon.com International Sales and Others, <u>C-521/11</u>

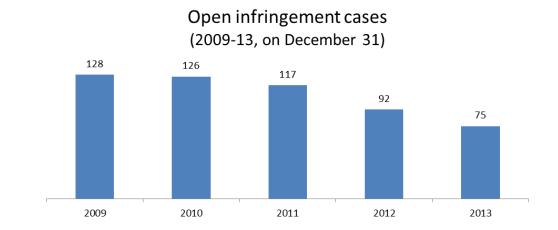
¹⁸ Directive <u>2011/92/EU</u>

¹⁹ Leth, <u>C-420/11</u>

²⁰ Salzburger Flughafen, <u>C-244/12</u>

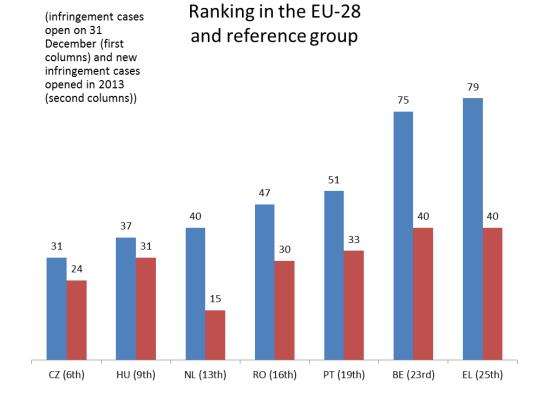
BELGIUM

I. General statistics

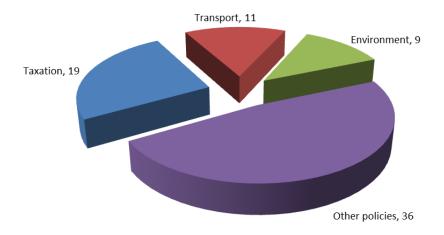


1. Open infringement cases against Belgium (2009–13, on 31 December 2013)

2. Ranking in the EU-28 and reference group



3. **75** infringement cases against Belgium



75 infringement cases against Belgium

- 4. Referrals to the Court and key infringement cases
 - (a) There were 40 new infringement procedures launched against Belgium in 2013. They and other major ongoing infringement cases relate to:
 - the independence of the national regulatory authority under the Framework Directive on Electronic Communications;²¹
 - limited access for non-Belgian residents to certain courses of higher education in medicine (the procedure has been suspended until the end of 2016 to allow Belgium to prove that the restrictive measures are necessary and proportionate to protect the Belgian healthcare system);²²
 - the non-respect of EU air quality (Particulate Matter₁₀) limit values in several zones and agglomerations;²³
 - the issue of visas and residence cards for non-EU family members of EU citizens and safeguards against the expulsion of EU citizens;²⁴
 - the lack of transparency of the Belgian legal framework for gambling, especially the restrictions on the provision of online gambling (e.g. requiring a physical presence);²⁵
 - deficiencies in implementing the directive on protecting pigs,²⁶ which requires keeping sows in groups during part of their pregnancy;²⁷

²¹ Directive <u>2002/21/EC</u>

²² IP/12/1388

²³ IP/13/47

²⁴ MEMO/13/122

²⁵ IP/13/1101

²⁶ Directive <u>2008/120/EC</u>

²⁷ <u>IP/13/135</u>

- the tax reduction for loans from residents of Flanders to businesses established in the region (not available to non-residents who receive their income in Belgium).²⁸
- (b) Six cases were referred to the Court under Article 258 TFEU. They relate to:
 - the lack of adequate urban waste water treatment in small agglomerations;²⁹
 - failure to bring Belgian law into line with EU rules on customs opening hours and administrative fees;³⁰
 - discriminatory inheritance tax provisions in Walloon law (discouraging Belgian residents from investing in foreign shares because their inheritance might be more heavily taxed);³¹
 - proof of language knowledge for access to employment in local administration: only certificates issued by the Belgian government recruitment service are accepted as proof of language knowledge; ³²
 - higher taxation of interests paid to foreign investment funds; ³³
 - refusal by Belgium to apply tax exemptions granted to Union institutions. ³⁴
- (c) Cases referred to the Court under Article 260(2) TFEU
 - none in 2013

II. Transposition of directives

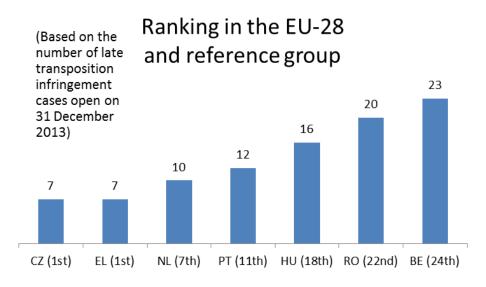
1. New late transposition infringement cases



New late transposition

- ²⁸ MEMO/13/122
- ²⁹ IP/13/251
- ³⁰ IP/13/1104
- ³¹ <u>IP/13/871, IP/12/408</u>
- ³² IP/13/868
- ³³ IP/13/1105
- ³⁴ <u>IP/13/952</u>

2. Ranking in the EU-28 and reference group



3. Policy areas in which most new late transposition infringement cases were opened

23 late transposition cases against Belgium	
Energy	4
Environment	4
Other	15

- 4. Court referrals under Articles 258/260(3) TFEU
 - partial transposition of the directive on investigating maritime accidents,³⁵ which had to be transposed by 17 June 2011;
 - failure to transpose the directive on intelligent transport systems,³⁶ which had to be transposed by 27 February 2012;
 - failure to transpose the directive adapting the legislation³⁷ on inland transport of dangerous goods to scientific and technical progress, which had to be transposed by 30 June 2014; ³⁸

³⁵ Directive <u>2009/18/EC</u>, <u>IP/13/560</u>

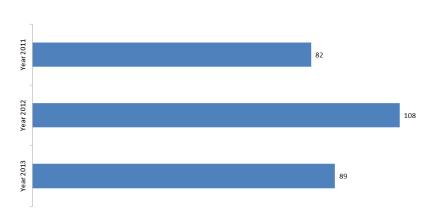
³⁶ Directive <u>2010/40/EU</u>, <u>IP/13/561</u>

³⁷ Directive 2008/68/EC

³⁸ <u>IP/13/256</u>

III. Complaints

1. Complaints made against Belgium



Complaints 2011-13

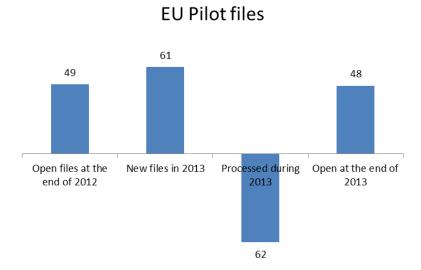
Main complaint areas

	BELGIUM Total	89
Taxation	(customs representation)	26
Justice	(free movement of persons)	21
Enterprise and industry	(especially car registration)	10
Other	(airport charges, posting of workers, waste management, nitrates' pollution)	32

IV. EU Pilot

New and processed

1. Progress of files relating to Belgium open in EU Pilot



61 New EU Pilot files during 2013		
Transport 11		
Justice 10		
Employment 7		
Internal market 7		
Other	26	

Average EU Pilot response	
65 days in 2013	
75	days in 2012
71	days in 2011

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- the partial transposition of the directives on transferring defence products,³⁹ minimum sanctions and measures against employers of illegally staying third-country nationals,⁴⁰ transporting dangerous goods,⁴¹ investigating maritime accidents⁴² and state control of ports;⁴³
- bad application of the Environmental Impact Assessment Directive;⁴⁴
- the non-ratification by Belgium of the EU-Western Balkans Aviation Agreement.

VI. Important judgments

The Court ruled that:

Belgium failed to comply with a previous judgment⁴⁵ that Belgium had infringed several provisions of the Urban Waste Water Treatment Directive. It has ordered Belgium to pay a lump sum of €10 million and a penalty payment of €4722 euro per day.⁴⁶

In preliminary rulings addressed to the Belgian judiciary, the Court ruled that:

• EU rules on the free movement of workers preclude the obligatory use of Dutch in crossborder employment contracts;47under the Data Protection Directive,48 Member States are

³⁹ Directive <u>2009/43/EC</u>

⁴⁰ Directive 2009/52/EC

⁴¹ Directive 2010/61/EU

⁴² Directive 2009/18/EC

⁴³ Directive 2009/16/EC

⁴⁴ Directive 95/377/ECC as amended, now codified in Directive 2011/92/EU

⁴⁵ Commission v Belgium, <u>C-27/03</u>

⁴⁶ Commission v Belgium, <u>C-533/11</u> and Court press release No <u>133/13</u>

⁴⁷ Las, <u>C-202/11</u>

⁴⁸ Directive <u>95/046/EC</u>

not obliged to transpose into national law one or more of the exceptions the directive makes to the obligation to inform data subjects of the use of their personal data. They can do so if they wish however.⁴⁹

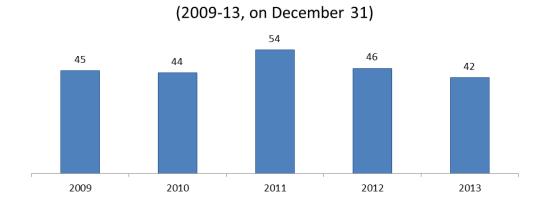
⁴⁹ IPI, <u>C-473/12</u>

BULGARIA

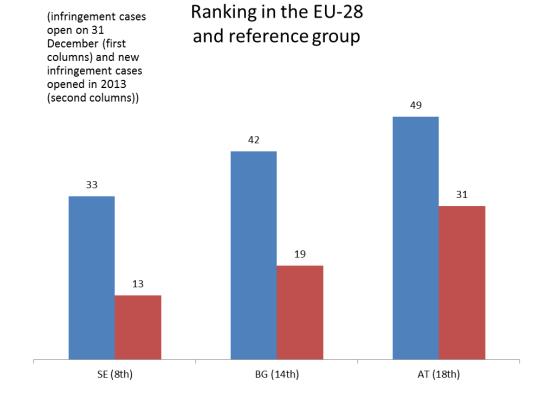
I. General statistics

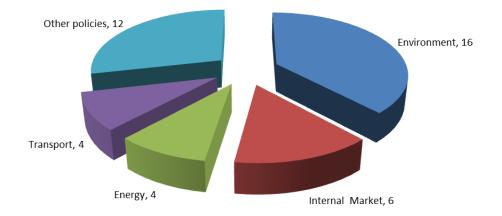
Open infringement cases

1. Open infringement cases against Bulgaria (2009-13)



2. Ranking in the EU-28 and reference group





42 infringement cases against Bulgaria

- 4. Referrals to the Court and key infringement cases
 - (a) 19 new infringement procedures were launched against Bulgaria in 2013. They and other major ongoing infringement cases relate to:
 - the compatibility of the working conditions of employees at the Ministry of the Interior with the Working Time Directive;⁵⁰
 - Bulgaria's failure to notify the Commission of measures to transpose the directive on alternative investment fund managers;⁵¹
 - values for the PM₁₀⁵² exceeding the limit in certain zones and agglomerations (air quality);⁵³
 - transposition of the Railway Safety Directive⁵⁴, including the definition of 'railway undertaking', the rules relating to the safety authority and safety management systems.
 - (b) Three cases were referred to the Court under Article 258 TFEU. They relate to:
 - the assignment of digital terrestrial broadcast spectrum. The Commission argues that in Bulgaria the reallocation of radio spectrums in the transition from analogue to digital broadcasting was disproportionately restrictive;⁵⁵

⁵⁰ Directive <u>2003/88/EC</u>

⁵¹ Directive <u>2011/61/EU</u>

⁵² PM₁₀ is 'an air pollutant consisting of small particles with an aerodynamic diameter less than or equal to a nominal 10 micrometer. Their small size allows them to make their way to the air passages deep within the lungs where they may be deposited and result in adverse health effects' (Source: <u>the</u> <u>European Environmental Agency</u>).

⁵³ <u>IP/13/47</u>

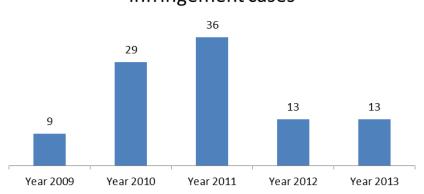
⁵⁴ Directive <u>2004/49/EC</u>

⁵⁵ <u>IP/13/46</u>

- the insufficient designation of a large part of the Important Bird Area 'Kaliakra' as a special protection area under the Birds Directive.⁵⁶ Numerous economic projects (including wind turbines and golf courses) were authorized in the Kaliakra region which has allowed the destruction or deterioration of priority natural habitat (Habitats Directive⁵⁷) and endangered bird species under the Birds Directive (the region being an important migratory route and resting, feeding and nesting place for those species), without adequate assessments of their cumulative environmental effects (the Environmental Impact Assessment Directive⁵⁸);⁵⁹
- a technical assistance agreement between Bulgaria and the US which goes beyond the permissible privileges that may be afforded to commodities imported by organisations that are set up in the framework of international cultural, scientific or technical cooperation agreements with third countries.⁶⁰
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases



New late transposition infringement cases

⁶⁰ IP/13/573

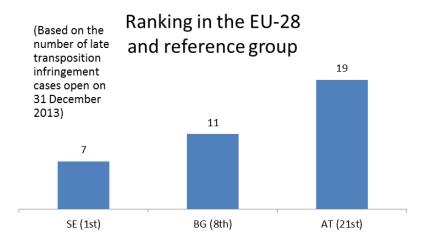
⁵⁶ Directive <u>2009/147/EC</u>

⁵⁷ Directive <u>92/43/EEC</u>

⁵⁸ Directive <u>2011/92/EC</u>

⁵⁹ <u>IP/13/966</u>

2. Ranking in the EU-28 and reference group



3. Policy areas in which most new late transposition infringement cases were opened

11 late transposition cases against Bulgaria	
Energy	2
Environment	2
Internal market	2
Health & consumers	2
Other	3

4. Court referrals under Articles 258/260(3) TFEU:

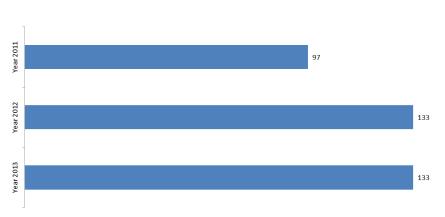
• Bulgaria's s failure to fully transpose the EU internal energy market rules. Bulgaria has only partially transposed the Electricity and Gas Directives.⁶¹ The Commission asked the Court to impose a daily penalty in respect of each partially transposed directive.⁶²

⁶¹ Directive <u>2009/72/EC</u> and Directive <u>2009/73/EC</u> ⁶² IP/12/42 The Commission withdraw the Court a

<u>IP/13/42.</u> The Commission withdrew the Court application in 2013, following Bulgaria's compliance with the directives' requirements.

III. Complaints

1. Complaints made against Bulgaria

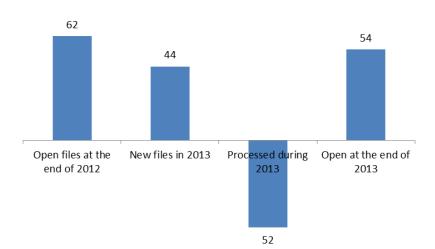


Complaints 2011-13

Main complaint areas

	BULGARIA Total	133
Internal market	(online gambling, public procurement and free movement of services)	24
Justice	(free movement of people and fundamental rights)	21
Taxation	(deduction of value added tax)	17
Other	(rural development, renewable energy, energy metering and billing,	71
	asylum and food safety)	

1. Progress of files relating to Bulgaria open in EU Pilot



New and processed EU Pilot files

44 New EU Pilot files during	
2013	
Transport	12
Environment	10
Internal market 7	
Other	25

Average EU Pilot response	
59	days in 2013
68	days in 2012
67	days in 2011

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- EU rules governing citizens' participation (as voters or candidates) in the European Parliament or municipal elections;⁶³
- full transposition of the Electricity and Gas Directives;⁶⁴
- the mandatory customs declaration requirement for jewels, precious stones and metals;
- the marketing rules for hearing devices;

⁶³ <u>IP/13/874</u>

⁶⁴ Directive <u>2009/72/EC</u> and Directive <u>2009/73/EC</u>

• manufacturing practices for medicinal products for veterinary use.

VI. Important judgment

In preliminary rulings addressed to the Bulgarian judiciary concerning rural development , the Court ruled that:

- there is no contradiction with EU law if all disputes arising from decisions made by the
 national authority dealing with agricultural support under the Common Agricultural Policy
 are heard by a single court, and if the procedures that safeguard individuals' rights under EU
 law are conducted at least under the same conditions as those available under national aid
 schemes, and that such procedural rules do not make exercising these rights under EU law
 excessively difficult;⁶⁵
- the national court must assess if a project can objectively achieve one of the aims of the European Agricultural Fund for Rural Development (EAFRD) and if artificially creating conditions exclusively for the purposes of receiving payment from the EAFRD would compromise the achievement of this goal. However, an applicant cannot be rejected merely on the grounds that applicants for an investment project are not functionally independent from each other or that they are legally linked.⁶⁶

⁶⁵ Agrokonsulting-04, <u>C-93/12</u>

⁶⁶ Slancheva sila, <u>C-434/12</u>

CROATIA

I. General statistics

There were four infringement procedures launched against Croatia in 2013, all of them for late transposition of directives relating to:

- the management of spent nuclear fuel and radioactive waste;⁶⁷
- the restriction on using certain hazardous substances in electrical and electronic equipment;⁶⁸
- the lead and cadmium content of electrical and electronic equipment.⁶⁹

II. Complaints

Complaints made against Croatia in 2013 related to alleged discrimination on grounds of residence as regards access to recreational fisheries.

III. EU Pilot

At the end of 2013, the Commission and Croatia were working on 13 open files in EU Pilot (18 new EU Pilot files were opened since 1 July 2013). The Commission processed five EU Pilot files on Croatian issues in 2013. Croatia's average response time (61 days) met the 10-week target.

⁶⁷ Directive <u>2011/70/EURATOM</u>

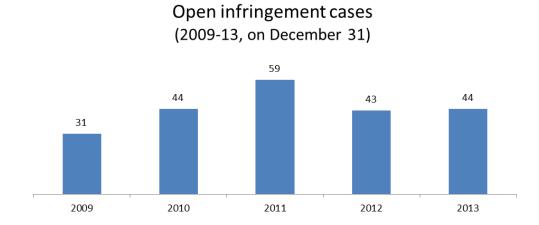
⁶⁸ Directive <u>2011/65/EU</u>

⁶⁹ Directives <u>2012/50/EU</u> (on lead) and <u>2012/51/EU</u> (on cadmium), both amending Directive <u>2011/65/EU</u>. These two cases were closed in 2013 following Croatia's transposition.

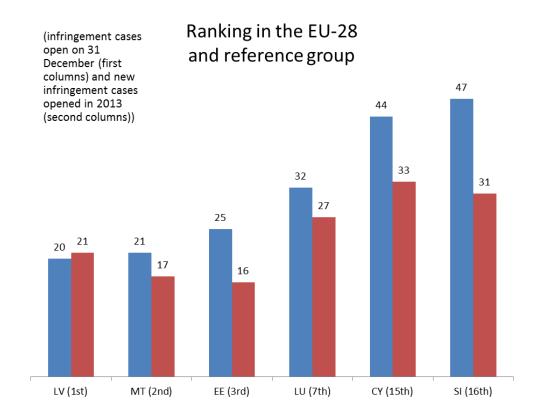
CYPRUS

I. General statistics

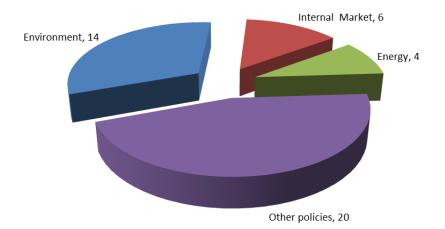
1. Open infringement cases against Cyprus (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group



3. **44** infringement cases against Cyprus



44 infringement cases against Cyprus

- 4. Referrals to the Court and key infringement cases
 - (a) 33 new infringement procedures were launched against Cyprus in 2013. These and other major ongoing infringement cases relate to:
 - Cyprus' failure to notify the Commission of measures to transpose: three directives in the automotive sector;⁷⁰ the directive on preventing trafficking in human beings;⁷¹ and the Postal Services Directive;⁷²
 - the incorrect application of the Unfair Commercial Practices Directive⁷³ and the directive on unfair terms in consumer contracts⁷⁴ in relation to the purchase of immovable property;
 - restrictions on the provision of online gambling services (which were made subject to physical presence in the recipient Member State) and the failure to ensure equal treatment of gambling service providers;⁷⁵
 - non-compliance with the Single European Sky provisions that require full implementation of Functional Airspace Blocks (FABs);⁷⁶
 - the incorrect implementation of EU legislation concerning the welfare of animals, which requires that sows are kept in groups during part of their pregnancy;⁷⁷
 - delays in VAT refunding;

⁷⁰ Directives <u>2011/87/EU</u>, <u>2012/24/EU</u> and <u>2013/15/EU</u>

⁷¹ Directive <u>2011/36/EU</u> and <u>MEMO/13/1005</u>

⁷² Directive <u>2008/6/EC</u>

⁷³ Directive <u>2005/29/EC</u>

⁷⁴ Directive <u>93/13/EEC</u>

⁷⁵ <u>IP/13/1101</u>

⁷⁶ <u>IP/13/860</u>

⁷⁷ Directive <u>2008/120/EC</u> and <u>IP/13/135</u>

- the refusal to take into account periods that Cypriot teachers spent working in Greece when calculating and granting pension entitlements, and the refusal to grant partial pensions to teachers who have worked in Greece and Cyprus;⁷⁸
- the insufficient designation of special protection areas for birds;⁷⁹
- the violation of the rules on free movement of persons as regards registration of EU citizens, fees for obtaining permanent residence certificates, and deadlines for issuing residence cards for third-country family members of EU citizens.⁸⁰
- (b) One case was referred to the Court under Article 258 TFEU. It relates to:
 - the application of discriminatory conditions to the pension rights and unpaid leave rights of Cypriot civil servants working in another Member State – this is in breach of EU rules on the free movement of workers.⁸¹
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

⁷⁸ <u>MEMO/13/375</u>

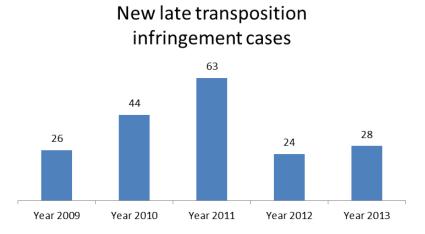
⁷⁹ <u>MEMO/13/122</u>

⁸⁰ <u>MEMO/13/583</u>

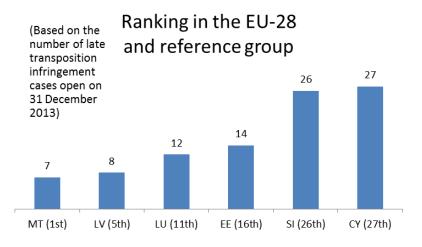
⁸¹ <u>IP/13/869</u>

II. Transposition of directives

1. New late transposition infringement cases



2. Ranking in the EU-28 and reference group



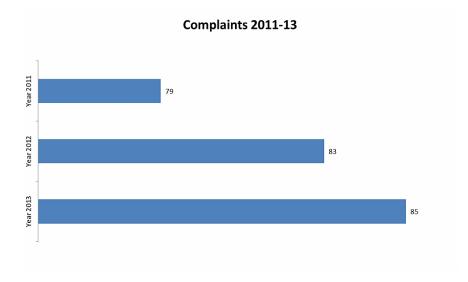
3. Policy areas in which most new late transposition infringement cases were opened

27 late transposition cases against Cyprus	
Environment	8
Internal market	5
Other	14

- 4. Court referrals under Articles 258/260(3) TFEU
 - failure to transpose the Renewable Energy Directive, which had to be transposed by 5 December 2010.⁸²

III. Complaints

1. Complaints made against Cyprus

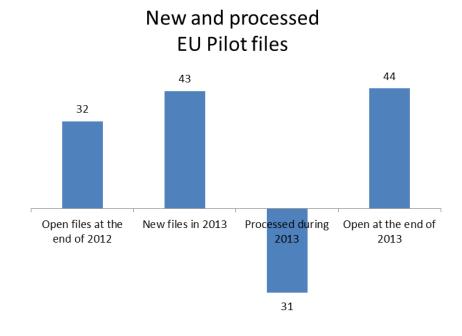


Main complaint areas

	CYPRUS Total	85
Justice	(free movement of people)	26
Internal market	(professional qualifications, public procurement, gambling and	14
	patents & industrial property)	
Environment	(nature protection, environmental impact assessment and waste	13
	management)	
Other	(residence requirement for jobseekers, fees for long-term residence	32
	permits, asylum and car taxation)	

⁸² Directive 2009/28/EC and IP/13/259. Subsequently Cyprus achieved full transposition and the Commission withdrew the Court application.

1. Progress of files relating to Cyprus open in EU Pilot



43 New EU Pilot files during		
2013		
Transport	11	
Environment	9	
Internal market	5	
Other	18	

Average EU Pilot response	
66	days in 2013
60	days in 2012
70	days in 2011

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- Cyprus' failure to notify the Commission of measures to transpose the directives on road intelligent transport systems⁸³ and driving licences;⁸⁴
- the incorrect transposition of the directive on public participation in the drawing up of certain plans and programmes relating to the environment (national legislation restricts access to justice for certain NGOs);⁸⁵
- failure to implement the ban on using unenriched cages for laying hens;⁸⁶
- discriminatory taxation rules applied to the registration of second-hand cars brought into Cyprus from other EU Member States.

VI. Important judgments

The Court ruled that:

 Cyprus failed to fulfil its obligations under the Landfill Directive.⁸⁷ Not all sites of uncontrolled landfill of waste operating on its territory have been decommissioned or rendered compliant with the directive's requirements.⁸⁸

⁸³ Directive <u>2010/40/EU</u>

⁸⁴ Directive 2006/126/EC

⁸⁵ Directive <u>2003/35/EC</u> and <u>MEMO/13/375</u>

⁸⁶ In accordance with Directive <u>1999/74/EC</u>

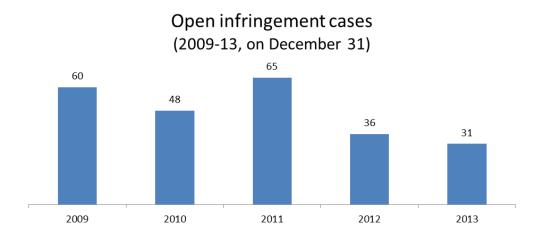
⁸⁷ Directive <u>1999/31/EC</u>

⁸⁸ Commission v Cyprus, <u>C-412/12</u>

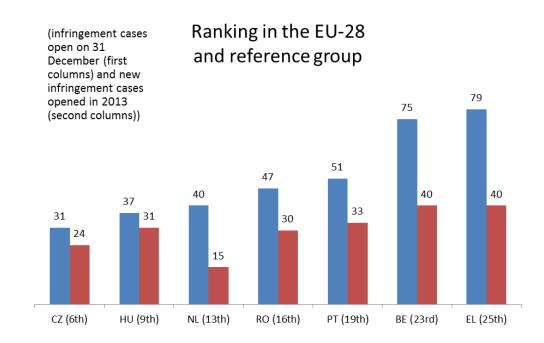
CZECH REPUBLIC

I. General statistics

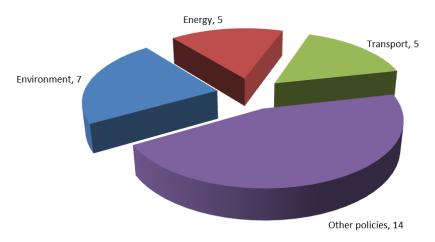
1. Open infringement cases against the Czech Republic (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group



3. **31** infringement cases against the Czech Republic



31 infringement cases against the Czech Republik

II. Referrals to the Court and key infringement cases

- (a) 24 new infringement procedures were launched against the Czech Republic in 2013. They and other major ongoing infringements relate to:
 - the requirement that bottles of wine produced for domestic consumption be labelled with a list of ingredients in Czech;
 - the Czech Republic's failure to apply the mutual recognition of hallmarks issued in other Member States;⁸⁹
 - the Environmental Impact Assessment Directive⁹⁰ and the limit values for PM₁₀⁹¹ laid down in EU air quality legislation;⁹²
 - the extension of air carriers' liability relating to intra-Schengen flights;
 - the right to appeal against a decision taken on the refusal, annulment and revocation under the Visa Code;⁹³
 - online gambling services;⁹⁴
 - aviation security.
- (b) Cases referred to the Court under Article 258 TFEU:
 - none in 2013

⁸⁹ <u>MEMO/13/470</u>

⁹⁰ Directive <u>2011/92/EU</u>

PM₁₀ is 'an air pollutant consisting of small particles with an aerodynamic diameter less than or equal to a nominal 10 micrometer. Their small size allows them to make their way to the air passages deep within the lungs where they may be deposited and result in adverse health effects' (Source: <u>the</u> <u>European Environmental Agency</u>).

⁹² <u>IP/13/47</u>

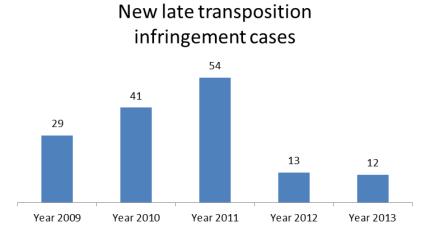
⁹³ Regulation (EC) No <u>810/2009</u>

⁹⁴ <u>IP/13/1101</u>

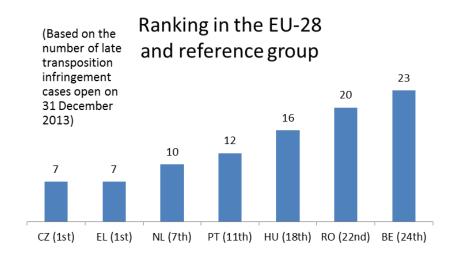
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

III. Transposition of directives

1. New late transposition infringement cases



2. Ranking in the EU-28 and reference group



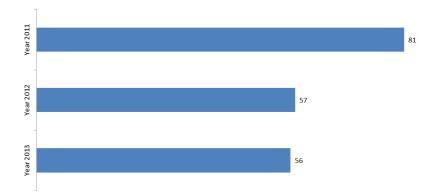
3. Policy areas in which most new late transposition infringement cases were opened

7 late transposition cases against Czech Re	epublic
Energy	3
Environment	2
Other	2

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

IV. Complaints

1. Complaints made against the Czech Republic

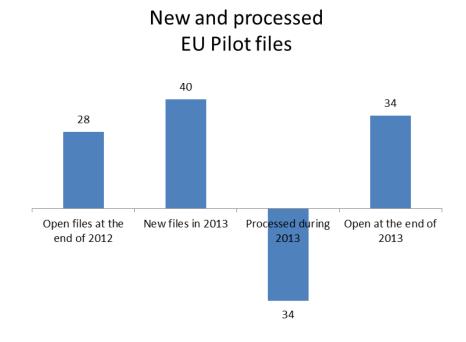


Complaints 2011-13

Main complaint areas

	CZECH REPUBLIC Total	56
Justice	(fundamental rights)	14
Environment	(environmental impact assessment and waste management)	12
Regional policy	(cohesion policy)	9
Other	(wines' product labelling, authorisations and establishment requirements in electronic communications, support schemes for renewable energy, carriers' liability on intra-Schengen flights)	21

1. Progress of files relating to the Czech Republic open in EU Pilot



40 New EU Pilot files during 2013		
Transport	11	
Environment	9	
Justice	8	
Other	12	

Average EU Pilot response		
75	days in 2013	
71	days in 2012	
72	days in 2011	

VI. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- the directive on preventing sharp injuries in the hospital and healthcare sector;⁹⁵
- the directive on combating late payment in commercial transactions;⁹⁶
- Sumava National Park's visitor code (it is a Natura 2000 site);
- the Czech Republic's failure to ratify the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage;
- the Czech Republic's failure to apply the Drivers' Working Time Directive⁹⁷ to self-employed drivers.

VII. Important judgments

Court rulings made against the Czech Republic related to:

- the Czech Republic's failure to comply with the Court's earlier judgement⁹⁸ on transposing the directive on the institutions for occupational retirement,⁹⁹ where a lump sum payment of € 250,000 was ordered;¹⁰⁰
- the incorrect implementation of one of the directive in the EU's First Railway Package.¹⁰¹ The Czech Republic restricted the independence of the railway infrastructure manager; continued to operate a funding system that does not provide an incentive to the reduce infrastructure costs and access charges; and put in place incoherent and non-transparent rules that do not encourage fewer disruptions and better performance.¹⁰²

In preliminary rulings to the Czech judiciary, the Court ruled that:

• Czech national rules were incompatible with EU law in defining "normal retirement age" for receiving support from the EAGGF¹⁰³, as the Czech retirement age differs depending on gender and, for women, on the number children raised;¹⁰⁴

⁹⁸ Commission v Czech Republic, <u>C-343/08</u>; the Court ordered only a lump sum payment as the Czech Republic complied with the first judgment during the second Court procedure.

⁹⁵ Directive <u>2010/32/EU</u>

⁹⁶ Directive <u>2011/7/EU</u>

⁹⁷ Directive <u>2002/15/EC</u>

⁹⁹ Directive <u>2003/41/EC</u>

¹⁰⁰ Commission v Czech Republic, <u>C-241/11</u>

¹⁰¹ Directive <u>2001/14/EC</u>

¹⁰² Commission v Czech Republic, <u>C-545/10</u>

¹⁰³ The European Agricultural Guidance and Guarantee Fund

¹⁰⁴ Soukupová, <u>C-401/11</u>

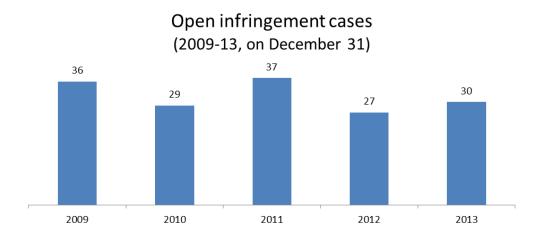
 asylum seekers cannot be considered as staying illegally in the territory of a Member State so they should benefit from the right to move freely. However, their detention may be maintained if the asylum application was made solely in order to delay or jeopardise an earlier decision to return that person to a third country.¹⁰⁵

¹⁰⁵ Arslan, <u>C-534/11</u>

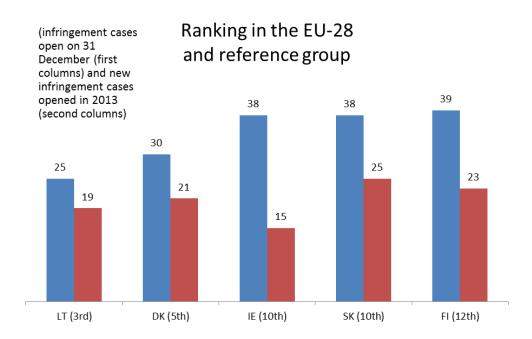
DENMARK

I. General statistics

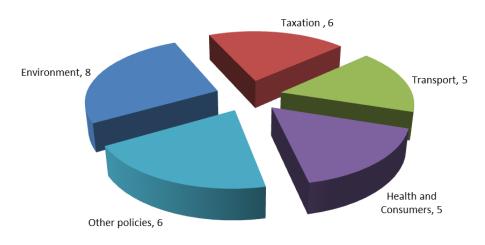
1. Open infringement cases against Denmark (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group



3. **30** infringement cases against Denmark



30 infringement cases against Denmark

4. Referrals to the Court and key infringement cases

- (a) 21 new infringement procedures were launched against Denmark in 2013. They and other major ongoing infringement cases relate to:
 - the compatibility of Danish national law with the directive on competition in the markets for electronic communications, networks and services;¹⁰⁶ Denmark had introduced mandatory membership for households to local Danish cable associations;
 - the incompatibility of the National Holiday Act with the Working Time Directive; the National Holiday Act makes it possible to defer annual leave by one year;
 - Denmark's failure to correctly implement the regulation concerning the rights of bus and coach passengers;¹⁰⁷
 - Denmark's incorrect application of the directive laying down minimum standards for the protection of pigs, ¹⁰⁸ which requires that sows are kept in groups during a part of their pregnancy;¹⁰⁹
 - a case in which public school teachers working part-time were excluded from a number of benefits that full-time employees received.¹¹⁰ The directive on part-time work¹¹¹ requires the equal treatment of part-time staff and permanent staff doing similar work;

¹⁰⁶ Directive <u>2002/77/EC</u>

¹⁰⁷ Regulation (EU) No <u>181/2011</u>

¹⁰⁸ Directive <u>2008/120/EC</u> ¹⁰⁹ ID/12/125

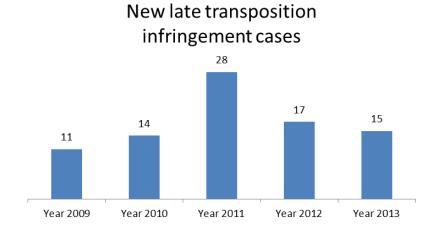
¹⁰⁹ <u>IP/13/135</u> ¹¹⁰ MEMO(12

¹¹⁰ <u>MEMO/13/583</u>

¹¹¹ Directive <u>97/81/EC</u>

- Denmark's lack of river basin management plans, which are required under the Water Framework Directive;¹¹²
- the compatibility of Danish taxation rules for foreign investment funds with the freedom to provide services and the free movement of capital as set out in the EU Treaties.¹¹³ In Denmark, dividends distributed to funds registered as 'investment institutes with minimum taxation' are exempt from tax, but only if the institute is Danish. The Danish tax rules discriminate against 'investment institutes with minimum taxation' from other Member States.
- (b) Cases referred to the Court under Article 258 TFEU:
 - none in 2013
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

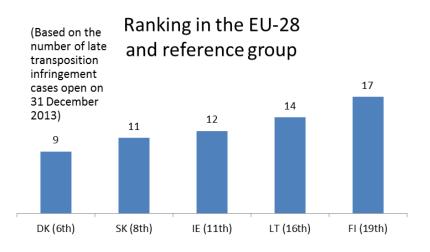


1. New late transposition infringement cases

¹¹² <u>MEMO/13/907</u> ¹¹³ MEMO/12/275

¹¹³ <u>MEMO/13/375</u>

2. Ranking in the EU and reference group



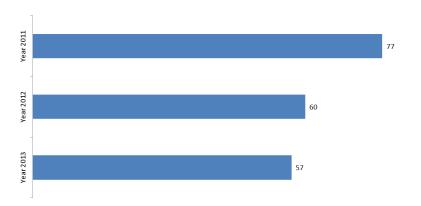
3. Policy areas in which most new late transposition infringement cases were opened

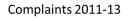
9 late transposition cases against Denmark	
Environment	3
Internal market	3
Other	3

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

1. Complaints made against Denmark



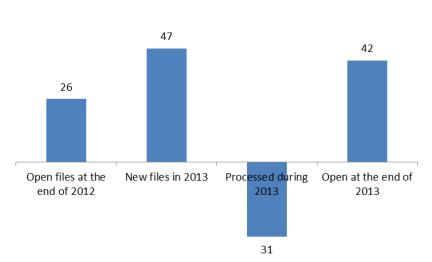


Main complaint areas

	DENMARK Total	57
Taxation	(charges having an equivalent effect to customs, discriminatory taxation	12
	of self-employed businesses registered in other Member States)	
Employment	(social security coverage, posted workers and family benefits to migrant	11
	workers)	
Environment	(water protection and nature protection)	9
Other	(transport fares for students and access to education)	25

IV. EU Pilot

1. Progress of files relating to Denmark in EU Pilot



New and processed
EU Pilot files

47 New EU Pilot files during 2013	
Transport	17
Taxation	6
Justice	5
Other	19

Average EU Pilot response		
69	days in 2013	
70	days in 2012	
81	days in 2011	

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 covered:

- the incorrect transposition of the Habitats Directive;¹¹⁴
- the incorrect transposition of the Bathing Water Directive.¹¹⁵

VI. Important judgments

In preliminary rulings addressed to the Danish judiciary, the Court ruled that:

- an EU citizen working while studying in a Member State is entitled to receive the same amount of financial aid for studies that is granted to the nationals of that Member State;¹¹⁶
- in certain circumstances, a disability can include incurable or curable long-term illnesses caused by a psychical, mental or psychological limitation. In such cases, the employer must offer a reduction in working hours to enable the person with a disability to work.¹¹⁷

¹¹⁴ Directive <u>92/43/EEC</u>

¹¹⁵ Directive <u>2006/7/EC</u>

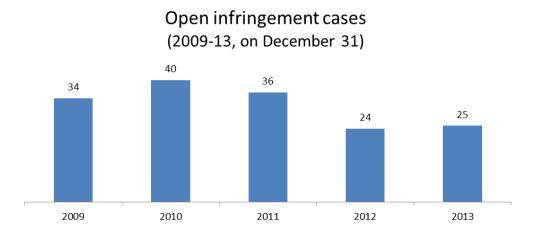
¹¹⁶ N., <u>C-46/12</u>

¹¹⁷ HK Denmark, <u>C-335/11 and C-337/11</u>

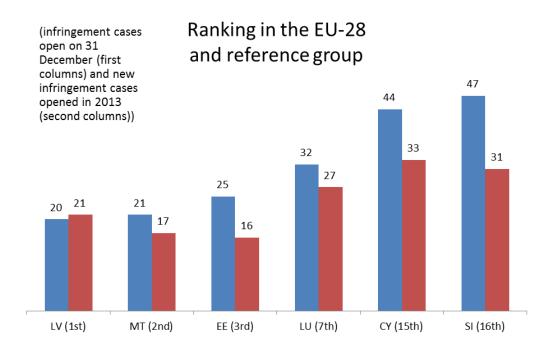
ESTONIA

I. General statistics

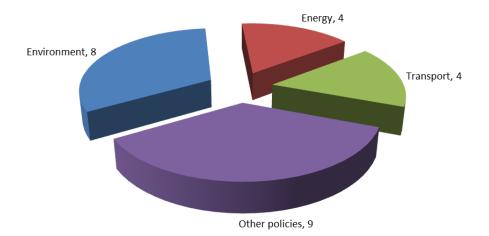
1. Open infringement cases against Estonia (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group



3. **25** infringement cases against Estonia



25 infringement cases against Estonia

- 4. Referrals to the Court and key infringement cases
 - (a) 16 new infringement procedures were launched against Estonia in 2013. They and other major ongoing infringement cases relate to:
 - the incorrect transposition of the INSPIRE Directive;¹¹⁸
 - failure to correctly implement the right to appeal against a visa refusal, annulment or revocation in accordance with the provisions of the Visa Code;¹¹⁹
 - failure to transpose the Directive on Alternative Investment Fund Managers within the timeframe allowed;¹²⁰
 - incorrect transposition of the Railway Safety Directive;¹²¹
 - failure to grant tax-exempt allowances in respect of the pension income of nonresidents with very low worldwide total taxable income.¹²²
 - (b) One case was referred to the Court under Article 258 TFEU. It relates to:
 - the independence of the national telecoms regulator. Estonian law is not in line with EU legislation on telecoms, which stipulates that national authorities acting as regulators cannot at the same time be involved in the ownership or control of telecoms companies.¹²³
 - (c) Cases referred to the Court under Article 260(2) TFEU:
 - o none in 2013

¹¹⁸ Directive <u>2007/2/EC</u>

¹¹⁹ Regulation (EC) No <u>810/2009</u>

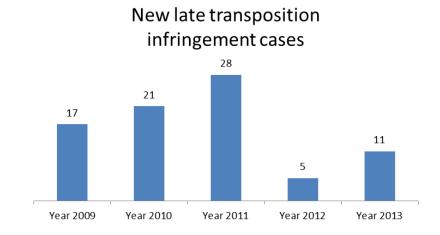
¹²⁰ Directive <u>2011/61/EU</u>

¹²¹ Directive <u>2004/49/EC</u>

¹²² IP/09/1636; IP/08/1532

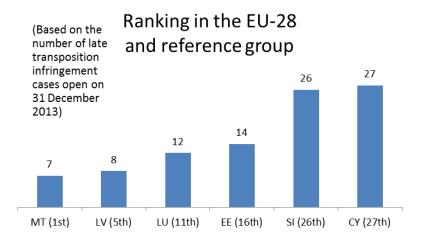
¹²³ IP/13/480

II. Transposition of directives



1. New late transposition infringement cases

2. Ranking in the EU-28 and reference group



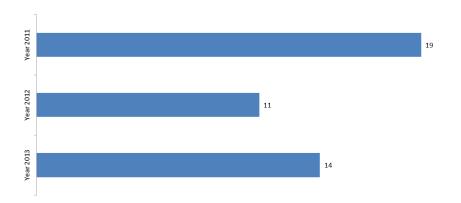
3. Policy areas in which most new late transposition infringement cases were opened

14 late transposition cases against Estonia	
Energy	4
Environment	4
Other	6

- 4. Court referrals under Articles 258/260(3) TFEU:
 - Estonia's failure to fully transpose the EU internal energy market rules. Estonia has only partially transposed the Electricity and Gas Directives.¹²⁴ Some provisions, for example relating to consumer protection and the independence of the regulatory authority, have not been transposed. The Commission asked the Court to impose daily penalties in respect of each partially transposed directive.¹²⁵

III. Complaints

1. Complaints made against Estonia



Complaints 2011-13

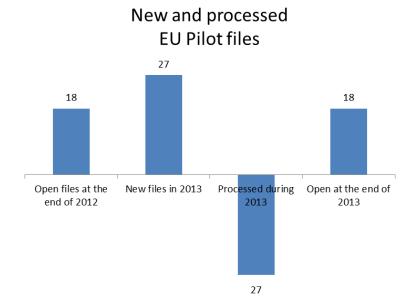
Main complaint areas

	ESTONIA Total	14
Taxation	(rules on VAT and property taxation)	3
Health and consumers	(e.g. stud-books for horses)	2
Home affairs	(Schengen Borders Code)	2
Other	(waste management, end-of-life vehicles and packaging)	7

¹²⁴ Directive <u>2009/72/EC</u> and Directive <u>2009/73/EC</u>

¹²⁵ IP/13/42. Subsequently, Estionia achieved full transposition and the Commission withdrew the Court applications.

1. Progress of files relating to Estonia open in EU Pilot



27 New EU Pilot file	s during 2013
Transport	7
Environment	4
Justice	4
Other	12

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

 the incorrect transposition of the Batteries Directive¹²⁶ and of the directives in the First Railway Package.¹²⁷

¹²⁶ Directive <u>2006/66/EC</u>

¹²⁷ Directive <u>91/440/EEC</u>, amended by Directives <u>1995/18/EC</u> and <u>2001/14/EC</u>

VI. Important judgments

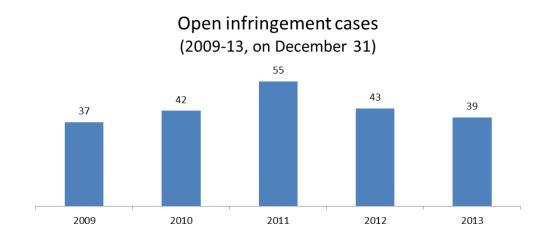
In preliminary rulings addressed to the Estonian judiciary, the Court ruled that:

the concept of proximity and self-sufficiency in relation to the management of municipal waste.¹²⁸ A local authority can require the authority responsible for the collection of waste on its territory to transport mixed municipal waste collected from private households to the nearest appropriate treatment facility. The local authority cannot however impose similar obligations on the authority in respect of industrial and building waste if the producers of that waste are themselves required to deliver the waste either to the authority or directly to the facility.

¹²⁸ Ragn-Sells, <u>C-292/12</u>

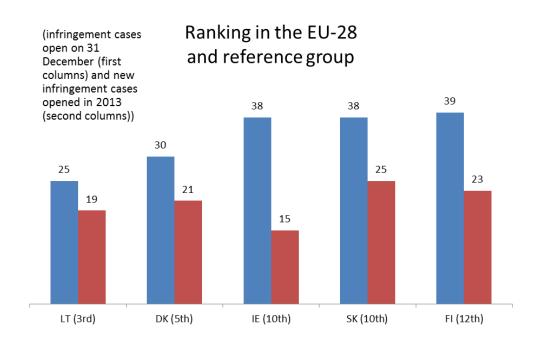
FINLAND

I. General statistics

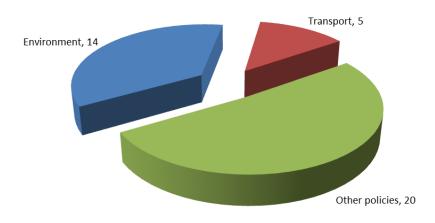


1. Open infringement cases against Finland (2009-13, on 31December 2013)

2. Ranking in the EU-28 and reference group



3. **39** infringement cases against Finland



39 infringement cases against Finland

4. Referrals to the Court and key infringement cases

- (a) 23 new infringement procedures were launched against Finland in 2013. They and other major ongoing infringement cases relate to:
 - the conditions for receiving unemployment benefits in Finland;¹²⁹
 - the protection of pensions financed through book reserves in case of the insolvency of the employer;
 - the lack of timely transposition of the Laboratory Animals Directive within the allowed timeframe;¹³⁰
 - the lack of timely transposition of the Industrial Emissions Directive within the allowed timeframe,¹³¹
 - the national equality body, which provides assistance to victims of discrimination. This body has not been designated as competent for all of the tasks set out in the Racial Equility Directive;¹³²
 - the lack of timely transposition of the Directive on Alternative Investment Fund Managers which expired on 22 July 2013.
- (b) Two cases were referred to the Court under Article 258 TFEU. They relate to:
 - the discriminatory conditions applied in determining unemployment benefits;¹³³

¹²⁹ <u>MEMO/13/470</u>

¹³⁰ MEMO/13/820

¹³¹ Directive <u>2010/75/EU</u> and <u>MEMO/13/907</u>

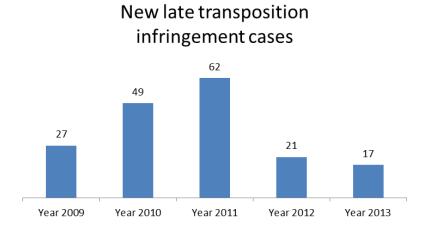
¹³² Directive <u>2000/43/EC</u> and <u>MEMO 13/1005</u>

¹³³ <u>IP/13/1107</u>

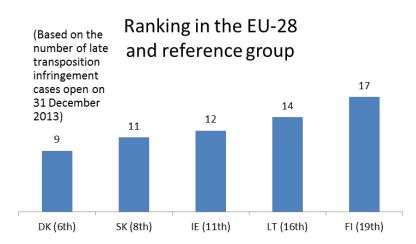
- transposition of requirements relating to maximum working hours for selfemployed drivers.¹³⁴
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases



2. Ranking in the EU-28 and reference group



¹³⁴ <u>IP/13/142</u>

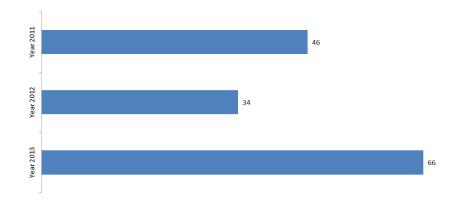
3. Policy areas in which most new late transposition infringement cases were opened

17 late transposition cases against Finland	
Environment	7
Other	10

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013



1. Complaints made against Finland

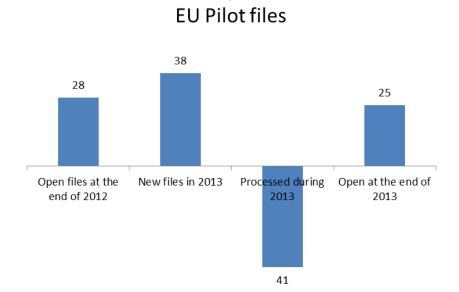


Complaints 2011-13

Main complaint areas

	FINLAND Total	66
Taxation	(e.g. access household tax credit)	15
Internal market	(professional qualifications, free movement of capital)	12
Environment	(nature protection and waste management)	11
Other	(marketing of spirits, language of instruction in education	28
	institutions)	

1. Progress of files relating to Finland open in EU Pilot



New and processed

38 New EU Pilot files during 2013	
Transport	8
Taxation	8
Justice	5
Other	17

Average EU Pilot response	
65 days in 2013	
66	days in 2012
80	days in 2011

V. Early resolution of infringement cases

The cases closed without a Court judgement in 2013 related to:

- gambling services and the compliance with Union law of the national provisions establishing exclusive rights to provide gambling services;¹³⁵
- failure to transpose the directives on road intelligent transport systems, on organisation of the working time of self-employed drivers, on roadworthiness tests for motor vehicles, on insurance of ship-owners and on maritime traffic monitoring and on minimum standards on sanctions and measures against employers of illegally staying third-country nationals;
- full transposition of the Electricity and Gas Directives.¹³⁶

VI. Important judgments

The Court ruled that:

• Finland had restricted the free movement of capital in a case concerning capital gains arising from the sale of real estate. Finnish law does not allow losses made from the sale of real estate in another Member State to be offset against gains taxable in Finland. Nonetheless, this restriction was deemed to be justified, in particular in order to ensure a balanced allocation of taxing rights between Member States.¹³⁷

In preliminary rulings addressed to the Finnish judiciary, the Court ruled that:

in the area of chemical substances, Member States cannot, in principle, subject the manufacture, placing on the market or use of a substance referred to in Annex XVII to the REACH Regulation to conditions other than those laid down by the this regulation. If a Member State intends to impose stricter conditions for a substance restricted in Annex XVII to REACH, it may do so only in order to respond to an urgent situation to protect human health or the environment in accordance with the relevant safeguarded clause given in Article 129 of the REACH Regulation, or on the basis of new scientific evidence in accordance with Article 114(5) of the TFEU.¹³⁸

¹³⁵ Directive <u>2009/52/EC</u> and <u>IP/13/1101</u>

¹³⁶ Directive <u>2009/72/EC</u> and Directive <u>2009/73/EC</u>

¹³⁷ K, <u>C-322/11</u>

¹³⁸ Lapin luonnonsuojelupiiri, <u>C-358/11</u>



EUROPEAN COMMISSION

> Brussels, 23.12.2014 SWD(2014) 358 final

PART 2/3

COMMISSION STAFF WORKING DOCUMENT

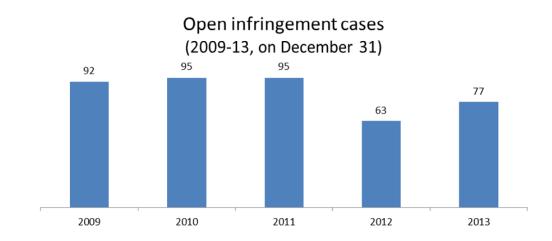
MONITORING THE APPLICATION OF EU LAW IN MEMBER STATES

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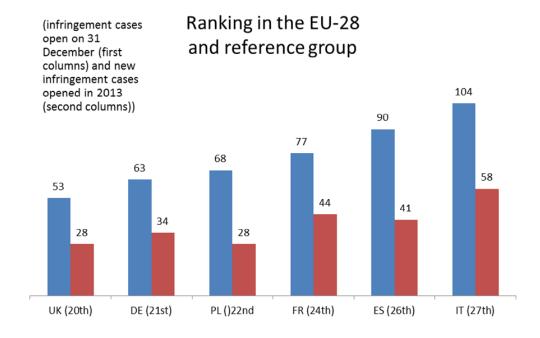
FRANCE

I. General statistics

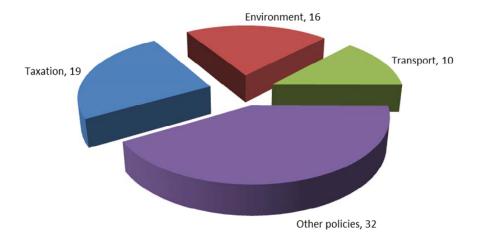


1. Open infringement cases against France (2009-13, on 31December 2013)

2. Ranking in the EU-28 and reference group



3. **77** infringement cases open against France



77 infringement cases against France

- 4. Referrals to the Court and key infringement cases
 - (a) **44** new infringement procedures were launched against France in 2013. They and other major ongoing infringement cases relate to:
 - France's refusal to grant welfare benefits to unemployed and under-employed workers from other Member States;
 - failure to comply with the Working Time Directive as regards the working conditions of hospital doctors and trainee doctors;
 - failure to comply with the Working Time Directive as regards the working conditions of police officers;
 - restrictions placed on imports of ambulances complying with standard EN 1789;
 - 139
 - the French authorities' refusal to register some kit cars previously registered in other Member States;¹⁴⁰
 - barriers placed on trade for alcohol test kits in cars;¹⁴¹
 - breach of EU air quality minimum standards in a number of areas and agglomerations;¹⁴²
 - inadequate implementation of the directive on minimum standards for the reception conditions of asylum seekers¹⁴³ and of the bad implementation of directive on preventing and combating trafficking in human beings;¹⁴⁴

¹³⁹ <u>MEMO/13/22</u>

¹⁴⁰ <u>MEMO/13/1005</u>

¹⁴¹ <u>MEMO/14/36</u>

¹⁴² IP/13/47

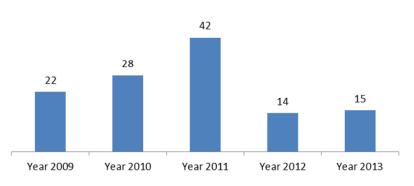
¹⁴³ Directive <u>2003/9/EC</u>

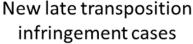
¹⁴⁴ Directive 2011/36/EU

- national legislation governing cabotage to Corsica, which does not comply with Union law on the freedom to provide services;
- failure to comply with EU legislation on animal welfare, specifically the requirement that sows are kept in groups during part of their pregnancy;¹⁴⁵
- failure to transpose the directive on administrative cooperation in the field of taxation;¹⁴⁶
- discriminatory taxation of futures markets operations on foreign stock exchanges;
- the incorrect implementation of the First Railway Package: France failed to comply with EU rules against excessive track access charges for passenger and freight trains in the Channel Tunnel.
- (b) Two cases were referred to the Court under Article 258 TFEU. They relate to:
 - reduced rates of VAT to e-books;¹⁴⁷
 - discriminatory rules governing the tax paid on investments in new residential property.¹⁴⁸
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases





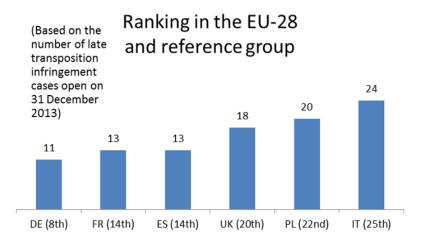
¹⁴⁵ Directive <u>2008/120/EC</u> and <u>IP/13/135</u>

¹⁴⁶ Directive <u>2011/16/EU</u> and <u>MEMO/13/1005</u>

¹⁴⁷ IP/13/137

¹⁴⁸ <u>IP/13/473</u>

2. Ranking in the EU-28 and reference group



3. Policy areas in which most new late transposition infringement cases were opened

13 late transposition cases against France	
Environment	4
Other	9

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

1. Complaints made against France



Complaints 2011-13

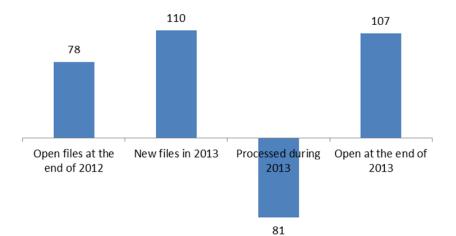
Main complaint areas

	France Total	277
Employment	(discriminatory national pension rights against former French soldiers holding Moroccan nationality, 'prélèvements sociaux' on the real estate income of non-residents and quota of Home Grown Players for professional basketball league clubs)	59
Taxation	(value added tax and taxation of activities and assets situated abroad)	
Internal market	(regulated professions especially in the area of sport and insurance)	42
Other	(car registration, access to education, environmental impact assessment, waste management, maritime transport services in Corsica, international railway transport and food safety)	126

IV. EU Pilot

1. Progress of files relating to France open in EU Pilot

New and processed EU Pilot files



110 New EU Pilot files during 2013	
Transport 19	
Environment	18
Taxation18	
Other 55	

Average EU Pilot response	
93	days in 2013
83	days in 2012
84	days in 2011

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- a tax imposed on milk producers who exceeded their individual milk quotas set under the single Common Market Organisation (although the national quota had not been exceeded);
- national legislation on the marketing of certain products obtained by distilling lees and marcs (by-products of wine production) as '*eaux-de-vie de vin*';¹⁴⁹
- the free movement of building materials and the refusal to award subsidies incentivising the purchase of environmentally friendly cars to imported demonstration motor vehicles, in breach of the principle of the free movement of goods. France has amended its legislation to conform to Union law;
- failure to transpose the directive on railway interoperability and the directive on railway safety indicators;
- the identification of horses.

VI. Important judgments

The Court ruled that:

- a special charge imposed on electronic communications operators, set according to the amount of subscription charges and other sums they receive from users for the provision of services, does not constitute an administrative charge within the meaning of the 2002 directive¹⁵⁰ and does therefore not fall within the scope of this directive. Consequently, the Court dismissed the Commission's action;¹⁵¹
- a measure introduced by France concerning the import of tobacco products was found to be contrary to the directive on the general arrangements for products subject to excise duty.¹⁵² The Court dismissed the Commission's complaint in so far as it related to a breach of free movement of goods. The Court highlighted that, where a topic has been the subject of exhaustive harmonisation at EU level, any national measure in this area must be assessed in the light of the provisions of the harmonising measure and not those of the Treaty;¹⁵³
- France had fail to the designate a number of areas at risk of having an excessively high concentration of nitrate in the water as such,¹⁵⁴ and the urban wastewater treatment in large agglomerations was inadequate;¹⁵⁵

¹⁴⁹ <u>IP/12/179</u>

¹⁵⁰ Directive <u>2002/20/EC</u>

¹⁵¹ Commission v France, <u>C-485/11</u>

¹⁵² Directive <u>92/12/EEC</u>

¹⁵³ Commission v France, <u>C-216/11</u>

¹⁵⁴ Commission v France, <u>C-193/12</u>, <u>IP/12/170</u>

¹⁵⁵ Commission v France, <u>C-23/13</u>

- France did not respect the provisions of the VAT Directive by affording VAT exemption to vessels that did not navigate in the high seas, which is a condition to such exemption;¹⁵⁶
- France complied with existing rail legislation as regards the level of independence required for an infrastructure manager in a holding company.157

In preliminary rulings addressed to the French judiciary, the Court ruled that:

- the French system for compensating businesses for the additional costs imposed on them by the obligation to purchase wind-generated energy must be qualified as State aid;¹⁵⁸
- the jurisdiction clause in a contract concluded between the manufacturer and the initial buyer of goods cannot be used to bring a case against the sub-buyer of the goods, even if the contract formed part of a chain of contracts transferring ownership.¹⁵⁹

¹⁵⁶ Commission v France, <u>C-197/12</u>

¹⁵⁷ Directive 91/440/EC, Commission v France, <u>C-625/10</u>

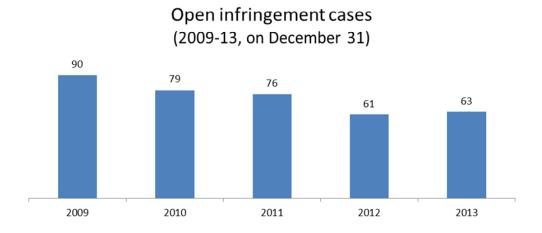
¹⁵⁸ Vent De Colère and Others, <u>C-262/12</u>

¹⁵⁹ Refcomp, <u>C-543/10</u>

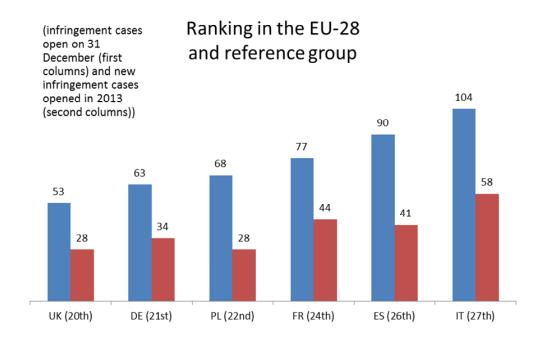
GERMANY

I. General statistics

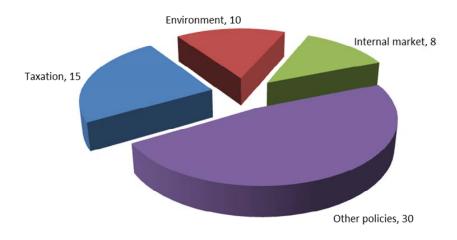
1. Open infringement cases against Germany (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group



3. 63 infringement cases against Germany



63 infringement cases against Germany

- 4. Referrals to the Court and key infringement cases
 - (a) **34** new infringement procedures were launched against Germany in 2013. They and other major ongoing infringement cases relate to:
 - the incompatibility with the Working Time Directive of the reference period used by Germany to calculate average weekly working hours;
 - Germany's failure to notify the Commission of national measures transposing the directive on combating late payment in commercial transactions;¹⁶⁰
 - a ban on 'off the shell' chemical mixtures containing methylenediphenyl diisocyanate, the selling of which is in breach of the REACH regulation;¹⁶¹
 - the incorrect application of the directive on mobile air conditioning¹⁶²;
 - the application of German pricing rules to pharmacies located in other Member States, in breach of the principle of free movement of goods;
 - the separation of accounts of railway undertakings from those of railway infrastructure managers;¹⁶³
 - the non-ratification of the EU-US Air Transport Agreement;
 - animal welfare and specifically the requirement that sows are kept in groups during part of their pregnancy;¹⁶⁴
 - the discriminatory taxation of outbound dividends.¹⁶⁵

¹⁶⁰ Directive <u>2011/7/EC</u> and <u>MEMO/13/1005</u>

¹⁶¹ Directive <u>2006/40/EC</u> and <u>MEMO/13/820</u>

¹⁶² <u>MEMO/14/50</u>

¹⁶³ <u>IP/13/1097</u>

¹⁶⁴ Directive <u>2008/120/EC</u> and <u>IP/13/135</u>

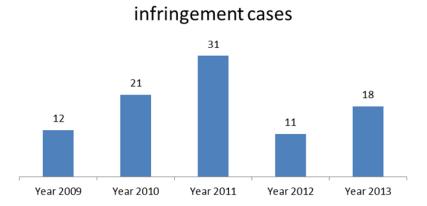
¹⁶⁵ <u>IP/09/435</u> – <u>IP/07/1152</u>

- (b) Two cases were referred to the Court under Article 258 TFEU. They relate to:
 - the inadequate implementation of Union law on access to justice in relation to environmental matters;¹⁶⁶
 - the separation of accounts in the German rail sector.¹⁶⁷
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

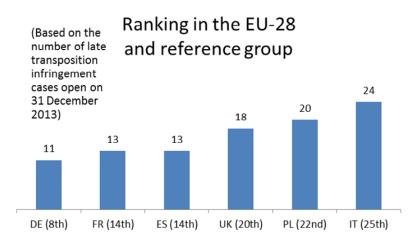
II. Transposition of directives

New late transposition

1. New late transposition infringement cases



2. Ranking in the EU-28 and reference group



166	IP/13/967
167	IP/13/1067

3. Policy areas in which most new late transposition infringement cases were opened

11 late transposition cases against Germany	
Home affairs	3
Energy	2
Taxation	2
Other	4

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

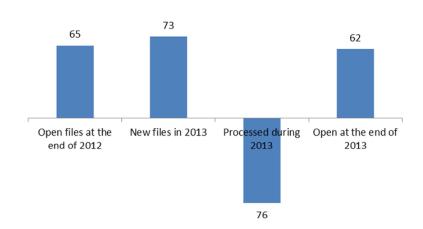
1. Complaints made against Germany



Complaints 2011-13

Main complaint areas

	Germany Total	297
Justice	(fundamental rights, civil justice and data protection)	64
Internal market	(regulated professions, mainly health professionals and teachers, and public procurement)	57
Environment	(nature protection and environmental impact assessment)	53
Other	(students' travel costs, Schengen Borders Code, Visa Code, asylum, taxation of non-resident German pensioners, posting of workers, levying pensions already subject to deductions in the paying Member State and family benefits for non-resident child)	123



New and processed EU Pilot files

1. Progress of files relating to Germany open in EU Pilot

73 New EU Pilot files during 2013	
Transport	14
Environment	11
Taxation	11
Other	37

Average EU Pilot response	
61	days in 2013
61	days in 2012
65	days in 2011

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- the rules adopted in all German *Länder* to allow benefits to be exported for the blind, the deaf and the disabled non-resident workers and their family members;
- the manufacturer's rebate on some medicines which an enquiry found does not breach the principle of free movement;
- the flawed application of the Habitats Directive¹⁶⁸ in relation to the proposed sites of Community importance in the Lower and Outer Ems area;

¹⁶⁸ Directive <u>92/43/EEC</u>

• the failure to transpose directives on insurance of ship-owners, on road intelligent transport systems and on railway interoperability.

VI. Important judgments

The Court ruled:

• in a case concerning a directive of the First Railway Package, following its Advocate General's opinion, that Germany had complied with existing rail legislation as regards the level of independence required for an infrastructure manager in a holding company structure.¹⁶⁹

In preliminary rulings addressed to the German judiciary, the Court ruled that:

- a Member State can only refuse to issue a uniform visa if one of the grounds for refusal listed in the Visa Code applies to the applicant in question;¹⁷⁰
- the notion of 'freedom to provide services' in Article 41(1) of the Additional Protocol to the EU-Turkey Association Agreement must be interpreted as not encompassing freedom for Turkish nationals who are the recipients of services to visit a Member State in order to obtain services;¹⁷¹
- where the Member State is aware that systemic deficiencies in the asylum procedure and in reception conditions for asylum seekers in the Member State initially identified as being responsible for examining an asylum application would lead to the asylum seeker being subjected to inhuman or degrading treatment, the Member State determining the Member State responsible is required not to transfer the asylum seeker to the Member State initially identified as responsible;¹⁷²
- an entry ban handed down more than five years before the date of the entry into force of national legislation implementing the Return directive cannot lead to impunishment under criminal law unless the person constitutes a serious threat to public order, public security or national security;¹⁷³
- EU law does not allow the national courts of the place where a harmful event occurred, which is attributed to one of the presumed perpetrators of damage who is not a party to the dispute, to take jurisdiction over another presumed perpetrator of that damage who has not acted within the jurisdiction of the court hearing the dispute;¹⁷⁴

¹⁶⁹ <u>IP/13/176</u>

¹⁷⁰ Koushkaki, <u>C-84/12</u>

¹⁷¹ Demirkan, <u>C-221/11</u>

¹⁷² Puid, <u>C-4/11</u>

¹⁷³ Filev and Osmani, <u>C-297/12</u>

¹⁷⁴ Melzer, <u>C-228/11</u>

in preliminary rulings on waste, environmental impact assessment, strategic environmental assessment, nature protection and access to justice in environmental matters, case Altrip C-72/12 was referred to.¹⁷⁵

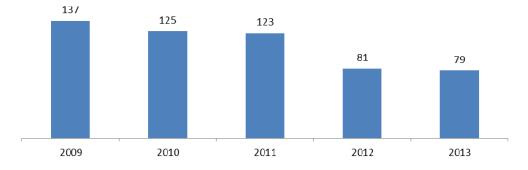
¹⁷⁵ Brady, <u>C-113/12</u>; Ragn-Sells, <u>C-292/12</u>; Leth, <u>C-420/11</u>; Salzburger Flughafen, <u>C-244/12</u>; L v M, <u>C-463/11</u>; Sweetman and Others, <u>C-258/11</u>; Edwards and Pallikaropoulos, <u>C-260/11</u>; Gemeinde Altrip and Others, <u>C-72/12</u>

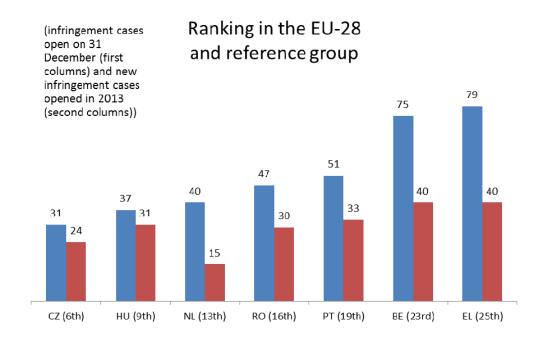
GREECE

I. General statistics

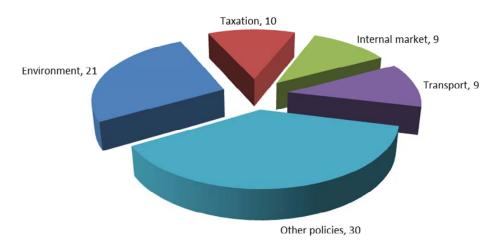
1. Open infringement cases against Greece (2009-13, on 31December 2013)

Open infringement cases (2009-13, on December 31)





3. 79 infringement cases against Greece



79 infringement cases against Greece

- 4. Referrals to the Court and key infringement cases
 - (a) **40** new infringement procedures were launched against Greece in 2013. They and other major ongoing infringement cases relate to:
 - the incompatibility with Union law of national legislation from 1934 obliging all wine producers of Samos to be members of the local cooperative and give it their entire production;
 - failure to comply with the Working Time Directive as regards the working conditions of hospital doctors,¹⁷⁶
 - the obstacles to exports of pharmaceuticals;¹⁷⁷
 - inadequate hazardous waste management and planning (failure to comply with Court judgment of 10 September 2009 in case C-286/08);
 - the implementation of the directive on preventing and combating trafficking in human beings¹⁷⁸ and a case regarding the implementation of the directive to extend its scope to beneficiaries of international protection;¹⁷⁹
 - the violation of the right of EU citizens to stand as candidates in local and European elections in their Member State of residence due to restrictions in their involvement in political parties;
 - non-compliance with the fisheries data collection obligation; Greece has since complied with the obligations under the EU data collection framework and put in place the necessary administrative measures to ensure compliance with data

¹⁷⁶ IP/13/1108

¹⁷⁷ <u>MEMO/13/470</u>

¹⁷⁸ Directive 2011/36/EU

¹⁷⁹ Directive 2011/51/EU

collection obligations in the future, enabling the Commission to close the case in October 2013;

- the lack of timely transposition for the Directive on Alternative Investment Fund Managers;¹⁸⁰
- a breach of the First and the Third Non-life Insurance Directives as regards the organisation and operation of roadside assistance in Greece;¹⁸¹
- failure to comply with EU legislation on animal welfare, specifically the requirement that sows are kept in groups during part of their pregnancy;¹⁸²
- restrictions on the marketing of plant-propagating material;
- income tax exemption for companies that operate vessels;
- the non-compliance with the Single European Sky provisions requiring full implementation of Functional Airspace Blocks (FABs).¹⁸³
- (b) Four cases were referred to the Court under Article 258 TFEU. They relate to:
 - non-compliance with EU rules on limits to working time limits (the Working Time Directive) for doctors in public health services, with Greece failing to ensure that they work no more than 48 hours per week on average, including any overtime;¹⁸⁴
 - a landfill site in Peloponnese;¹⁸⁵
 - nitrate pollution;¹⁸⁶
 - failure to enforce the ban on battery cages for laying hens.¹⁸⁷
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - Greece was referred twice to the Court for two long-standing cases, both for not respecting EU law in environmental matters (illegal landfills and urban waste water).¹⁸⁸

¹⁸⁰ Directive <u>2011/61/EU</u>

¹⁸¹ <u>MEMO/13/470</u>

¹⁸² Directive <u>2008/120/EC</u>, <u>IP/13/135</u>

¹⁸³ <u>IP/13/860</u>

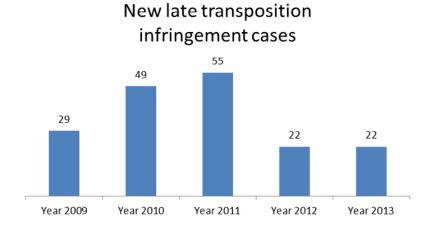
¹⁸⁴ IP/13/1108

¹⁸⁵ IP/13/483

¹⁸⁶ IP/13/576

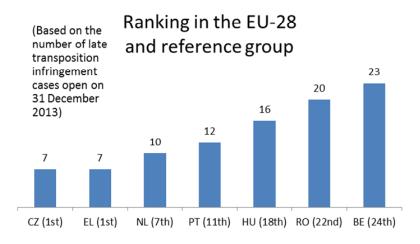
¹⁸⁷ IP/13/366

¹⁸⁸ IP/13/143, IP/13/1102, Commission v Greece, C-378/13 and Commission v Greece, C-167/14



1. New late transposition infringement cases

2. Ranking in the EU-28 and reference group



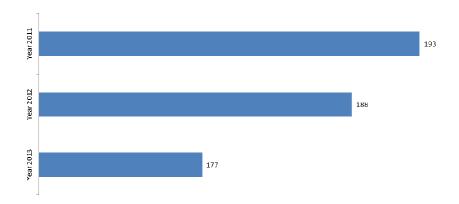
3. Policy areas in which most new late transposition infringement cases were opened

7 late transposition cases against Greece		
Energy	2	
Home affairs	2	
Other	3	

- 4. Court referrals under Articles 258/260(3) TFEU
 - none in 2013

III. Complaints

1. Complaints made against Greece

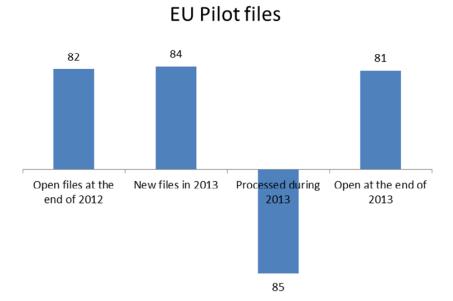


Complaints 2011-13

Main complaint areas

	GREECE Total	177
Internal market	(regulated professions and public procurement)	47
Environment	(nature protection, environmental impact assessment and waste management)	27
Employment	(recognition of foreign post-graduate diploma of public sector workers in their promotion)	22
Other	(e.g. parallel import of pharmaceuticals, discriminatory airport taxes, push-back practices at the borders, food safety and customs fees)	81

Progress of files relating to Greece open in EU Pilot 1.



New and processed

84 New EU Pilot files during 2013		
Environment	28	
Transport	9	
Enterprise & industry	6	
Taxation	6	
Other	35	

Average EU Pilot response		
67	days in 2013	
65	days in 2012	
63	days in 2011	

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- the adoption by the Greek authorities of legislative measures regarding fire safety;
- the procedure for fixing the price of parallel imported pharmaceuticals that created obstacles to these imports, where Greece has changed its legislation on the contested issues;
- Greece's exceeding the ceilings for sulphur dioxide under the National Emissions Reduction Plan;
- the non-conformity of the transposition of the Bathing Water Directive;¹⁸⁹
- fisheries data collection;
- the recognition of degrees obtained in another Member State in Greece.

VI. Important judgments

The Court ruled that:

• Greece failed to protect Lake Koroneia (a wetland in the region of Thessaloniki) from pollution.¹⁹⁰

In a preliminary ruling addressed to the Greek judiciary, the Court ruled that:

• EU law precludes national legislation giving a single entity the exclusive right to offer games of chance, if it does not reduce the number of opportunities for gambling and ensure strict control of the expansion of the sector of games in order to combat criminality.¹⁹¹

¹⁸⁹ Directive <u>2006/7/EC</u>

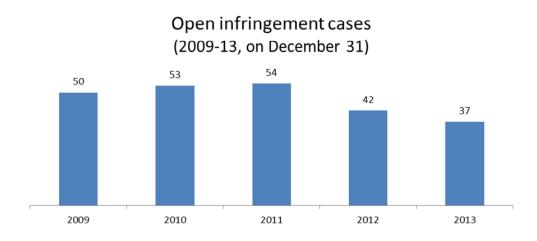
¹⁹⁰ Commission v Greece, <u>C-517/11</u>, <u>IP/11/89</u>

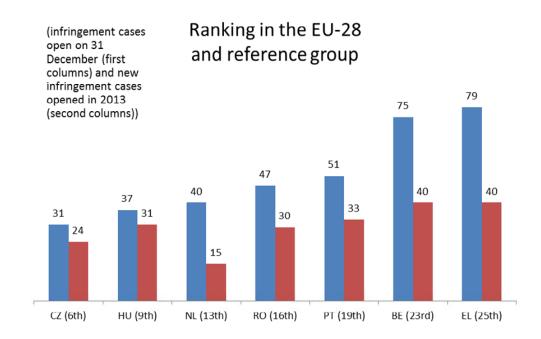
¹⁹¹ Stanleybet International and Others, <u>C-186/11 and C-209/11</u>

HUNGARY

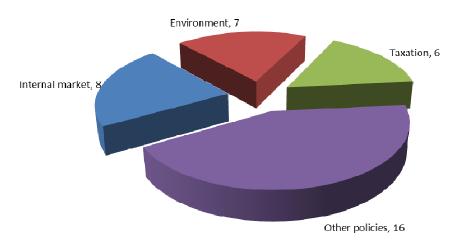
I. General statistics

1. Open infringement cases against Hungary (2009-13, on 31December 2013)





3. **37** infringement cases against Hungary



37 infringement cases against Hungary

4. Referrals to the Court and key infringement cases

- (a) 31 new infringement procedures were launched against Hungary in 2013. They and other major ongoing infringements cases relate to:
 - the limit values for PM₁₀¹⁹² in air being exceeded(air quality);¹⁹³ and the transposition measures for the Industrial Emissions Directive;¹⁹⁴
 - the right to appeal against visa decisions;¹⁹⁵ non-compliance with certain provisions of the Asylum Procedures and the Reception Conditions Directives¹⁹⁶ and Article 47 of the Charter of Fundamental Rights;
 - transposition of the Directive on Alternative Investment Fund Managers.¹⁹⁷
- (b) Two cases that were referred to the Court under Article 258 TFEU relate to:
 - new restrictions on the issuing of meal vouchers and other benefits in-kind;¹⁹⁸
 - tax exemption granted for fruit distillates ('pálinka') produced for personal use (harmonised EU rules only allow tax reductions).¹⁹⁹

 PM_{10} is 'an air pollutant consisting of small particles with an aerodynamic diameter less than or equal to a nominal 10 micrometer. Their small size allows them to make their way to the air passages deep within the lungs where they may be deposited and result in adverse health effects' (Source: <u>the</u> <u>European Environmental Agency</u>).

¹⁹³ IP/13/47

¹⁹⁴ Directive <u>2010/75/EU</u> and <u>MEMO/13/583</u>

¹⁹⁵ This case was closed later in 2013 due to compliance.

¹⁹⁶ Directives <u>2005/85/EC</u> and <u>2003/9/EC</u>

¹⁹⁷ Directive <u>2011/61/EU</u>

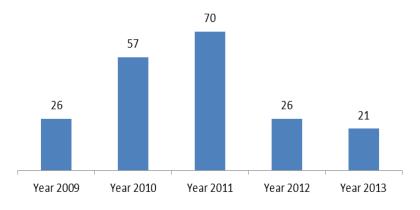
¹⁹⁸ IP/13/578

¹⁹⁹ IP/13/138

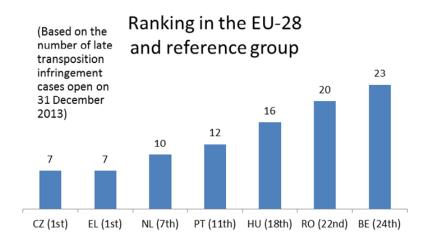
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases



New late transposition infringement cases



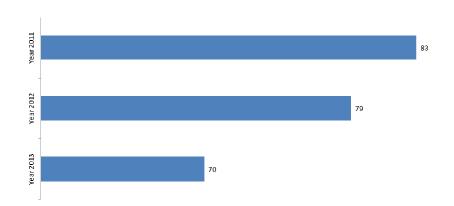
3. Policy areas in which most new late transposition infringement cases were opened

16 late transposition cases against Hungary		
Environment	4	
Internal market	3	
Other	9	

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

1. Complaints made against Hungary

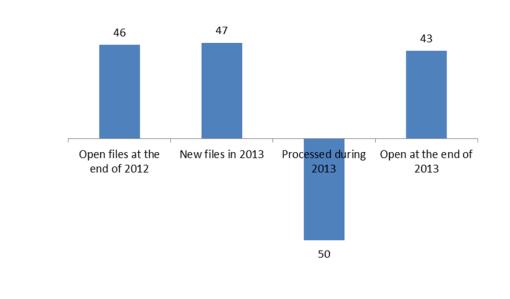


Complaints 2011-13

Main complaint areas

	HUNGARY Total	70
Internal market	(public procurement, online gambling, financial services and free movement of services)	13
Regional policy	(cohesion policy)	12
Taxation	(excise duties)	11
Other	(rural development, academic tuition fees, authorisation of electronic communication, posting of workers, asylum-seekers' integration measures and work obligation of students in state-funded studies)	34

New and processed **EU** Pilot files



1. Progress of files relating to Hungary open in EU Pilot

47 New EU Pilot files during 2013	
Environment	9
Justice	8
Transport	8
Other	22

V. Early resolution of infringement cases

The cases closed without a Court judgment related to:

- late transposition of the Directive on preventing sharp injuries in the hospital and healthcare • sector;²⁰⁰
- late transposition of the Directive establishing minimum standards on sanctions and ٠ measures against employers of illegal third-country nationals;²⁰¹

²⁰⁰ Directive 2010/32/EU

²⁰¹ Directive 2009/52/EC

• the Environmental Impact Assessment Directive,²⁰² and more specifically the incorrect interpretation of 'development consent' and the exclusion of sewerage projects from the scope of urban development projects.

VI. Important judgments

The Court ruled against Hungary in the area of railway transport because of:

failing to lay down conditions to ensure that the accounts of railway infrastructure managers were balanced and to ensure that these managers were provided with incentives to reduce their management costs and network access charges. In addition, Hungary failed to ensure that the charges for the minimum access package and track access to service facilities were set at the cost that was directly incurred as a result of operating the service.²⁰³

In a preliminary ruling on local border traffic at the EU's external borders of the Member States addressed to the Hungarian judiciary, the Court ruled that:

the limitation of stays in the Schengen area (a maximum of three months over a six-month period) does not apply to those foreign nationals who benefit from the local border traffic system and who are not subject to visa requirements. The holders of a local border traffic permit are entitled to move freely within the border area for a continuous period up to three months; in addition, they have a new right to a three-month stay each time such a stay is interrupted.²⁰⁴

²⁰² Directive <u>2011/92/EU</u>

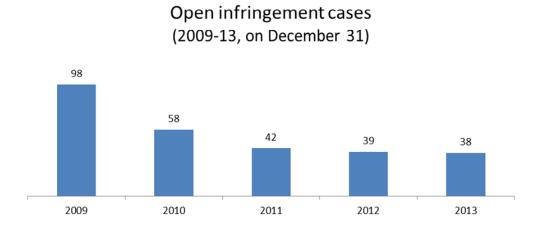
²⁰³ Commission v Hungary, <u>C-473/10</u>

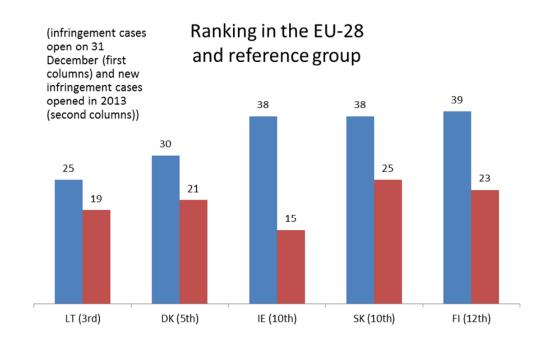
²⁰⁴ Shomodi, <u>C-254/11</u> (Court press release No <u>35/13</u>)

IRELAND

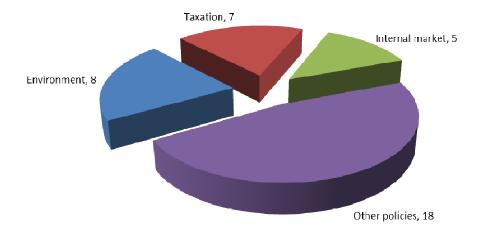
I. General statistics

1. Open infringement cases against Ireland (2009-13, on 31December 2013)





3. **38** infringement cases against Ireland



38 infringement cases against Ireland

- 4. Referrals to the Court and key infringement cases
 - (a) 15 new infringement procedures were launched against Ireland in 2013. They and other major ongoing infringement cases relate to:
 - the non-exportability of long-term care benefits (carer's allowance) to insured people residing outside of Ireland;
 - inadequate urban wastewater treatment in several agglomerations;
 - Ireland's failure to transpose the directive on preventing and combating trafficking in human beings;²⁰⁵
 - unjustified restrictions imposed on operators and travel agents who are established in other Member States and intend to provide cross-border travel agency services in Ireland;²⁰⁶
 - violation of the directive on the protection of pigs,²⁰⁷ which requires that sows be kept in groups during part of their pregnancy.²⁰⁸
 - (b) One case was referred to the Court under Article 258 TFEU. It relates to:
 - Ireland's failure to apply the rules of the Working Time Directive²⁰⁹ to doctors in training and other non-consultant hospital doctors.²¹⁰

²⁰⁵ Directive <u>2011/36/EU</u>

²⁰⁶ MEMO/13/820 — Case closed in 2014, following Ireland's compliance with EU legislation.

²⁰⁷ Directive <u>2008/120/EC</u>

²⁰⁸ <u>IP/13/135</u>

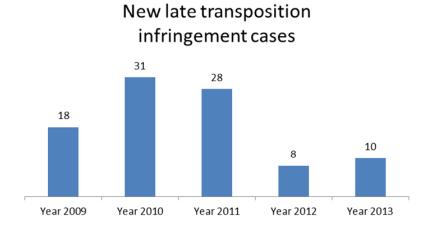
²⁰⁹ Directive 2003/88/EC

²¹⁰ IP/13/1109

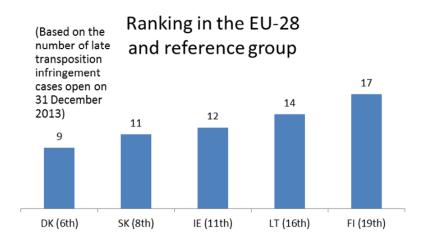
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases



2. Ranking in the EU-28 and reference group



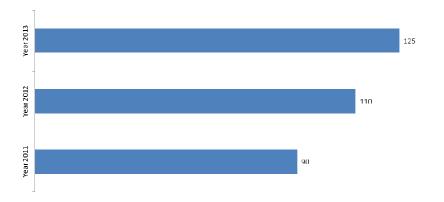
3. Policy areas in which most new late transposition infringement cases were opened

12 late transposition cases against Ireland	
Energy	3
Health & consumers	2
Other	7

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

1. Complaints made against Ireland

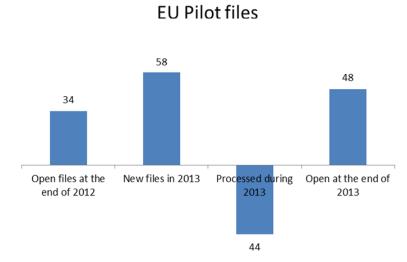


Complaints 2011-13

Main complaint areas

	IRELAND Total	125
Environment	(environmental impact assessment and nature protection)	39
Justice	(free movement of people, then data protection and equality)	25
Internal market	(regulated professions, mostly architects)	21
Other	(recognition of public service undertaken in other Member State when calculating seniority, excessive delays in asylum procedures)	40

1. Progress of files relating to Ireland open in EU Pilot



New and processed

58 New EU Pilot files during 2013		
Environment	15	
Transport	11	
Taxation	11	
Other	21	

Average EU Pilot response		
74	days in 2013	
78	days in 2012	
75	days in 2011	

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- minimum safety and health requirements at temporary or mobile constructions sites;²¹¹
- obligations under the Electricity Regulation²¹² (*i.a.* as regards lack of congestion management and transparency concerning access to the network for cross-border exchanges in electricity);

²¹¹ Directive <u>92/57/EEC</u>

- transparency of conditions for access to the natural gas transmission networks, under the Gas Regulation;²¹³
- the application of harmonised standards, including technical specifications, under the Machinery Directive.²¹⁴

VI. Important judgments

The Court ruled that Ireland:

- had allowed pig-rearing and poultry-rearing installations to operate without or with outdated permits, in breach of the Directive on integrating pollution prevention and control;²¹⁵
- failed to fulfil its obligations under the VAT Directive,²¹⁶ by applying a reduced rate of valueadded tax of 4.8% to supplies related to greyhounds and horses, and to the hire of horses and certain insemination services;²¹⁷
- failed to correctly implement EU rules on excise duties on fuel by granting an exemption for fuel used by disabled people for motor vehicles, without respecting the minimum levels of taxation.²¹⁸

In preliminary rulings addressed to the Irish judiciary, the Court clarified:

- the meaning of a number of provisions of the directive on protecting employees in the event of the insolvency of their employer;²¹⁹
- the concept of waste, including in situations where slurry produced and held by a pig farm is to be classified as 'waste'²²⁰ under EU waste legislation.²²¹

²¹² Regulation (EC) No <u>1228/2003</u> (replaced by Regulation (EC) No <u>714/2009</u> as of 3 March 2011)

²¹³ Regulation (EC) No <u>1775/2005</u> (replaced by Regulation (EC) No <u>715/2009</u> as of 3 March 2011)

²¹⁴ Directive <u>98/37/EC</u> (replaced by Directive <u>2006/42/EC</u> as of 29 December 2009)

²¹⁵ Directive 2008/1/EC; Commission v Ireland, C-158/12

²¹⁶ Directive 2006/112/EC

²¹⁷ Commission v Ireland, <u>C-108/11</u>

²¹⁸ Directive <u>2003/96/EC</u> as amended by Directive <u>2004/74/EC</u>; Commission v Ireland, <u>C-55/12</u>

²¹⁹ Directive 2008/94/EC; Hogan and Others, C-398/11

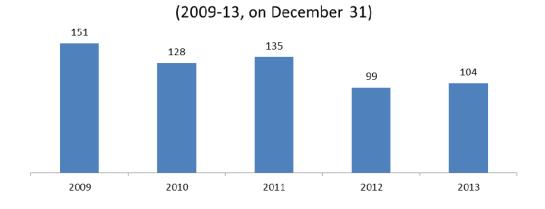
²²⁰ Brady, <u>C-113/12</u>

²²¹ Directive <u>75/442/EEC</u> as amended by Decision <u>96/350/EC</u>

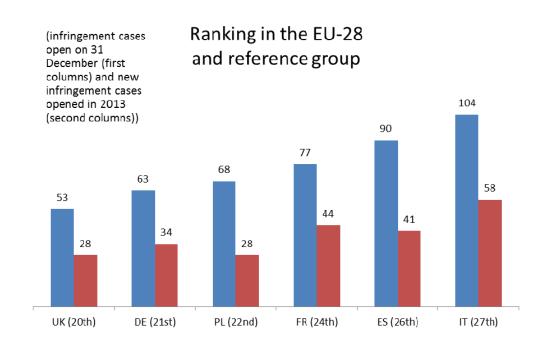
ITALY

I. General statistics

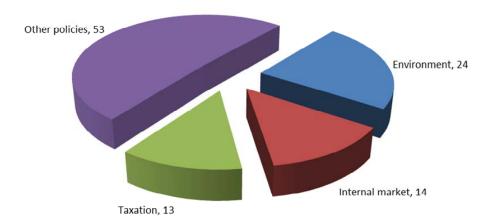
1. Open infringement cases against Italy (2009-13, on 31December 2013)



Open infringement cases



3. **104** infringement cases against Italy



104 infringement cases against Italy

- 4. Referrals to the Court and key infringement cases
 - (a) 58 new infringement procedures were launched against Italy in 2013. They and other major ongoing infringement cases relate to:
 - the environmental impact of the ILVA steel plant in Taranto, Europe's largest iron and steel works;²²²
 - shortcomings in the recovery of surplus levies owed by dairy producers who
 exceeded their individual quotas when Italy overran its national dairy quota. An
 estimated EUR 1.42 billion needs to be returned to the Italian budget;²²³
 - different pension conditions for men and women taking early retirement, in breach of the directive on equality between men and women at work;²²⁴
 - Italy's failure to adopt measures to comply with EU law on human trafficking;²²⁵
 - the non-compliance with the Single European Sky provisions requiring full implementation of Functional Airspace Blocks (FABs).²²⁶

(b) Two cases have been referred to the Court under Article 258 TFEU. They relate to:

Italy's failure to comply with EU waste legislation owing to its narrow interpretation
of 'sufficient treatment of waste', which means the Malagrotta landfill site in Rome
and other landfill sites in the Lazio region are being filled with waste that has not
undergone the treatment required under EU law, posing a serious threat to human
health and the environment; ²²⁷

²²² <u>IP /13/866</u>

²²³ <u>IP/ 13/577</u>

Directive 2006/54/EC (recast)

²²⁵ Directive <u>2011/36/EU</u>

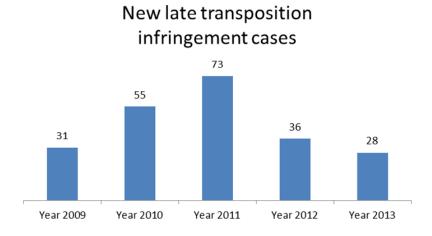
²²⁶ IP/13/860

²²⁷ IP/13/250

- the failure to correctly implement the Laying Hens Directive²²⁸ banning battery cages.²²⁹
- (c) Two cases were referred to the Court under Article 260(2) TFEU. They relate to:
 - waste management²³⁰ in the Campania region where new waste crises are still possible and systemic problems have not been fully addressed;²³¹
 - the failure to recover illegal State aid given to Venice and Chioggia in the form of relief on social security contributions.²³²

II. Transposition of directives

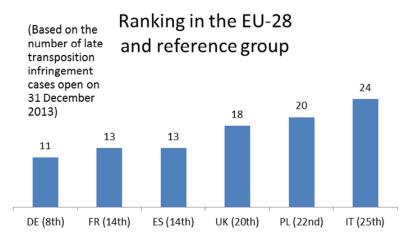
1. New late transposition infringement cases



- ²²⁹ <u>IP/13/366</u>
- ²³⁰ Directive <u>2008/98/EC</u>
- ²³¹ <u>IP/11/1102</u>
- ²³² IP 13/1103

²²⁸ Directive <u>1999/74/EC</u>

2. Ranking in the EU-28 and reference group



3. Policy areas in which most new late transposition infringement cases were opened

24 late transposition cases against Italy	
Environment	8
Energy	3
Other	13

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013



1. Complaints made against Italy



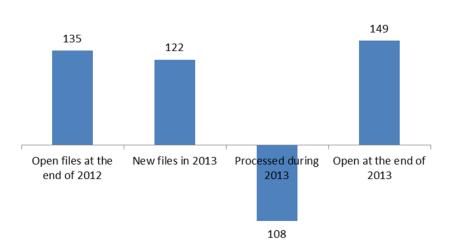
Complaints 2011-13

Main complaint areas

	ITALY Total	472
Employment	(recognition of professional experience acquired abroad, assessment of occupational accidents and health & safety at temporary or mobile construction sites)	120
Internal market	(regulated professions, mainly teachers and engineers, and public procurement)	81
Environment	(nature protection, environmental impact assessment and waste management)	64
Other	(taxation of immovable property, air passengers' rights, Late Payment Directive, equal treatment of third country nationals, funding conditions for studies abroad, rural development and Schengen Borders Code)	207

IV. EU Pilot

1. Progress of files relating to Italy open in EU Pilot



New and processed EU Pilot files

122 New EU Pilot files during 2013		
Environment	35	
Internal market	17	
Transport	17	
Other	53	

Average EU Pilot response		
77	days in 2013	
69	days in 2012	
72	days in 2011	

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- the transposition of the directive concerning the status of third-country nationals who are long-term residents²³³ by the province of Verona and the region of Friuli-Venezia Giulia;
- the breach of the equal treatment principle in relation to access to public housing under the directive on the status of third-country nationals who are long-term residents;
- the non-recognition of certain diplomas obtained in other EU Member States for placement on reserve lists of teachers;
- the legislation relating to pyrotechnics products, which imposed additional requirements to those in the directive concerned.²³⁴

VI. Important judgments

The Court ruled that Italy had:

- breached the directive on equal treatment in employment²³⁵ by failing to oblige employers to adopt practical and effective measures covering different aspects of work for all persons with disabilities, enabling them to participate in employment;
- failed to make the provision of an energy performance certificate obligatory when a building is being sold or rented out, in breach of the Energy Performance of Buildings Directive;²³⁶
- not ensured the independence of the railway infrastructure manager as part of steps taken to liberalise the EU rail sector.²³⁷

In a preliminary ruling addressed to the Italian judiciary, the Court ruled that:

Member States must take account of any period of work in an international organisation located in another Member State when establishing entitlement to an old-age pension.²³⁸

²³³ Directive <u>2003/109/EC</u>

²³⁴ Directive <u>2007/23/EC</u>

²³⁵ Directive 2000/78/EC, Commission v Italy, <u>C-312/11</u>; Court press release No 82/13

²³⁶ Directive <u>2002/91/EC</u>, Commission v Italy, <u>C-345/12</u>

²³⁷ Commission v Italy, <u>C-369/11</u>, Court press release No <u>127/13</u>

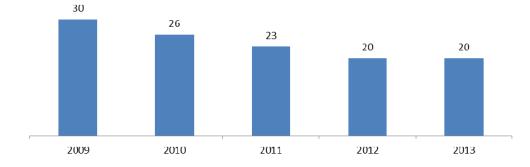
²³⁸ Gardella, <u>C-233/12</u>

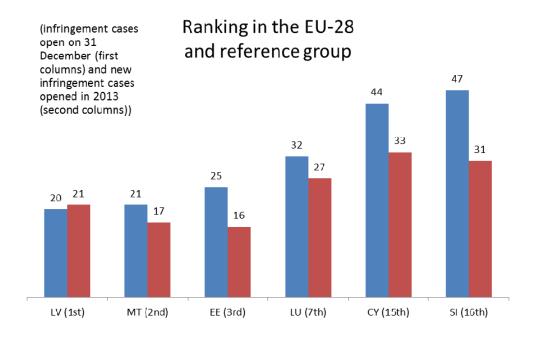
LATVIA

I. General statistics

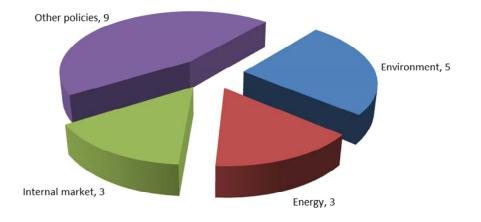
1. Open infringement cases against Latvia (2009-13, on 31December 2013)

Open infringement cases (2009-13, on December 31)





3. **20** infringement cases against Latvia



20 infringement cases against Latvia

4. Referrals to the Court and key infringement cases

- (a) 21 new infringement procedures were launched against Latvia in 2013. They and other major ongoing infringement cases relate to:
 - inadequate transposition and implementation of the Nitrates Directive;²³⁹
 - breach of EU air quality standards (maximum PM₁₀ values) in one agglomeration;²⁴⁰
 - alleged violation of the Local Border Traffic Regulation;²⁴¹
 - failure to implement the provisions of the directive amending the directive on the status of non-EU nationals who are long-term residents²⁴² to extend its scope to beneficiaries of international protection;
 - violation of EU citizens' right to stand as candidates in local and European elections in their Member State of residence, this being prevented by restrictions placed on their involvement in political parties;
 - restrictions placed on the freedom of establishment in relation to the provision of towage services in the port of Riga;
 - late transposition of the provisions contained in the Directive on Alternative Investment Fund Managers²⁴³ and the directive on administrative cooperation in the field of taxation.²⁴⁴

²³⁹ Directive <u>91/676/EEC</u>

²⁴⁰ <u>IP/13/47</u>

²⁴¹ Regulation (EC) No <u>1931/2006</u>

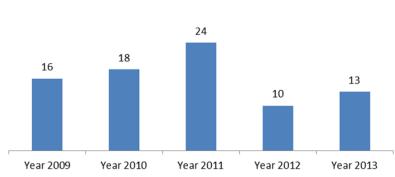
²⁴² Directive <u>2003/109/EC</u>

²⁴³ Directive <u>2011/61/EU</u>

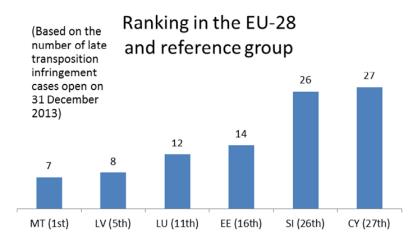
- (b) Cases referred to the Court under Article 258 TFEU:
 - none in 2013
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases



New late transposition infringement cases



3. Policy areas in which most new late transposition infringement cases were opened

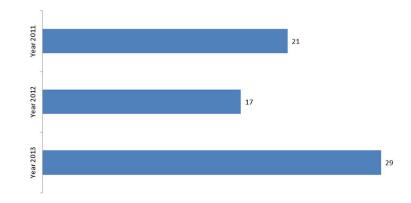
8 late transposition cases against Latvia		
Energy	3	
Internal market	2	
Other	3	

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013



1. Complaints made against Latvia

Complaints 2011-13



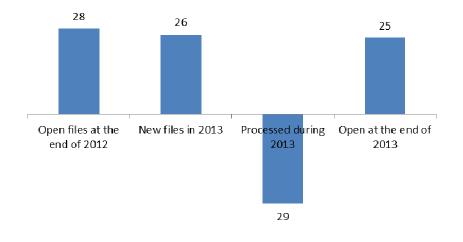
Main complaint areas

	LATVIA Total	29
Energy	(not respecting the obligations vis-á-vis the consumers in the internal market of electricity)	5
Internal market	(public procurement and regulated professions)	4
Justice	(consumer protection)	4
Other	(protection of animals, requirements going beyond the rules of the Local Border Traffic Regulation, provision of towage services in the port of Riga)	16

IV. EU Pilot

1. Progress of files relating to Latvia open in EU Pilot

New and processed EU Pilot files



26 New EU Pilot files during 2013	
Justice	6
Transport	6
Energy	5
Other	9

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- failure to notify the Commission of measures taken to transpose the directive on late payment²⁴⁵ and the directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment;²⁴⁶
- incorrect transposition of rules on hunting laid down in the Wild Birds Directive.²⁴⁷

²⁴⁵ Directive <u>2011/7/EU</u>

²⁴⁶ Directive <u>2009/50/EC</u>

²⁴⁷ Directive 2009/147/EC

VI. Important judgments

In preliminary rulings addressed to the Latvian judiciary, the Court ruled that:

 Article 13(3) of the Regulation establishing a Community Code on the rules governing the movement of persons across borders²⁴⁸ obliges Member States to establish a means of obtaining redress only against decisions to refuse entry.²⁴⁹

²⁴⁸ Regulation (EC) No <u>562/2006</u>

²⁴⁹ Zakaria, <u>C-23/12</u>



EUROPEAN COMMISSION

> Brussels, 23.12.2014 SWD(2014) 358 final

PART 3/3

COMMISSION STAFF WORKING DOCUMENT

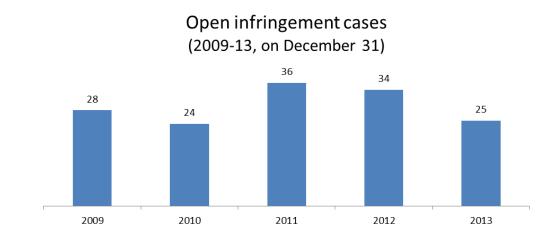
MONITORING THE APPLICATION OF EU LAW IN MEMBER STATES

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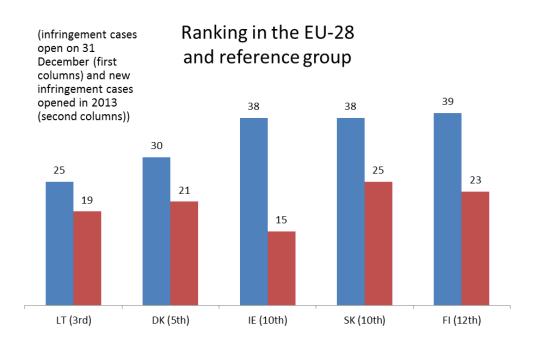
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LITHUANIA

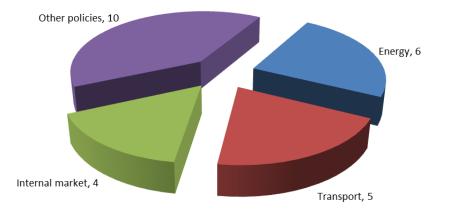
I. General statistics



1. Open infringement cases against Lithuania (2009-13, on 31December 2013)



3. **25** infringement cases against Lithuania



25 infringement cases against Lithuania

- 4. Referrals to the Court and key infringement cases
 - (a) 19 new infringement procedures were launched against Lithuania in 2013. They and other major ongoing infringement cases relate to:
 - obstructions created by Lithuanian legislation impeding the sale of precious metals imported from other Member States. Hallmarks granted by other Member States are not recognised and the goods therefore have to be re-checked and stamped again in Lithuania;
 - failure to transpose the Industrial Emissions Directive²⁵⁰ and the Directive on Alternative Investment Fund Managers within the timeframes allowed;²⁵¹
 - violation of EU citizens' right to stand as candidates in local and European elections in their Member State of residence, this being prevented by restrictions placed on their involvement in political parties;
 - failure to implement the provisions contained in the Postal Services Directive;²⁵²
 - restrictions placed on the supply of gambling services. National law obliges businesses providing online gambling services in Lithuania to establish a physical presence in the country and prescribes a specific legal form for them;²⁵³
 - a breach of EU rules on the free movement of persons, specifically in relation to the safeguards preventing expulsion of EU citizens and their families²⁵⁴;

²⁵⁰ Directive <u>2010/75/EU</u>

²⁵¹ Directive <u>2011/61/EU</u>

²⁵² Directive <u>2008/6/EC</u>

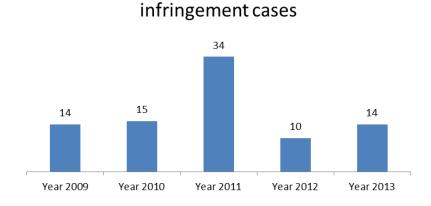
²⁵³ IP/13/1101

²⁵⁴ MEMO 13/470

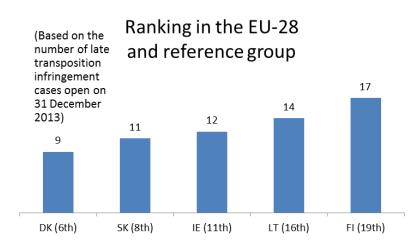
- the incompatibility with EU law of national legislation that continues to favour incumbent cargo-handling operators by giving them a 'priority right' when issuing new contracts.²⁵⁵
- (b) Cases referred to the Court under Article 258 TFEU:
 - none in 2013
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases



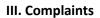
New late transposition



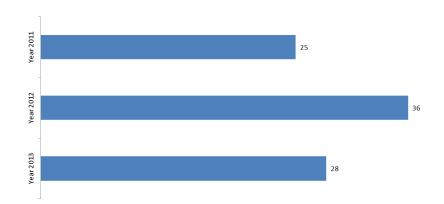
3. Policy areas in which most new late transposition infringement cases were opened

14 late transposition cases against Lithua	inia
Energy	5
Internal market	3
Other	6

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013



1. Complaints made against Lithuania



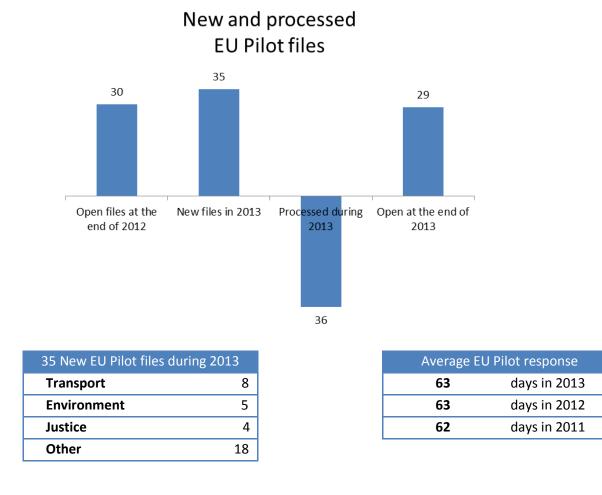
Complaints 2011-13

Main complaint areas

	LITHUANIA Total	28
Internal market	(public procurement and regulated professions)	7
Justice	(residence permits)	4
Electronic communications	(implementation of EU rules on emergency number 112)	4
Other	(alcohol law, nature protection, provision of port services in Klaipėda)	13

IV. EU Pilot

1. Progress of files relating to Lithuania open in EU Pilot



V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

 directives providing minimum standards on sanctions and measures against employers of illegal third-country nationals,²⁵⁶ on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment,²⁵⁷ on driving licences²⁵⁸ and on roadworthiness tests for motor vehicles.²⁵⁹

VI. Important judgments

There were no cases involving Lithuania in which the Court issued major judgments.

²⁵⁶ Directive <u>2009/52/EC</u>

²⁵⁷ Directive <u>2009/50/EC</u>

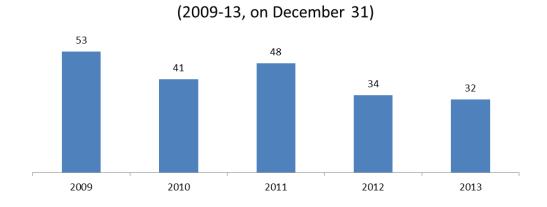
²⁵⁸ Directive <u>2006/126/EC</u>

²⁵⁹ Directive <u>2010/48/EU</u>

LUXEMBOURG

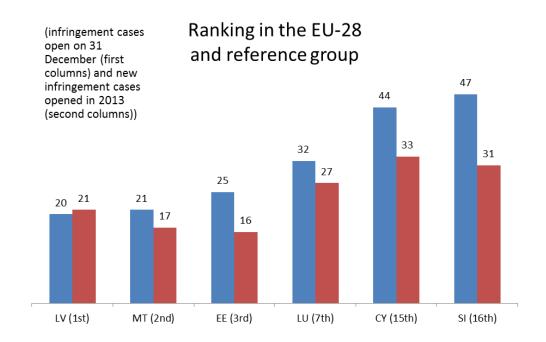
I. General statistics

1. Open infringement cases against Luxembourg (2009-13, on 31December 2013)

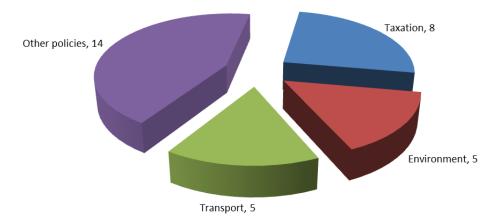


Open infringement cases

2. Ranking in the EU-28



3. **32** infringement cases against Luxembourg



32 infringement cases against Luxembourg

- 4. Referrals to the Court and key infringement cases
 - (a) 27 new infringement procedures were launched against Luxembourg in 2013. They and other major ongoing infringement cases relate to:
 - the incompatibility of Luxembourg's Labour Code with the Fixed Term Work Directive:²⁶⁰ staff at the University of Luxembourg and in the entertainment sector are not *directly* informed by their employer when permanent vacancies are made available;
 - the National Regulatory Authority's failure to notify the Commission of the results of its market analysis carried out over the last five to seven year period, which is in breach of the Framework Directive on Electronic Communications Networks and Services;²⁶¹
 - the late transposition of the Industrial Emissions Directive²⁶² and of the directive preventing and combating trafficking in human beings;²⁶³
 - the incorrect transposition of the Railway Interoperability Directive.²⁶⁴
 - (b) One case was referred to the Court under Article 258 TFEU. It relates to:
 - failure to comply with the VAT Directive,²⁶⁵ by applying reduced VAT rates to e-books. The reduced rate seriously distorts competition, to the detriment of traders from other EU Member States.²⁶⁶

²⁶⁰ Directive <u>1990/70/EC</u> ²⁶¹ Directive <u>2002/21/EC</u>

²⁶¹ Directive <u>2002/21/EC</u>

²⁶² Directive <u>2010/75/EU</u> ²⁶³ Directive 2011/26/EU

²⁶³ Directive <u>2011/36/EU</u>

²⁶⁴ Directive 2004/49/EC

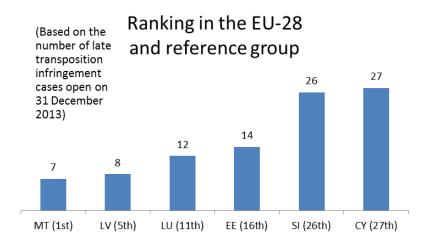
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

New late transposition

1. New late transposition infringement cases





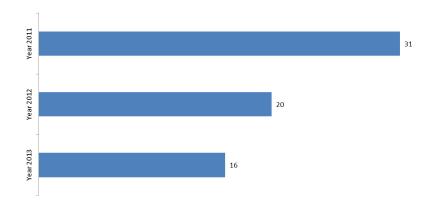
3. Policy areas in which most new late transposition infringement cases were opened

12 late transposition cases against Luxembourg		
Environment	3	
Energy	2	
Other	7	

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

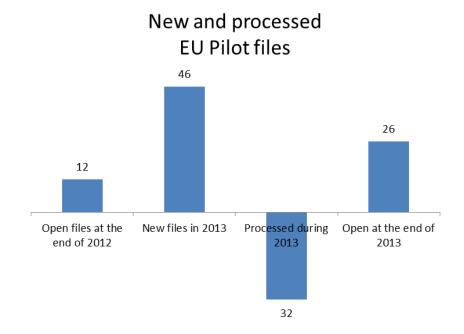
1. Complaints made against Luxembourg



Complaints 2011-13

Main complaint areas

	LUXEMBOURG Total	16
Taxation	(financial advantages to highly qualified employees and dividends paid between parent and subsidiary companies)	5
Employment	(family benefit designed to support children of non-resident workers)	3
Justice	(discrimination on the basis of religion, right to access to justice)	3
Other	(discriminatory rules in sport and protection of Natura 2000 sites)	5



1. Progress of files relating to Luxembourg open in EU Pilot

46 New EU Pilot files during 2013	
Environment	11
Transport	9
Justice	7
Other	19

Average EU Pilot response		
69	days in 2013	
67	days in 2012	
*	days in 2011	
* No data for Luxembourg for 2011 as it was		
not yet EU Pilot member		

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- the requirement that lawyers must have working knowledge of German and Luxembourgish to establish themselves in Luxembourg;
- late transposition of the directive providing minimum standards on sanctions and measures against the employers of illegally staying third-country nationals.²⁶⁷

²⁶⁷ Directive <u>2009/52/EC</u>

VI. Important judgments

The Court ruled that:

- under Article 260(2) TFEU, Luxembourg had to pay financial penalties for failing to comply with the Court's judgment of 2006, which stated that Luxembourg had infringed the Urban Waste Water Directive (due to inadequate urban wastewater treatment);²⁶⁸
- Luxembourg complied with existing rail legislation as regards the level of independence required for an infrastructure manager in a holding company structure.²⁶⁹

In preliminary rulings addressed to the Luxembourgish judiciary, the Court ruled that:

- the system excluding the children of frontier workers from financial aid for higher education pursues a legitimate objective, that is increasing the number of people in the Luxembourg population with a higher education degree, but it goes beyond what is necessary to attain that objective;²⁷⁰
- an air carrier must provide care to passengers whose flight has been cancelled due to extraordinary circumstances, such as the closure of airspace following the eruption of the Eyjafjallajökull volcano.²⁷¹

²⁶⁸ Commission v Luxembourg, <u>C-576/11</u>, Court press release No <u>152/13</u>

²⁶⁹ Directive 91/440/EC, Commission v Luxembourg, <u>C-412/11</u>

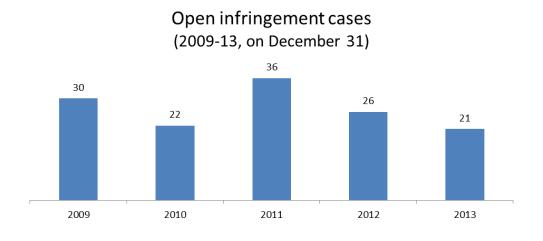
Giersch and Others, <u>C-20/12</u>, Court press release No <u>74/13</u>

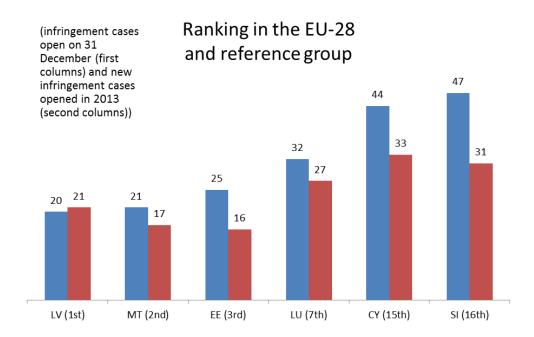
²⁷¹ McDonagh, <u>C-12/11</u>

MALTA

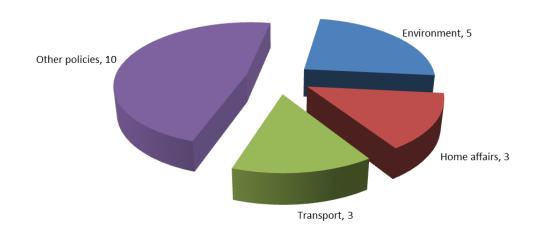
I. General statistics

1. Open infringement cases against Malta (2009-13, on 31December 2013)





3. **21** infringement cases against Malta



21 infringement cases against Malta

- 4. Referrals to the Court and key infringement cases
 - (a) 17 new infringement procedures were launched against Malta in 2013. They and other major ongoing infringement cases relate to:
 - the inadequate transposition and implementation of EU rules on access to justice in environmental matters;²⁷²
 - non-compliance with the directive on long term residents²⁷³ in relation to the conditions a third-country national must fulfil when applying for an EU long-term residence permit;
 - the failure to notify the Commission of measures to transpose the directive on preventing trafficking in human beings²⁷⁴ and the directive extending the scope of the Long-term Residents Directive to cover beneficiaries of international protection;²⁷⁵
 - discriminatory bus fares for non-residents compared to those for residents.
 - (b) One case was referred to the Court under Article 258 TFEU. It relates to:
 - the reduction of the Maltese old-age pension if the beneficiary receives a pension from another Member State from having worked in the public service of that State.²⁷⁶
 - (c) Cases referred to the Court under Article 260(2) TFEU:

²⁷² Directive <u>2003/35/EC</u>

²⁷³ Directive <u>2003/109/EC</u>

²⁷⁴ Directive <u>2011/36/EU</u>

²⁷⁵ Directive <u>2011/51/EU</u>

²⁷⁶ <u>IP/13/249</u>

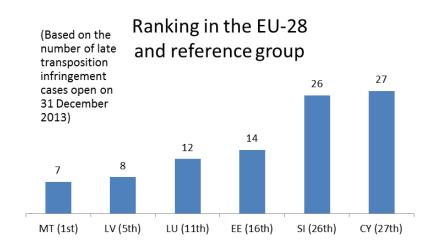
• none in 2013

II. Transposition of directives

1. New late transposition infringement cases



New late transposition



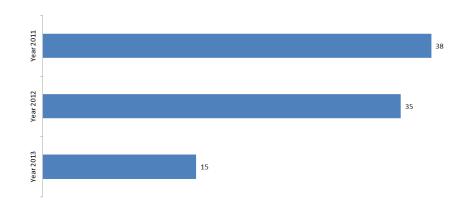
3. Policy areas in which most new late transposition infringement cases were opened

7 late transposition cases against Malta		
Energy	2	
Home affairs	2	
Internal market	2	
Justice	1	

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

1. Complaints made against Malta



Complaints 2011-13

Main complaint areas

	MALTA Total	15
Justice	(free movement of people, especially in relation to water and energy tariffs)	8
Employment	(refusal to grant invalidity pension to non-Maltese citizen, refusal to issue employment certificate to request pension in other Member State)	2
Other	(tuition fees in adult education and training, birds hunting and trapping, discriminatory bus fees and car taxation)	5

New and processed EU Pilot files 45 27 Open files at the New files in 2013 Processed during Open at the end of 2013 36

1. Progress of files relating to Malta open in EU Pilot

45 New EU Pilot files during 2013	
Justice	9
Transport	8
Environment	6
Other	22

Average EU Pilot response		
57	days in 2013	
87	days in 2012	
*	days in 2011	
* No data for Malta for 2011 as it was not yet EU Pilot member		

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- the failure to transpose certain provisions of the directive on public access to environmental information;²⁷⁷
- the incorrect transposition of the Packaging and Packaging Waste Directive;²⁷⁸

²⁷⁷ Directive <u>2003/4/EC</u>

²⁷⁸ Directive <u>94/62/EC</u>

• the non-conformity of Maltese legislation with the Free Movement Directive,²⁷⁹ with regard to the entry and residence of the partner with whom the EU citizen has a duly attested stable relationship.

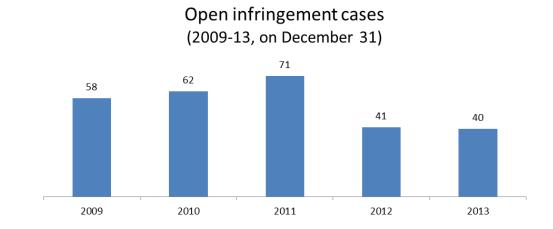
VI. Important judgments

• none in 2013

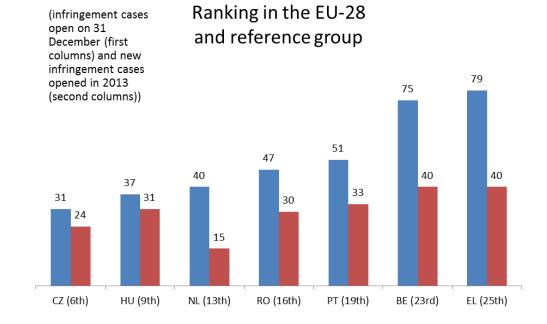
²⁷⁹ Directive <u>2004/38/EC</u>

THE NETHERLANDS

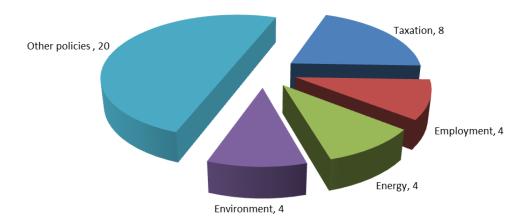
I. General statistics



1. Open infringement cases against the Netherlands (2009-13, on 31December 2013)



3. **40** infringement cases against the Netherlands



40 infringement cases against Netherlands

- 4. Referrals to the Court and key infringement cases
 - (a) 15 new infringement procedures were launched against the Netherlands in 2013. They and other major ongoing infringement cases relate to:
 - the Framework Directive,²⁸⁰ which established a common regulatory framework for electronic communications networks and services. In the Netherlands, access to broadcasting transmission networks — a means of regulating the market in specific situations — is granted by law, rather than via independent marketanalysis procedures;
 - violation of the Toy Safety Directive²⁸¹ Dutch legislation gives too broad a definition of the category of toy guns to which the ban applies;
 - incorrect implementation of the requirements for issuing Energy Performance Certificates;²⁸²
 - discriminatory taxation of outbound dividends received by insurance companies. Only dividends paid on shares held by Dutch insurance companies are actually tax exempt;
 - late transposition of the directive on protecting animals used for scientific purposes²⁸³ and of the directive on preventing and combatting trafficking in human beings and protecting its victims.²⁸⁴

²⁸⁰ Directive <u>2002/21/EC</u>

²⁸¹ Directive <u>2009/48/EC</u> 282 Directive <u>2009/48/EC</u>

²⁸² Directive <u>2010/31/EU</u>, <u>MEMO/13/1005</u>

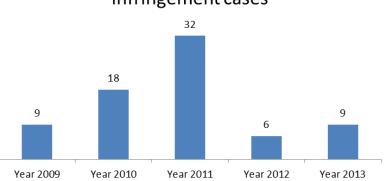
²⁸³ Directive 2010/63/EU, MEMO/13/583

²⁸⁴ Directive 2011/36/EU

- (b) Three cases were referred to the Court under Article 258 TFEU. They relate to:
 - discount fares on public transport being restricted to Dutch students, with students from other EU countries not considered eligible;²⁸⁵
 - discrimination against pensioners who live abroad in the payment of an allowance for elderly taxpayers;²⁸⁶
 - the breach of the Gender Equality Directive.²⁸⁷ Dutch legislation does not include express provisions to protect employees returning from maternity, paternity or adoption leave (such as entitlement to return to their job or to an equivalent post).²⁸⁸
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases



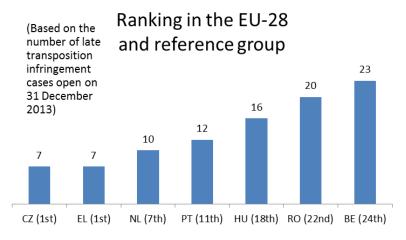
New late transposition infringement cases

- ²⁸⁶ <u>IP/13/1</u>40
- ²⁸⁷ Directive <u>2006/54/EC</u>

²⁸⁵ <u>IP/13/574</u>

²⁸⁸ <u>IP/13/45</u>

2. Ranking in the EU-28 and reference group



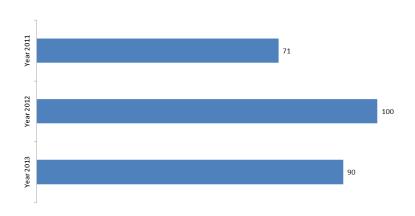
3. Policy areas in which most new late transposition infringement cases were opened

10 late transposition cases against Netherlands		
Energy	3	
Other	7	

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

1. Complaints made against the Netherlands



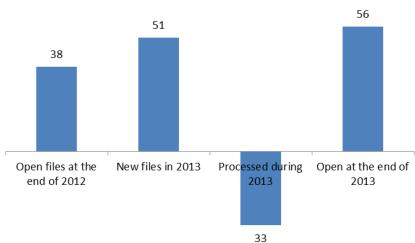
Complaints 2011-13

Main complaint areas

	NETHERLANDS Total	90
Internal market	(public procurement and recognition of professional qualifications)	20
Environment	(protection of Natura 2000 sites)	16
Taxation	(VAT exemption for medical services, discriminatory treatment of investment funds and dividend taxation)	14
Other	(students' transport fares, asylum, calculation of health care contributions and the application of the EU-Turkey Association Agreement)	40

IV. EU Pilot

1. Progress of files relating to the Netherlands open in EU Pilot



New and processed	
EU Pilot files	

51 New EU Pilot files during 2013	
Transport	12
Environment	10
Taxation	8
Other	21

Average EU Pilot response		
67	days in 2013	
64	days in 2012	
67	days in 2011	

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

• the non-conformity of national legislation with the directive on employment equality.²⁸⁹

VI. Important judgments

The Court ruled that:

 the Netherlands failed to fulfil its obligations under the directive on cross-border mergers of limited liability companies.²⁹⁰ Employees employed in the Netherlands enjoy broader participation rights than employees of establishments in other countries set up by companies formed through cross-border mergers whose registered offices are in the Netherlands.²⁹¹

In preliminary rulings addressed to the Dutch judiciary, the Court ruled that:

- the protection of consumers by maintaining undistorted competition in the field of energy supply may justify restrictions on the free movement of capital;²⁹²
- under the Asylum Qualification Directive,²⁹³ homosexual asylum applicants can constitute a particular social group who may be persecuted on account of their sexual orientation;²⁹⁴
- under the Return Directive,²⁹⁵ a violation of the right to defence in the case of a decision extending detention does not automatically bring about the lifting of the detention;²⁹⁶
- the Data Protection Directive does not preclude the levying of fees in respect of the communication of personal data by a public authority, but the level of those fees must not exceed the cost of communicating such data;²⁹⁷
- the Member State in which a person was last employed can refuse to grant unemployment benefit to a wholly unemployed frontier worker whose prospects of reintegration into working life are best in that Member State, on the grounds that he does not reside in its territory.²⁹⁸

²⁸⁹ Directive <u>2000/78/EC</u> ²⁹⁰ Directive 2005/75/

²⁹⁰ Directive <u>2005/56/EC</u>

²⁹¹ Commission v Netherlands, <u>C-635/11</u>

²⁹² Essent and Others, <u>C-105/12</u>, C-106/12 and C-107/12, Court press release No <u>137/13</u>

²⁹³ Directive <u>2004/83/EC</u>

²⁹⁴ X and Others, <u>C-199/12, C-200/12, C-201/12</u>, Court press release No <u>145/13</u>

²⁹⁵ Directive <u>2008/115/EC</u>

²⁹⁶ G. and R., <u>C-383/13</u>, Court press release No <u>100/13</u>

²⁹⁷ X, <u>C-486/12</u>

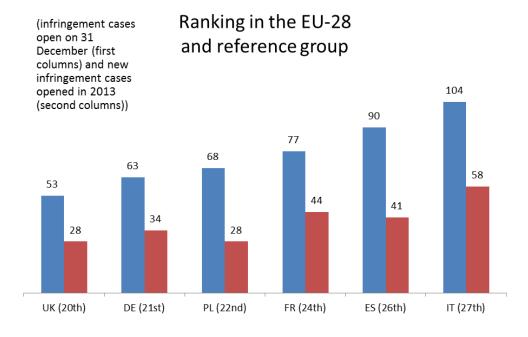
²⁹⁸ Jeltes and Others, <u>C-443/11</u>

POLAND

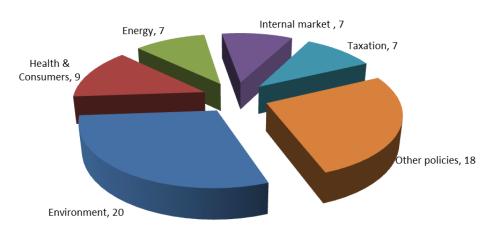
I. General statistics

1. Open infringement cases against Poland (2009-13, on 31December 2013)





3. 68 infringement cases against Poland



68 infringement cases against Poland

- 4. Referrals to the Court and key infringement cases
 - (a) 28 new infringement procedures were launched against Poland in 2013. They and other major ongoing infringement cases relate to:
 - certain provisions of the Polish Gambling Act which raise concerns as to their compatibility with the Single Market freedoms enshrined in the Treaties, as well as the lack of notification of technical regulations contained in this Act, prior to their adoption;²⁹⁹
 - the limit values of PM₁₀³⁰⁰ being exceeded in certain areas and agglomerations³⁰¹ (air quality) and the alleged lack of impact assessment for the Upper Vistula flood prevention scheme;³⁰²
 - the Polish authorities' request made based on a bilateral agreement, that holders of local border traffic permits must present proof of travel medical insurance;³⁰³
 - the potentially incorrect implementation of the EU Visa Code³⁰⁴ as regards the right to appeal against decisions on visa refusal, annulment and revocation;
 - the possible incompatibility of election rules with the TFEU by restricting the founding of membership in political parties to Polish nationals;
 - the requirement for online gambling service providers to have a physical presence in Poland, and for, prior approval of changes to their shareholder structure;³⁰⁵

²⁹⁹ Directive <u>98/34/EC</u> allows the Commission to raise objections against such rules if they restrict the free movement of goods.

³⁰⁰ PM_{10} is 'an air pollutant consisting of small particles with an aerodynamic diameter less than or equal to a nominal 10 micrometer. Their small size allows them to make their way to the air passages deep within the lungs where they may be deposited and result in adverse health effects' (Source: <u>the European Environmental Agency</u>).

³⁰¹ <u>IP/13/47</u>

³⁰² <u>MEMO/13/375</u>

³⁰³ Regulation (EC) No <u>1931/2006</u>

³⁰⁴ Regulation (EC) No <u>810/2009</u>

- the rules governing the mandatory collective management of broadcasting firms' cable transmission rights;
- the correct implementation of animal welfare rule concerning pregnant sows;³⁰⁶
- the discriminatory nature of Polish rules granting tax deductions only for pension contributions paid to Polish financial institutions.
- Nine cases have been referred to the Court under Article 258 TFEU. They relate to: (b)
 - the incompatibility with the Gas Directive³⁰⁷ of the Polish system of regulated gas • prices for non-household consumers;³⁰⁸
 - Poland's alleged failure to designate sufficient nitrate vulnerable zones³⁰⁹ and • shortcomings in its water legislation;³¹⁰
 - the discriminatory nature of a number of exclusion criteria in public procurement rules;³¹¹
 - the non-application of EU quality and safety rules³¹² to reproductive cells, • embryonic tissues and foetal tissues;³¹³
 - GMO cultivation notifications;³¹⁴ •
 - VAT exemption granted to a broader scope of medical equipment than provided for in the VAT Directive; and VAT exemption on fire-fighting protection goods.³¹⁵
- Cases referred to the Court under Article 260(2) TFEU: (c)
 - none in 2013

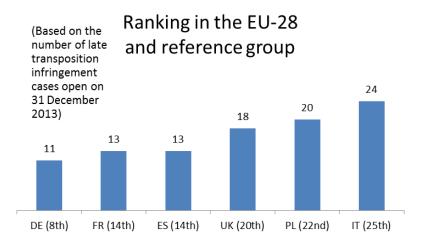
305	<u>IP/13/1101</u>
306	IP/13/135
307	Directive 2009/73/EC
308	IP/13/580
309	<u>IP/13/48</u>
310	<u>IP/13/144</u>
311	<u>IP/13/965</u>
312	Directive 2004/23/CE
313	<u>IP/13/873</u>
314	<u>IP/13/571</u>
315	Directive 2006/112/EC and IP/13/870

305



1. New late transposition infringement cases

2. Ranking in the EU-28 and reference group



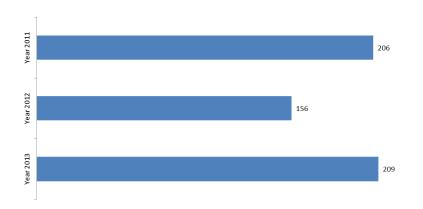
3. Policy areas in which most new late transposition infringement cases were opened

20 late transposition cases against Poland		
Environment	5	
Energy	4	
Other	11	

- 4. Court referrals under Articles 258/260(3) TFEU:
 - the non-transposition of the Renewable Energy Directive,³¹⁶ which had to be transposed by the Member States by 5 December 2010.³¹⁷

III. Complaints

1. Complaints made against Poland



Complaints 2011-13

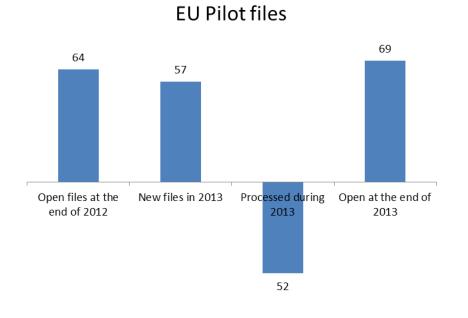
Main complaint areas

	POLAND Total	209
Regional policy	(cohesion policy)	33
Agriculture	(direct payments, rural development and organic farming)	31
Justice	(equal treatment and civil justice)	28
Environment	(water protection and management, nature protection, environmental impact assessment and landfills' waste management)	28
Other	(students' train fares, equal treatment in education, gambling services, requirements beyond those in Local Border Traffic Regulation and excise duties)	89

³¹⁶ Directive <u>2009/28/EC</u>

³¹⁷ <u>IP/13/259</u>

1. Progress of files relating to Poland open in EU Pilot



New and processed

57 New EU Pilot files d	uring 2013
Transport	11
Environment	9
Internal market	6
Other	31

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

• the late transposition of the Energy and Gas Directives,³¹⁸ the Marine Strategy Directive³¹⁹ and the Waste Framework Directive;³²⁰

³¹⁸ Directive <u>2009/72/EC</u> and Directive <u>2009/73/EC</u>

³¹⁹ Directive 2008/56/EC

³²⁰ Directive 2008/98/EC

- non-residents' obligation to appoint a resident proxy to receive documents in civil and commercial proceedings and the rule that only the date of a court document is delivered to the Polish postal service operator can serve as the document's date of service;
- the nationality requirement for public notaries;
- the narrow scope of the rules transposing the Drivers' Working Time Directive was not extended to self-employed drivers;³²¹
- the practice of keeping laying hens in non-enriched cages;
- the discriminatory corporate tax of foreign pension and investment funds compared to the exemption of similar Polish funds.

VI. Important judgments

The Court ruled that:

- Poland failed to comply with the Hydrocarbons Licensing Directive³²² by maintaining discriminatory conditions with regard to the access to the prospection, exploration and extraction of hydrocarbons and by not following the procedure that must precede the granting of authorisations for these activities;³²³
- imbalances between the income and expenditure accounts of the railway infrastructure manager do not violate EU railway laws³²⁴ as long as the necessary measures to balance out these accounts put in place, under normal business conditions and over a reasonable period of time. However, Poland failed to adopt incentive measures to reduce infrastructure costs and access charges;³²⁵
- Poland failed to lay down transparent and non-discriminatory procedures for allocating air traffic rights in certain cases;³²⁶
- some of the Polish rules implementing the directive on the contained use of genetically modified micro-organisms (GMMs)³²⁷ are incorrect.³²⁸

Among the preliminary rulings addressed to the Polish judiciary, the Court ruled that:

 working time records (the beginning and end of working hours and breaks) are considered to be 'personal data' for the purposes of the Data Protection Directive;³²⁹ however, national legislation obliging employers to make such records available to the authorities that monitor working conditions is not contrary to this directive.³³⁰

³²¹ Directive 2002/15/EC and IP/13/142 on the earlier referral decision

³²² Directive <u>94/22/EC</u>

³²³ Commission v Poland, <u>C-569/10</u>

³²⁴ Directive <u>91/440/EEC</u>

³²⁵ Commission v Poland, <u>C-512/10</u> and Court press release No <u>64/13</u>

³²⁶ Commission v Poland, <u>C-90/12</u>

³²⁷ Directive <u>2009/41/EC</u>

³²⁸ Commission v Poland, <u>C-281/11</u>

³²⁹ Directive <u>95/46/EC</u>

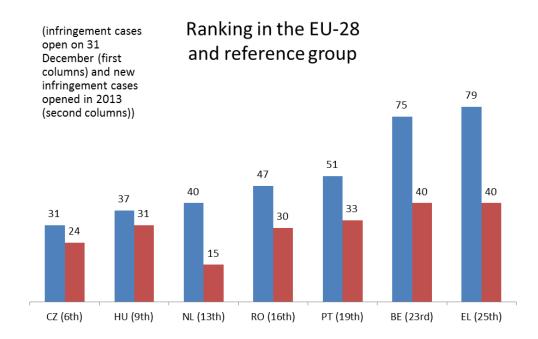
³³⁰ Worten, <u>C-342/12</u>

PORTUGAL

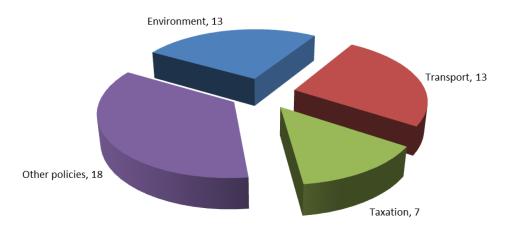
I. General statistics

1. Open infringement cases against Portugal (2009-13, on 31December 2013)





3. **51** infringement cases against Portugal



51 infringement cases against Portugal

4. Referrals to the Court and key infringement cases

- (a) 33 new infringement procedures were launched against Portugal in 2013. They and other major ongoing infringement cases relate to:
 - the non-respect of EU air quality standards (PM₁₀³³¹ limit values) in several zones and agglomerations;
 - the late transposition of the directives on preventing trafficking in human beings³³² and alternative investment fund managers;³³³
 - the incorrect implementation of EU legislation on the welfare of animals, which requires that sows are kept in groups during part of their pregnancy;³³⁴
 - Portugal's failure to fully apply the framework directive on health and safety at work³³⁵ to workers in the public sector;
 - the discriminatory treatment of teachers employed in public schools on fixed-term contracts, which is in breach of the Fixed-Term Work Directive;³³⁶
 - the illegal dumping of hazardous waste in the decommissioned mines of São Pedro da Cova in Gondomar;³³⁷

³³¹ PM₁₀ is 'an air pollutant consisting of small particles with an aerodynamic diameter less than or equal to a nominal 10 micrometer. Their small size allows them to make their way to the air passages deep within the lungs where they may be deposited and result in adverse health effects' (Source: <u>the</u> <u>European Environmental Agency</u>).

³³² Directive <u>2011/36/EU</u>

³³³ Directive 2011/61/EU

³³⁴ Directive <u>2008/120/EC</u> and <u>IP/13/135</u>

³³⁵ Directive <u>89/391/EEC and MEMO/13/1005</u>

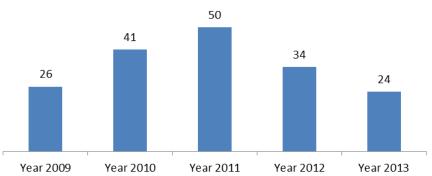
³³⁶ Directive <u>99/70/EC and MEMO/13/1005</u>

³³⁷ <u>MEMO/13/1005</u>

- Portugal's failure to comply with Court judgments³³⁸ on the lack of river basin management plans required under the Water Framework Directive³³⁹ and the incorrect transposition of the directives in the First Railway Package.³⁴⁰
- (b) Two cases were referred to the Court under Article 258 TFEU. They relate to:
 - Portugal's failure to guarantee functional and financial independence of airport slot coordinator, as required by EU rules on allocating slots at Community airports;³⁴¹
 - incorrect application of the rules on airport ground handling (baggage handling, ramp handling and freight-and-mail handling) at Lisbon, Porto and Faro airports.³⁴²
- (c) One case was referred to the Court under Article 260(2) TFEU:
 - Portugal's non-respect of the Universal Service Directive with regard to the designation of a universal service provider.³⁴³

II. Transposition of directives

1. New late transposition infringement cases



New late transposition infringement cases

³³⁸ Commission v Portugal, cases <u>C-223/11</u> and <u>C-557/10</u>

³³⁹ Directive <u>2000/60/EC</u> and <u>IP/11/438</u> on the earlier referral decision under Article 258 TFEU

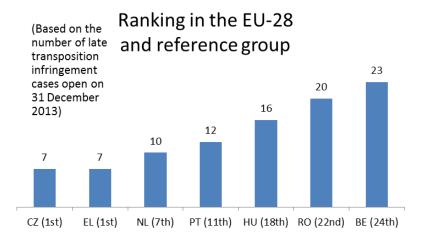
³⁴⁰ Directives <u>91/440/EEC</u> and <u>2001/14/EU</u>

³⁴¹ Regulation (EEC) No <u>95/93</u> and <u>IP/13/1100</u>

³⁴² Directive <u>96/67/EC</u> and <u>IP/13/255</u>

³⁴³ <u>IP/13/44</u> and Commission v Portugal, <u>C-154/09</u>

2. Ranking in the EU-28 and reference group



3. Policy areas in which most new late transposition infringement cases were opened

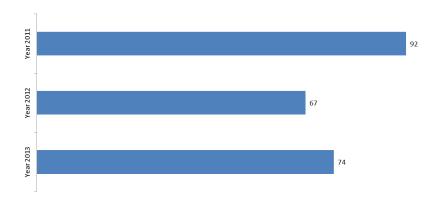
12 late transposition cases against Portugal		
Internal market	5	
Transport	3	
Other	4	

- 4. Court referrals under Articles 258/260(3) TFEU:
 - Portugal's failure to transpose the Energy Efficiency of Buildings Directive, which had to be transposed by 9 July 2012.³⁴⁴

³⁴⁴ Directive <u>2010/31/EU</u> and <u>IP/13/579</u>. The case was subsequently closed, following Portugal's compliance.

III. Complaints

1. Complaints made against Portugal

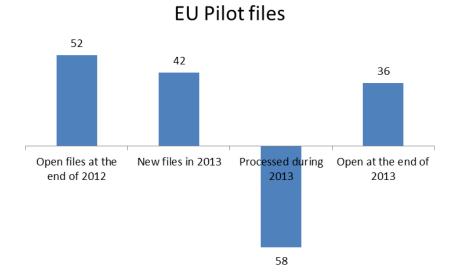


Complaints 2011-13

Main complaint areas

	PORTUGAL Total	74
Employment	(recognition of professional experience acquired abroad, workers' exposure to asbestos and Fixed Term Work Directive)	17
Taxation	(vehicles' taxation, VAT refunds and direct taxation)	15
Environment	(nature protection, environmental impact assessment and waste management)	11
Other	(authorisation requirements for electronic communication, access to scholarships, Late Payment Directive, heavy goods vehicles' toll and airport ground handling services)	31

1. Progress of files relating to Portugal open in EU Pilot



New and processed

42 New EU Pilot files during 2013	
Transport	11
Environment	10
Justice	7
Other	14

Average EU Pilot response		
72	days in 2013	
68	days in 2012	
60	days in 2011	

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

 late transposition of the directives on implementing the Framework Agreement on preventing sharp injuries in the hospital and healthcare sector³⁴⁵ and on defence procurement;³⁴⁶

³⁴⁵ Directive <u>2010/32/EU</u>

³⁴⁶ Directive 2009/81/EC

 non-compliance with EU rules on charging heavy goods vehicles — the Eurovignette Directive³⁴⁷ (the Portuguese legislation contained a provision leaving concession toll systems entirely outside of the directive's scope and, moreover, Portugal did not communicate to the Commission information on calculating the tolls for newly introduced tolling arrangements).

VI. Important judgments

In preliminary rulings addressed to the Portuguese judiciary, the Court ruled that:

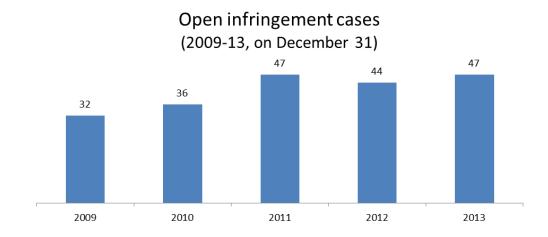
• EU law does not prevent national legislation from limiting the guarantee of wage claims to the period of six months before the commencement of an action that seeks a declaration of insolvency for an employer. This applies even if workers initiated legal proceedings against their employer prior to the start of that period, with a view to obtaining a determination of the amount of those claims and an enforcement order to recover these amounts.³⁴⁸

³⁴⁷ Directive <u>1999/62/EC</u>

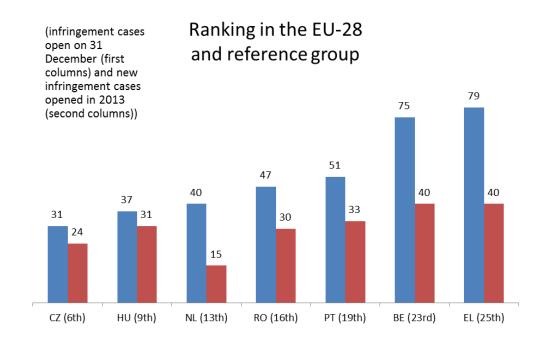
Gomes Viana Novo and others, <u>C-309/12</u>

ROMANIA

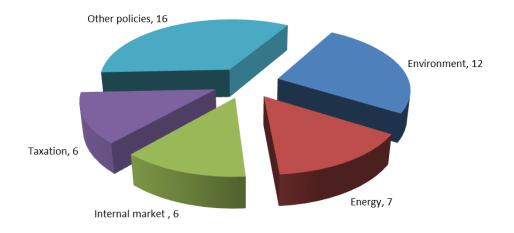
I. General statistics



1. Open infringement cases against Romania (2009-13, on 31December 2013)



3. **47** infringement cases against Romania



47 infringement cases against Romania

4. Referrals to the Court and key infringement cases

- (a) 30 new infringement procedures were launched against Romania in 2013. They and other major ongoing infringement cases relate to:
 - Romania's failure to align national law on annual leave for government employees with the Working Time Directive;³⁴⁹
 - non-compliance with the principle of equal access to EU waters and resources as laid down in the Common Fisheries Policy;
 - restrictions placed on the supply of gambling services. National law obliges businesses providing online gambling services in Romania to establish a physical presence in the country and prescribes a specific legal form for them;³⁵⁰
 - failure to notify the Commission of measures taken to transpose the Directive on Alternative Investment Fund Managers,³⁵¹ the third Postal Services Directive³⁵² and the Industrial Emissions Directive;³⁵³
 - incorrect implementation of the directive on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification;³⁵⁴
 - national legislation on the valuation of purchased debt claims for accounting purposes, which stipulates that transferred debt claims should be reported at their nominal value in the transferee's accounts and financial records. EU law

³⁴⁹ Directive <u>2003/88/EC</u>

³⁵⁰ <u>IP/13/1101</u>

³⁵¹ Directive <u>2011/61/EU</u>

³⁵² Directive <u>2008/6/EC</u>

³⁵³ <u>MEMO/13/820</u>

³⁵⁴ Directive <u>2001/14/EC</u>

does not provide for any derogation permitting the use of the nominal value of purchased debt claims for accounting purposes;³⁵⁵

- unreasonable delays in refunding VAT, in breach of EU legislation on VAT, which specifies that VAT should be refunded swiftly so that taxpayers are not bearing the burden for an unreasonably long period of time;³⁵⁶
- restrictions placed on the importing of salt from non-EU countries such as Ukraine and Belarus. Imports of salt from these countries are subject to systematic physical checks (on 100% of imports) and require a certificate of analysis on radioactivity contamination levels (confirming that radioactivity is within certain limits). No risk assessment has been carried out to justify this level of controls;³⁵⁷
- the refusal to pay pensions to Greek nationals who have worked in Romania.
- (b) Cases referred to the Court under Article 258 TFEU:
 - none in 2013
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

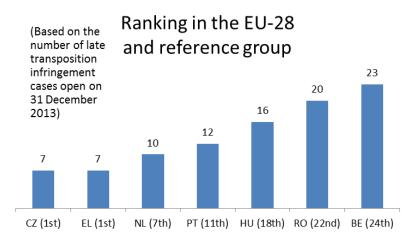
II. Transposition of directives

1. New late transposition infringement cases



355	<u>MEMO/13/820</u>
356	<u>MEMO/13/820</u>

2. Ranking in the EU-28 and reference group



3. Policy areas in which most new late transposition infringement cases were opened

20 late transposition cases against Ro	mania
Energy	5
Environment	5
Other	10

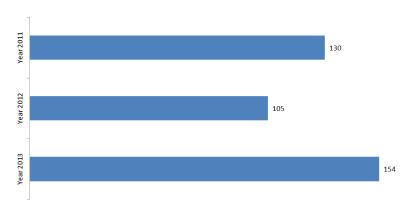
- 4. Court referrals under Articles 258/260(3) TFEU:
 - Romania's failure to fully transpose EU internal energy market rules.³⁵⁸ In particular, national legislation has not been aligned with the provisions relating to the protection of consumers and to certain of the energy regulator's duties. The Commission asked the Court to impose a daily penalty in respect of each of the partially transposed directives.³⁵⁹

³⁵⁸ Directive <u>2009/72/EC</u> and <u>2009/73/EC</u>

³⁵⁹ IP/13/260. Subsequently, Romania achieved full transposition and the Commission withdrew the Court applications

III. Complaints

1. Complaints made against Romania



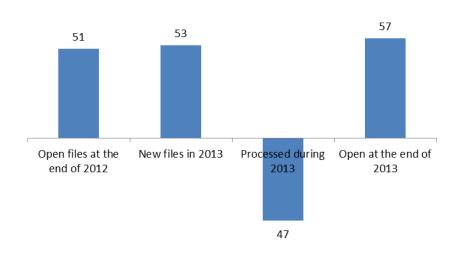
Main complaint areas

	ROMANIA Total	154
Environment	(environmental impact assessment, nature protection and industrial emissions)	32
Justice	(protection of personal data and rights of persons with disability)	25
Taxation	(excise duties and customs representation)	20
Other	(direct payments, rural development and organic farming, administrative obstacles in universities and animal welfare)	77

Complaints 2011-13

IV. EU Pilot

1. Progress of files relating to Romania open in EU Pilot



New and processed EU Pilot files

53 New EU Pilot files du	ring 2013
Environment	10
nternal market	9
ansport	7
Other	27

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- late transposition of the directive on transfer of defence products.³⁶⁰ Romania informed the Commission of the measures taken to implement this directive;
- failure to correctly apply the sulphur dioxide limit values specified in EU legislation on air quality;³⁶¹
- incorrect transposition of the directives in the First Railway Package;³⁶²
- restrictions placed on access to excise warehouses. In Romania, licences to run excise warehouses for storage of energy products are only granted to warehouse keepers

³⁶⁰ Directive <u>2009/43/EC</u>

³⁶¹ Directive <u>1999/30/EC</u> and Directive <u>96/62/EC</u>

³⁶² Directive <u>91/440/EEC</u>, amended by Directives <u>95/18/EC</u> and <u>2001/14/EC</u>

authorised to produce energy products in Romania and who own equipment and machines for petroleum refining and processing. This requirement is contrary to EU law;³⁶³

• the tax treatment of the profits or losses of a foreign legal entity that has several permanent establishments in Romania. These establishments are not allowed to combine (i.e. to consolidate or offset) their profits and losses.

VI. Important judgments

In preliminary rulings addressed to the Romanian judiciary, the Court ruled that:

- the judicial authorities cannot refuse to execute a European arrest warrant for a criminal prosecution on the grounds that the requested person had not been tried in the Member State issuing the warrant before that arrest warrant was issued;³⁶⁴
- homophobic statements made by the owner of a professional football club may shift the burden of proof on to the club to prove that it does not have a discriminatory recruitment policy. The modified burden of proof laid down in the Equal Treatment Directive would not require evidence that is impossible to provide without infringing on the right to privacy. The appearance of discrimination on grounds of sexual orientation may be refuted by the club on the basis of consistent evidence to the contrary. This may involve, in particular, distancing itself from discriminatory public statements and making sure that there are provisions in its recruitment policy expressly designed to ensure compliance with the principle of equal treatment.³⁶⁵

³⁶³ Directive 2008/118/EC

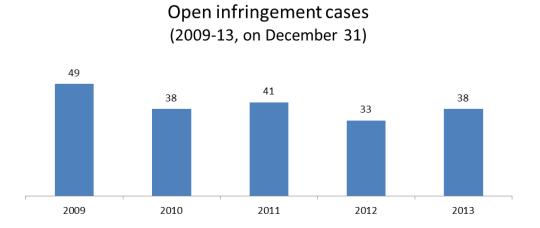
³⁶⁴ Radu, <u>C-396/11</u>

³⁶⁵ Asociatia Accept, <u>C-81/12</u>

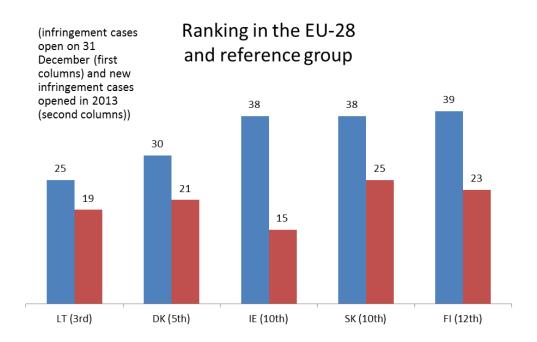
SLOVAKIA

I. General statistics

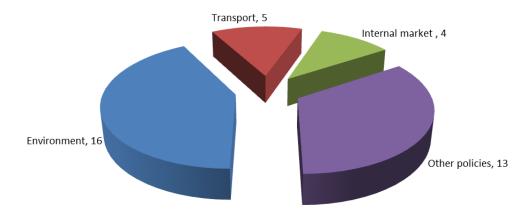
1. Open infringement cases against Slovakia (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group



3. **38** infringement cases against Slovakia



38 infringement cases against Slovakia

- 4. Referrals to the Court and key infringement cases
 - (a) 25 new infringement procedures were launched against Slovakia in 2013. They and other major ongoing infringements cases relate to:
 - Employees working in areas deemed not dangerous by the authorities being denied their right to health checks. This may constitute a breach of the directive on health and safety at work;³⁶⁶
 - Application of EU legislation determining which projects are subject to an environmental impact assessment³⁶⁷ and breaches of the maximum allowed level of PM₁₀ particles (a measure of air quality) in certain areas and agglomerations,³⁶⁸
 - individuals being denied the right to appeal against decisions taken on the refusal, annulment and revocation under the Visa Code;³⁶⁹
 - inadequate protection offered against unfair contract terms in consumer contracts; weak legislation on the use of injunctions allowing consumer law to be circumvented; and limited scope for arbitration in consumer disputes;
 - national legislation that gives only Slovak nationals the right to become a member of a political party.
 - (b) Two cases were referred to the Court under Article 258 TFEU.. They relate to:
 - welfare benefits for disabled people³⁷⁰ which should be available to all those insured under Slovak laws irrespective of whether they are resident in Slovakia or in another Member State;³⁷¹

³⁶⁶ Directive <u>89/391/EEC</u>

³⁶⁷ Directive <u>2011/92/EU</u>

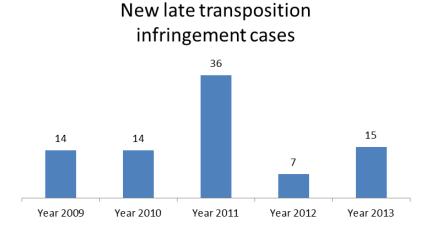
³⁶⁸ IP/13/47

³⁶⁹ Regulation (EC) No <u>810/2009</u>

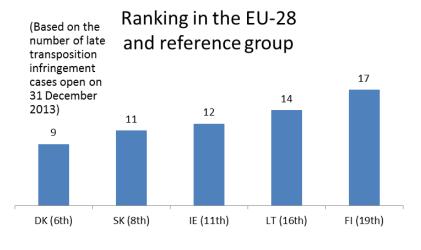
- state benefit for retired people whose statutory pension is below 60 % of the average wage³⁷² is only paid to pensioners resident in Slovakia.³⁷³
- (c) Cases referred to the Court under Article 260(2) TFEU
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases



2. Ranking in the EU-28 and reference group



- ³⁷⁰ The carer's allowance (*peňažný príspevok na opatrovanie*), the disability allowance (*peňažný príspevok na osobnú asistenciu*) and the cash allowance for compensation of increased costs for severely disabled persons (*peňažný príspevok na kompenzáciu zvýšených výdavkov*).
- ³⁷¹ <u>IP/13/476</u>
- ³⁷² The 'Christmas allowance' (*'vianočný príspevok'*)
- ³⁷³ <u>IP/13/364</u>

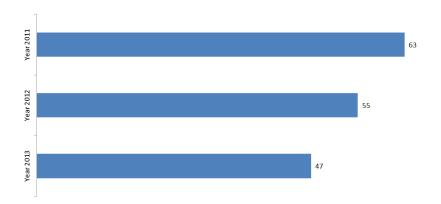
3. Policy areas in which most new late transposition infringement cases were opened

11 late transposition cases against Slova	akia
Environment	5
Transport	2
Other	4

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013



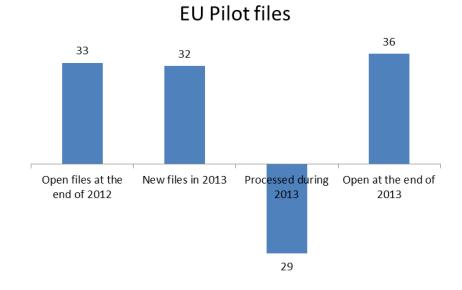
1. Complaints made against Slovakia



Complaints 2011-13

Main complaint areas

	SLOVAKIA Total	47
Employment	(posting of workers, workers' exposure to asbestos)	9
Environment	(water and waste management)	8
Justice	(unfair terms and practices in consumer contracts, protection of personal data and discrimination based on ethnical origin)	7
Other	(authorisation requirements for electronic communication, public procurement, railway contracts, car registration and air transport)	23



New and processed

1. Progress of files relating to Slovakia open in EU Pilot

32 New EU Pilot files during 2013	
Environment	6
Justice	6
Transport	5
Other	15

V. Early resolution of infringement cases

The cases closed before a Court judgment in 2013 related to:

- failure to fully transpose the directive on preventing sharp injuries in the hospital and healthcare sector;³⁷⁴
- national legislation that required dangerous waste to be treated primarily at Slovak locations.
 Such waste could only be exported to other Member States if it was impossible to treat it in Slovakia;

³⁷⁴ Directive <u>2010/32/EU</u>

- failure to ratify the International Convention on Civil Liability for Bunker Oil Pollution Damage;
- definition of the term "genetically modified micro-organism" used in transposing the directive on the contained use of genetically modified micro-organisms.³⁷⁵

VI. Important judgments

The Court ruled that :

Slovakia had breached the Landfill Directive³⁷⁶ in the case relating to the use of the landfill site Zilina – Povazsky Chlmec. The landfille site did not meet the requirements of this directive and, in particular, Sloviakia had failed to submit to the authorities a conditioning plan addressing environmental concerns (such as water control, leachate management, protection of soil and water, gas control and hazards). In addition, it had not indicated the corrective measures that would need to be taken in order to comply with the directive.³⁷⁷

In preliminary rulings addressed to the Slovak judiciary, the Court ruled that:

the directive concerning integrated pollution prevention and control³⁷⁸ should be interpreted as granting the public access to an urban planning decision from the start of the project's authorisation procedure. This right to access cannot be denied on the basis of commercial or industrial confidentiality, even if a legitimate economic interest needs to be protected. If a request for access to the planning decision is refused without justification during the administrative procedure, it should be possible to rectify this decision at a second instance in the administrative procedure (and not only in the court procedure), providing that such rectification will still allow the public to effectively influence the outcome of the decision-making.³⁷⁹

³⁷⁵ Directive <u>2009/41/EC</u>

³⁷⁶ Directive <u>1999/31/EC</u>

³⁷⁷ Commission v Slovakia, <u>C-331/11</u>

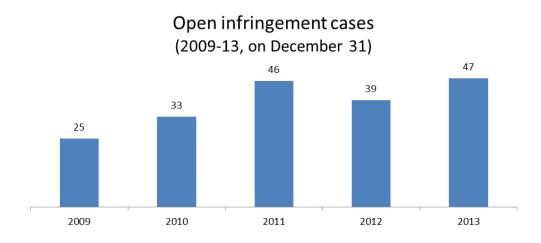
³⁷⁸ Directive <u>96/61/EC</u>

³⁷⁹ Križan and Others, <u>C-416/10</u>

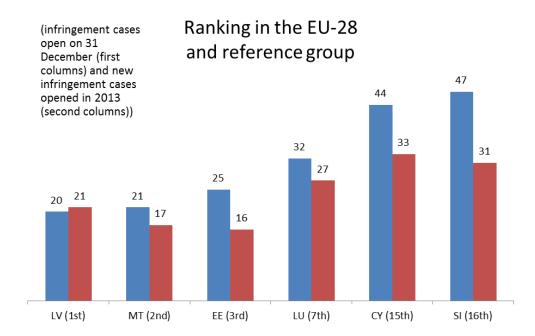
SLOVENIA

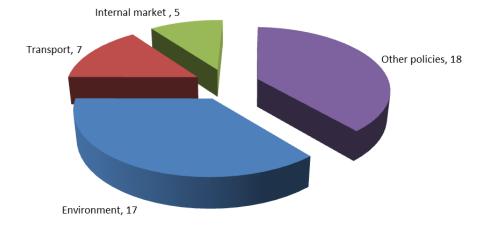
I. General statistics

1. Open infringement cases against Slovenia (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group





47 infringement cases against Slovenia

- 4. Referrals to the Court and key infringement cases
 - (a) 31 new infringement procedures were launched against Slovenia in 2013. They and other major important ongoing infringement cases relate to:
 - the waste management practices for a landfill site close to the centre of Celje, where soil heavily polluted by heavy metals has been illegally dumped;³⁸⁰
 - the lack of special administrative rules governing the operation of higher education institutions from other Member States (such as for the establishment of a university branch or a subsidiary, or for franchise agreements);³⁸¹
 - the accounts of the *Slovenske Železnice* group (the national railway company), which do not seem to be sufficiently detailed for the purposes of tracing financial flows between the group's subsidiaries.
 - (b) One case was referred to the Court under Article 258 TFEU. It relates to:
 - Slovenia's failure to notify the Commission of its transposing measures for the directive³⁸² modifying the Railway Interoperability Directive.³⁸³
 - (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013
- ³⁸⁰ MEMO/13/583

³⁸¹ MEMO/13/583

³⁸² Directive 2011/18/EU

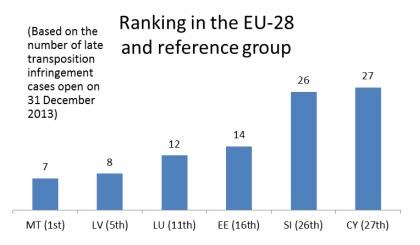
³⁸³ Directive 2008/57/EC and IP/13/141. As Directive 2011/18/EU was not adopted in a legislative procedure the Commission was not entitled to propose a financial penalty to the Court under Article 260(3) TFEU. Finally, the case has been withdrawn from the Court later in 2013 due to Slovenia's compliance.

New late transposition



1. New late transposition infringement cases

2. Ranking in the EU-28 and reference group



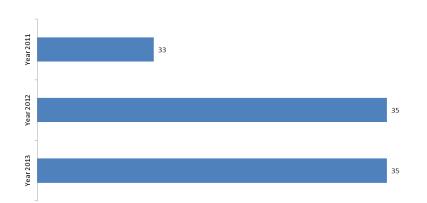
3. Policy areas in which most new late transposition infringement cases were opened

26 late transposition cases against Slovenia		
Environment	5	
Energy	4	
Health & consumers	4	
Other	13	

- 4. Cases referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

1. Complaints made against Slovenia

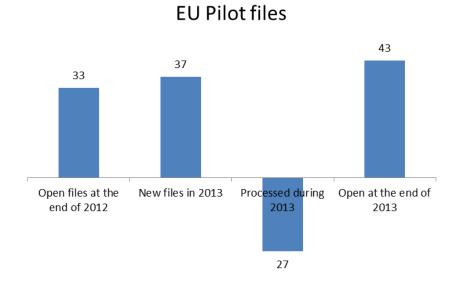


Complaints 2011-13

Main complaint areas

	SLOVENIA Total	35
Environment	(environmental impact assessment and waste management)	11
Enterprise and industry	(ban on fur farming, conformity certificate of new equipment and registration of second hand vehicles)	5
Internal market	(recognition of professional qualifications and public procurement)	4
Justice	(judicial cooperation in civil matters)	4
Other	(access to scholarships, Schengen Borders Code, real estate taxation, air passengers' rights and nationality condition to access energy & gas market jobs)	11

1. Progress of files relating to Slovenia open in EU Pilot



New and processed

37 New EU Pilot files during 2013		
Transport	8	
Justice	7	
Environment	6	
Other	16	

Average EU Pilot response	
66	days in 2013
64	days in 2012
67	days in 2011

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- the public financing of postgraduate studies abroad in return for working in Slovenia for a period equal to the duration of the scholarship, a possibility that was initially only available to Slovene nationals;
- the incomplete notification of national measures transposing the Employers' Sanctions Directive;³⁸⁴

³⁸⁴ Directive <u>2009/52/EC</u>

• the lack of transposition measures for the directive on preventing sharp injuries in the hospital and healthcare sector.³⁸⁵

VI. Important judgments

The Court ruled against Slovenia because:

decisions on the allocation of train tracks for railway undertakings were made by the national railway company, whereas the Railway Directive³⁸⁶ requires that they are made by entities not involved in rail transport. Other claims included: no incentives to reduce infrastructure costs and access charges, no performance scheme for railway companies and the infrastructure manager, and the incorrect calculation method of minimum access charges. However, the Slovene authorities resolved these issues by the time the judgment was delivered.³⁸⁷

³⁸⁵ Directive <u>2010/32/EU</u>

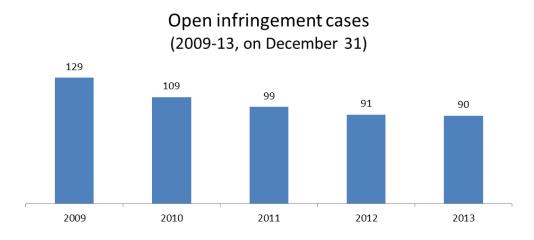
³⁸⁶ Directive <u>91/440/EEC</u> (repealed by Directive <u>2012/34/EU</u>)

³⁸⁷ Commission v Slovenia, <u>C-627/10</u> and Court press release No <u>88/13</u>

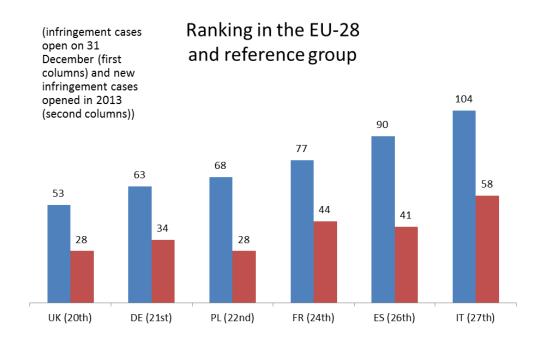
SPAIN

I. General statistics

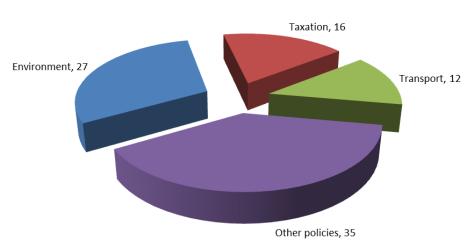
1. Open infringement cases against Spain (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group



3. 90 infringement cases against Spain



90 infringement cases against Spain

4. Referrals to the Court and key infringement cases

- (a) 41 new infringement procedures were launched against Spain in 2013. They and other major ongoing infringement cases relate to:
 - Spanish public hospitals refusing to recognise the European Health Insurance Card;³⁸⁸
 - violation of the framework directive on health and safety at work³⁸⁹ by the Regional Administration of Andalucía;
 - violation of EU citizens' right to stand as candidates in local and European elections in their Member State of residence, this being prevented by restrictions placed on their involvement in political parties;
 - failure to correctly implement the Regulation on public passenger transport services by rail and by road;³⁹⁰
 - incorrect implementation of the directive on airport charges,³⁹¹ specifically in relation to the obligation to consult airport users;
 - failure to notify the Commission of measures adopted to transpose the Directive on Alternative Investment Fund Managers³⁹² and the directive on preventing trafficking in human beings;³⁹³
 - discriminatory taxation of foreign dividends;³⁹⁴
 - the operation of sub-standard landfills sites, in breach of the Landfill Directive;³⁹⁵

³⁸⁸ <u>IP/13/474</u>

³⁸⁹ Directive <u>89/391/EEC</u>

³⁹⁰ Regulation (EC) No <u>1370/2007</u>

³⁹¹ Directive <u>2009/12/EC</u>

³⁹² Directive <u>2011/61/EU</u>

³⁹³ Directive <u>2011/36/EU</u> and <u>MEMO/13/1005</u>

³⁹⁴ MEMO/13/583

³⁹⁵ Directive <u>1999/31/EC</u> and <u>MEMO/13/22</u>

- Spain's failure to comply with Court judgments³⁹⁶ on the lack of river basin management plans required under the Water Framework Directive,³⁹⁷ and the inadequate urban wastewater treatment in certain areas.³⁹⁸
- (b) Three cases were referred to the Court under Article 258 TFEU. They relate to:
 - failure to implement correctly the provisions of the Framework Directive on health and safety at work in respect of workers of the Civil Guard;³⁹⁹
 - the restrictive nature of Spanish rules governing the recruitment of port workers (dockers), which could discourage cargo-handling companies from other Member States from establishing themselves in Spanish ports;⁴⁰⁰
 - the discriminatory taxation of non-residents on their reinvesting of capital gains in the acquisition of a new permanent residence.⁴⁰¹
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives



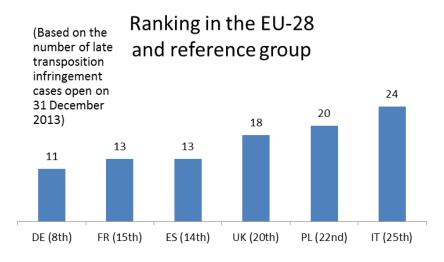
New late transposition

1. New late transposition infringement cases

³⁹⁶ Commission v Spain, cases <u>C-403/11</u> and <u>C-343/10</u>

- ³⁹⁷ Directive <u>2000/60/EC</u>
- ³⁹⁸ <u>IP/10/528</u> on earlier referral decision under Article 258 TFEU
- ³⁹⁹ <u>IP/13/963</u>
- ⁴⁰⁰ <u>IP/13/559</u>
- ⁴⁰¹ <u>IP/13/365</u>

2. Ranking in the EU-28 and reference group



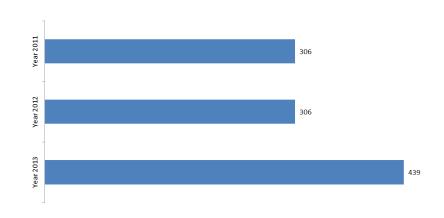
3. Policy areas in which most new late transposition infringement cases were opened

13 late transposition cases against Spain		
Energy	4	
Environment	3	
Internal market	3	
Other	3	

- 4. Court referrals under Articles 258/260(3) TFEU
 - none in 2013

III. Complaints

Complaints 2011-13



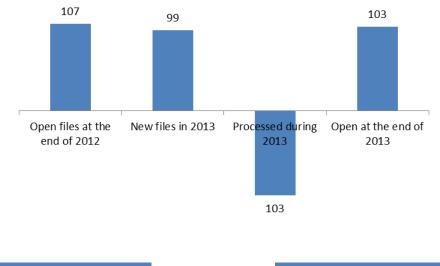
1. Complaints made against Spain

Main complaint areas

	SPAIN Total	439
Employment	(issuing of the European Health Insurance Card to some categories of citizens, transitional arrangements for workers from new Member States and restrictions on free movement of frontier workers at the border between Spain and Gibraltar)	100
Justice	(free movement of people and fundamental rights)	65
Environment	(environmental impact assessment, nature protection, waste management and water protection)	65
Other	(access to education, exploration of hydrocarbons, support schemes for renewable energy, Late Payment Directive, Schengen Borders Code, GMOs and regulated professions)	209

1. Progress of files relating to Spain open in EU Pilot

New and processed EU Pilot files



99 New EU Pilot files during 2013	
Environment	28
Transport	12
Enterprise & industry	10
Other	49

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- discrimination of pensioners from other EU countries, by refusing them access to free medication during a temporary stay in Spain;
- transposition of the directive on minimum safety and health requirements for work on board fishing vessels,⁴⁰² which did not conform with EU requirements (due to the definition of the term 'owner' in relation to a fishing vessel);
- non-conformity of Spain's provisions on protective and preventive services with the framework directive on health and safety at work;

⁴⁰² Directive <u>93/103/EC</u>

- failure to notify the Commission of the measures adopted to transpose the directive implementing the Framework Agreement on preventing sharp injuries in the hospital and healthcare sector;⁴⁰³
- restrictions placed on importing electricity into the Iberian electricity market;
- failure to notify the Commission of a new programme for the renovation of tyres, a breach of Member States' obligations in respect of technical regulations;⁴⁰⁴
- failure to take the measures needed to apply the provisions of the Drivers' Working Time Directive⁴⁰⁵ to self-employed drivers;
- failure to implement the ban on using unenriched cages for laying hens;⁴⁰⁶
- deficiencies in the implementation of EU legislation on the welfare of animals at the time of slaughter.⁴⁰⁷

VI. Important judgments

The Court ruled that Spain:

- failed to transpose a number of provisions contained in the Water Framework Directive⁴⁰⁸ in the intra-communal river basins outside Catalonia and in Catalonia;
- has not complied with the provisions contained in the First Railway Package,⁴⁰⁹ in so far as: it has reserved the right to determine the charge to be paid for use of the rail network; it has not satisfied the requirement to set up a performance scheme to minimise disruption and improve the performance of the railway network; it has given public authorities the right to establish allocation priorities for the different types of service on each line; it has used the criterion of actual use of the network as a criterion for the allocation of infrastructure capacity;⁴¹⁰
- failed to correctly implement the provisions of the VAT Directive for travel agents;⁴¹¹
- restricted the freedom of establishment by applying immediate taxation of unrealised capital gains on the transfer of the place of residence or of the assets of a company established in Spain to another Member State.⁴¹²

In preliminary rulings addressed to the Spanish judiciary, the Court ruled that:

⁴⁰³ Directive <u>2010/32/EU</u>

⁴⁰⁴ Directive <u>98/34/EC</u>

⁴⁰⁵ Directive <u>2002/15/EC</u>

⁴⁰⁶ In accordance with Directive <u>1999/74/EC</u>

⁴⁰⁷ Directive <u>93/119/EC</u> and Regulation (EC) No <u>882/2004</u>

⁴⁰⁸ Commission v Spain, <u>C-151/12</u>

⁴⁰⁹ Directive <u>2001/14/EC</u>

⁴¹⁰ Commission v Spain, <u>C-483/10</u>; and Court_press release No <u>20/13</u>

⁴¹¹ Commission v Spain, <u>C-189/11</u>

⁴¹² Commission v Spain, <u>C-64/11</u>; and Court press release No <u>53/13</u>

- a national legislation on the method of calculating retirement pensions is not in line with EU law, if this method does not take sufficient account of the applicant's work history in another Member State;⁴¹³
- the surrender of a person to the judicial authorities of another Member State following the issue of a European arrest warrant cannot be made conditional upon the conviction rendered *in absentia* being open to review in the Member State issuing the arrest warrant;⁴¹⁴
- the court which has jurisdiction to declare a unfair term in a loan agreement relating to immovable property must be allowed to adopt interim measures, in particular the staying of the enforcement proceedings, where they are necessary in order to guarantee the full effectiveness of its final decision.⁴¹⁵

⁴¹³ Salgado González, <u>C-282/11</u>; and Court press release No <u>15/13</u>

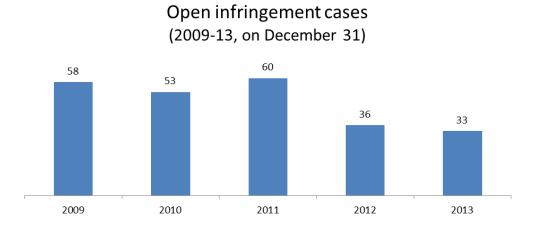
⁴¹⁴ Melloni, <u>C-399/11</u>; and Court press release No <u>17/13</u>

⁴¹⁵ Aziz, <u>C-415/11</u>; and Court press release No <u>30/13</u>

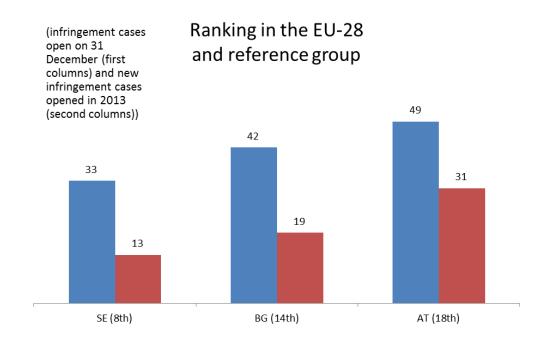
SWEDEN

I. General statistics

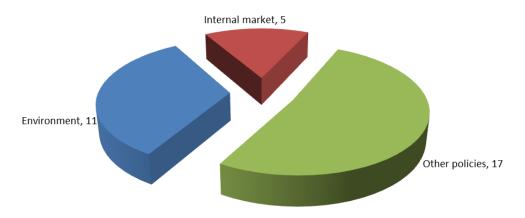
1. Open infringement cases against Sweden (2009-13, on 31December 2013)



2. Ranking in the EU-28 and reference group



3. **33** infringement cases against Sweden



33 infringement cases against Sweden

- 4. Referrals to the Court and key infringement cases
 - (a) 13 new infringement procedures were launched against Sweden in 2013. They and other major ongoing infringement cases relate to:
 - the non-respect of EU air quality standards (maximum PM₁₀ values) in several zones and agglomerations;⁴¹⁶
 - the delay in transposing the provisions of the directive amending the directive on the status of third-country nationals who are long-term residents,⁴¹⁷ to extend its scope to the beneficiaries of international protection;
 - failure to timely notify measures to transpose the directives on alternative investment fund managers;⁴¹⁸ the conditions of entry and residence of third-country nationals for highly qualified employment;⁴¹⁹ and minimum standards on sanctions and measures against employers of illegally staying third-country nationals;⁴²⁰
 - the Fixed-Term Work Directive in national law: there is no provision for protection against abusive successive fixed-term employment contracts;⁴²¹
 - the inconsistent application of restrictions on the cross-border provision of online sports betting services and online poker services and not subjecting the holder of the exclusive right to strict state control;⁴²²
 - failure to comply with EU law on the proper treatment of urban wastewater in large agglomerations.⁴²³

⁴¹⁶ <u>IP/13/47</u>

⁴¹⁷ Directive <u>2003/109/EC</u>

⁴¹⁸ Directive 2011/61/EU

⁴¹⁹ Directive 2009/50/EC

⁴²⁰ Directive 2009/52/EC

⁴²¹ MEMO/13/122

⁴²² <u>IP/13/1101</u>

- (b) Two cases were referred to the Court under Article 258 TFEU. They relate to:
 - failure to correctly implement the directive on animal health problems affecting intra-EU trade in bovine animals and swine.⁴²⁴ The uniform animal health conditions for trade in bovine animals set out in the directive do not include any health requirements for paratuberculosis. Sweden has continued testing bovine animals imported from other Member States for this disease;⁴²⁵
 - VAT postal exemption⁴²⁶: the EU VAT Directive states that services supplied by 'public postal services', and the sale of stamps, should be exempt from VAT. Supplies of services for which the terms have been individually negotiated are not allowed to benefit from the VAT exemption.
- (c) One case was referred to the Court under Article 260(2) TFEU. It relates to:
 - failure to license industrial plants operating without permits.⁴²⁷ Under the Integrated Pollution Prevention and Control Directive,⁴²⁸ industrial and agricultural activities with a high pollution potential must be licensed. Permits can only be issued if certain environmental conditions are met, making the companies themselves responsible for preventing and reducing any pollution they may cause. Despite an earlier Court judgment on this matter, Sweden has still not licensed two major industrial plants.

II. Transposition of directives



Year 2011

Year 2012

Year 2013

Year 2010

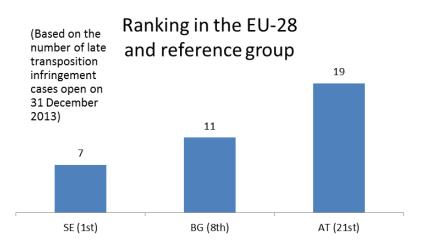
1. New late transposition infringement cases

⁴²³ Commission v Sweden, <u>C-438/07</u>, <u>IP/06/1769</u>

Year 2009

- ⁴²⁴ Directive <u>64/432/EEC</u>
- ⁴²⁵ <u>IP/13/570</u>
- ⁴²⁶ <u>IP/13/1111</u>
- ⁴²⁷ <u>IP/13/145</u>
- ⁴²⁸ Directive <u>2008/1/EC</u>

2. Ranking in the EU-28 and reference group



3. Policy areas in which most new late transposition infringement cases were opened

7 late transposition cases against Swed	len
Energy	2
Other	5

- 4. Court referrals under Articles 258/260(3) TFEU:
 - none in 2013

III. Complaints

1. Complaints made against Sweden



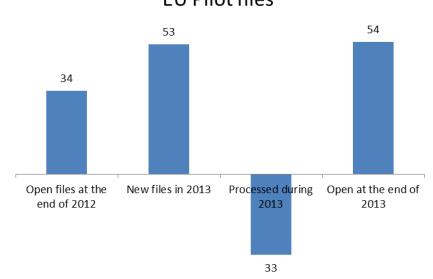
Complaints 2011-13

Main complaint areas

	SWEDEN Total	101
Taxation	(excise duties and VAT exemptions)	25
Justice	(free movement of persons)	22
Employment	(obstacles to register with healthcare institution, posting of workers and classification of a family benefit as sickness benefit)	13
Other	(access to education, environmental impact assessment, long-term resident permits and marketing of medical devices)	41

IV. EU Pilot

1. Progress of files relating to Sweden open in EU Pilot



53 New EU Pilot files during 2013	
Transport	14
Employment	5
Justice	5
Taxation	5
Other	24

Average EU Pilot response		
73	days in 2013	
61	days in 2012	
81	days in 2011	

New and processed EU Pilot files

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- the total ban on the use of metal detectors in breach of the free movement of goods principle. Sweden changed its legislation to allow the conditional use of such devices;
- the incorrect transposition of the Waste Electrical and Electronic Equipment Directive⁴²⁹ and the Strategic Environmental Assessment Directive;⁴³⁰
- failure to ratify the Convention on Civil Liability for Bunker Oil Pollution;
- restrictions on imports of syringes and hypodermic needles from another Member State. Veterinary surgeons, medical practitioners and dentists who import such products for their own practice must apply for a permit to do so and pay a fee. Sweden changed its legislation on this matter;
- the incorrect application of the definition of an economic activity. Sweden's definition of 'economic activity' does not fulfil the criteria under the VAT Directive, but to those under national income tax law.

VI. Important judgments

There were no major judgments in 2013.

⁴²⁹ Directive <u>2012/19/EU</u>

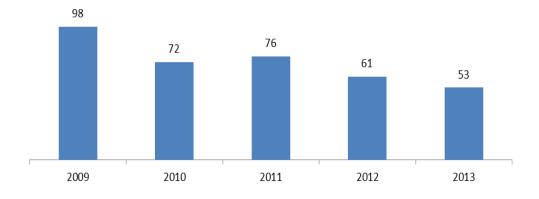
⁴³⁰ Directive <u>2001/42/EC</u>

UNITED KINGDOM

I. General statistics

1. Open infringement cases against the United Kingdom (2009-13, on 31December 2013)

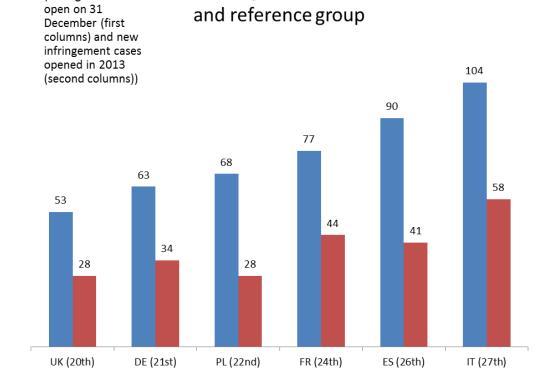
Open infringement cases (2009-13, on December 31)



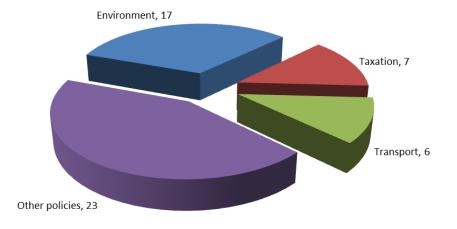
Ranking in the EU-28

2. Ranking in the EU-28 and reference group

(infringement cases



3. **53** infringement cases against the United Kingdom



53 infringement cases against United Kingdom

- 4. Referrals to the Court and key infringement cases
 - (a) 28 infringement procedures were launched against the United Kingdom in 2013.
 They and other major ongoing infringement cases relate to:
 - the Working Time Directive,⁴³¹ regarding annual leave entitlements for low-hour contracts;
 - the refusal to pay sickness benefits in cash to UK pensioners resident abroad (to benefit, pensioners have to be in the UK for 26 weeks out of 52 before the date of the claim);⁴³²
 - the incorrect implementation of the First Railway Package:⁴³³ the UK failed to comply with EU rules on excessive track access charges for passenger and freight trains using the Channel Tunnel;⁴³⁴
 - failure to correctly apply waste legislation with regard to waste oils and end-ofwaste criteria (i.e. the criteria that specify when certain waste ceases to be waste and becomes a product or a secondary raw material);⁴³⁵
 - the breach of EU rules on fiscal marking for fuels:⁴³⁶ private pleasure boat users, such as those of luxury yachts, can no longer buy lower taxed fuel intended for fishing boats.⁴³⁷
 - (b) Two cases were referred to the Court under Article 258 TFEU. They relate to:

⁴³¹ Directive <u>2003/88/EC</u>

⁴³² Regulation (EC) No <u>1408/71</u> and Regulation (EC) No <u>883/2004</u>

⁴³³ First Railway Package (Directives <u>91/440/EEC</u> and <u>2001/14/EC</u>, replaced by the Rail Recast Directive <u>2012/34/EU</u>)

⁴³⁴ IP/13/557

⁴³⁵ MEMO/13/375

⁴³⁶ Directive <u>95/60/EC</u>

⁴³⁷ MEMO/13/470

- the application of a discriminatory 'right to reside' condition for EU nationals to be granted social security benefits (such as child benefit or a state pension credit);⁴³⁸
- the application of VAT-reduced rate for supplies of enery-efficient products in houses, as there is no provision on the VAT Directive⁴³⁹ to allow a reduce VAT rate on these products.⁴⁴⁰
- (c) Cases referred to the Court under Article 260(2) TFEU:
 - none in 2013

II. Transposition of directives

1. New late transposition infringement cases

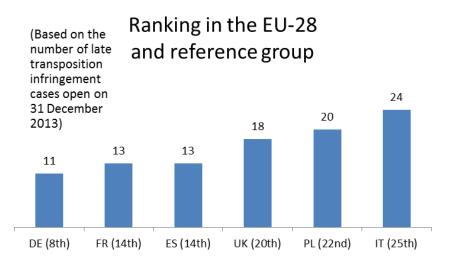


⁴³⁸ IP/13/475

⁴³⁹ Directive <u>2006/112/EC</u>

⁴⁴⁰ <u>IP/13/139</u>

2. Ranking in the EU-28 and reference group



3. Policy areas in which most new late transposition infringement cases were opened

18 late transposition cases against United Kingdom	
Enterprise & industry 4	
Environment	4
Internal market	4
Other	6

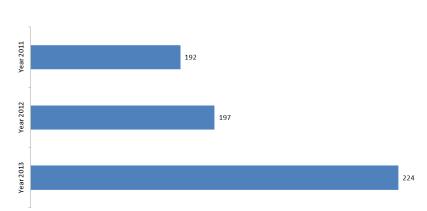
- 4. Court referrals under Articles 258/260(3) TFEU:
 - the UK's failure to fully transpose the EU internal energy market rules.⁴⁴¹ The Commission asked the Court to impose daily penalties in respect of each partially transposed directive.⁴⁴²

⁴⁴¹ Directive <u>2009/72/EC</u> and Directive <u>2009/73/EC</u>

⁴⁴² <u>IP/13/42</u>. In September 2013, however, the UK fully transposed the directives, and both cases were closed.

III. Complaints

1. Complaints made against the United Kingdom



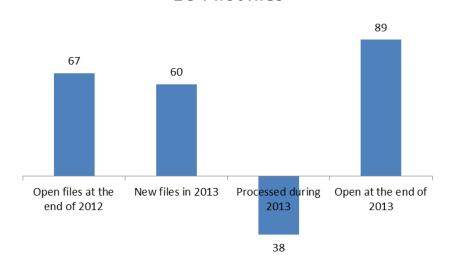
Complaints 2011-13

Main complaint areas

	UNITED KINGDOM Total	224
Justice	(free movement of persons and protection of personal data)	99
Environment	(nature protection, air quality, waste and water management)	28
Employment	(fees required for European Health Insurance Card by private entities, recognition of child raising periods spent abroad for pension calculation and discriminatory child benefits)	25
Other	(organic farming, tuition fees in education, minimum alcohol pricing, very long asylum procedures and marketing of medicinal products)	72

IV. EU Pilot

1. Progress of files relating to the United Kingdom open in EU Pilot



New and processed EU Pilot files

60 New EU Pilot files during 2013	
Justice	11
Transport	11
Employment	6
Taxation	6
Other	26

Average EU Pilot response		
72 days in 2013		
70	days in 2012	
66	days in 2011	

V. Early resolution of infringement cases

The cases closed without a Court judgment in 2013 related to:

- transparency of conditions for getting access to the natural gas transmission networks;
- the putting into service of CE-marked gas appliances (hot water boilers) in line with the requirements of the directive on gas appliances⁴⁴³ and the directive on the approximation of Member State laws on pressure equipment;⁴⁴⁴

⁴⁴³ Directive 2009/142/EC

⁴⁴⁴ Directive <u>97/23/EC</u>

 the late transposition of directives on reporting formalities for ships entering or leaving Member State ports;⁴⁴⁵ roadworthiness tests for motor vehicles;⁴⁴⁶ railway safety indicators;⁴⁴⁷ railway interoperability;⁴⁴⁸ passenger ships;⁴⁴⁹ driving licences, ⁴⁵⁰ maritime traffic monitoring⁴⁵¹ and the Electricity and Gas Directives.⁴⁵²

VI. Important judgments

In preliminary rulings addressed to the judiciary of the United Kingdom, the Court ruled that:

- the Member State responsible for considering an asylum application that an unaccompanied minor has made in more than one Member State is that in which the minor is present after lodging an application there;⁴⁵³
- the term 'not prohibitively expensive' in relation to access to justice in environmental matters⁴⁵⁴ means that the financial burden of access to justice should not prevent the people concerned from making or pursuing a claim or seeking a review by the courts;⁴⁵⁵
- if, under national law, taxpayers can choose between two possible courses of action to recover tax levied in breach of EU law, one of which has a longer limitation period, national law cannot curtail that limitation period without notice and retroactively.⁴⁵⁶

- ⁴⁴⁸ Directive 2008/57/EC
- ⁴⁴⁹ Directive 2010/36/EU
- ⁴⁵⁰ Directive <u>2006/126/EC</u>
- ⁴⁵¹ Directive 2009/17/EC

⁴⁴⁵ Directive <u>2010/65/EU</u>

⁴⁴⁶ Directive 2010/48/EU and Directive 2010/47/EU

⁴⁴⁷ Directive 2009/149/EC

⁴⁵² Directive 2009/72/EC and Directive 2009/73/EC

⁴⁵³ MA and Others, <u>C-648/11</u>, Court press release No <u>71/13</u>

⁴⁵⁴ Directive <u>2003/35/EC</u>

⁴⁵⁵ Edwards and Pallikarapoulos, <u>C-260/11</u>

⁴⁵⁶ Test Claimants in the Franked Investment Income Group Litigation, <u>C-362/12</u>

METHODOLOGY AND EXPLANATIONS

Annex I – Member States

GENERAL STATISTICS

First chart: open infringement cases The figures for the years 2009-13 include 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, on 31 December of the above years:

- (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.

Second chart: ranking in the EU-28 and reference group Each Member State belongs to a particular reference group. On the basis of the Member States' voting weights in the Council, the following reference groups were created: ⁴⁵⁷

- (i) Germany, United Kingdom, France, Italy, Spain and Poland
- (ii) Romania, the Netherlands, Greece, Czech Republic, Belgium, Hungary and Portugal

⁴⁵⁷ This categorisation may change in future Annual Reports.

- (iii) Sweden, Austria and Bulgaria
- (iv) Slovakia, Denmark, Finland, Lithuania and Ireland
- (v) Latvia, Slovenia, Estonia, Cyprus, Luxembourg, and Malta.

Three sets of data are shown for each Member State in a given reference group:

- 1. The first is the number of infringements that stood open against these Member States on 31 December in the reporting year (first columns).
- 2. The second is their ranking position in the EU-28 (without Croatia). 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.
- 3. The third set is 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) from 1 January until 31 December of the reporting year. To be noted that 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 2013 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 2013 due to the Member State's full notification.

Third chart: Breakdown according to policy areas As a principal rule, this 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).

REFERRALS TO THE COURT AND KEY INFRINGEMENT CASES

This section has three parts:

- 1. The first part starts with the number of new infringement procedures in the reporting year and lists the most important new and on-going procedures in the stage of letter of formal notice or reasoned opinion (under Article 258 TFEU).
- 2. The second part list contains the referral decisions that the Commission made under *solely* Article 258 TFEU against the Member State in the reporting year (or a negative confirmation). To be noted that referrals made under Article 258 *and* 260(3) TFEU are discussed in the "Transposition of directives" section (see below). To be noted also that the referral decision does not necessarily mean in all cases that the Commission had already submitted its claim to the Court by 31 December of the reporting year. Even if there is a negative confirmation, there might be on-going proceedings against the Member State under this Article due to earlier Commission decisions.
- 3. The third part includes all referral decisions that the Commission made under Article 260(2) TFEU against the Member State in the reporting year (or a negative confirmation). 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. Even if there is a negative confirmation, there might be on-going proceedings against the Member State under this Article due to earlier Commission decisions.

TRANSPOSITION OF DIRECTIVES

First chart: New late transposition infringement cases This figure shows the number of letters of formal notice addressed to the Member State under Article 258 TFEU due to missing or partial notifications of directives' national transposition measures. This figure is already included into 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 chart of the general statistics section.) To be noted that 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 2013 by sending a letter of formal notice it will be added to the new infringement cases even if the case was closed in October 2013 due to the Member State's full notification. The figure for the current reporting year is further broken down according to policy areas. Generally, this break-down indicates the two policy areas where the most late transposition procedures were launched during the reporting year. Three (or more) policies are mentioned, if two (or more) policies have the second highest number of open infringements. Only one policy is highlighted, if there are too many policies with the second highest number or if this would make the chart very fragmented (might occur in Member States with relatively few infringements).

Second chart: ranking in the EU-28 and reference group

Member State in a given reference group:

Two sets of data are shown for each

- 1. The first is the number of late transposition infringements that were launched against the Member State during the years 2009-13.
- 2. The second is their ranking position in the EU-28 (without Croatia). The ranking is based upon the number of open late transposition cases on 31 December of 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.

Referrals against the Member State under Articles 258 / 260(3) TFEU: The directive(s) that the Member State failed to transpose on time is mentioned (or a negative statement). 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. Even if there is a negative statement, there might be on-going proceedings under these Articles against the Member State due to earlier Commission decisions.

COMPLAINTS

This section analyses the number of complaints that the Commission received in relation to the Member State. The figure on the number of incoming complaints for the current reporting year is broken down according to policy areas and sectors. Generally, this break-down indicates the three policy areas (as well as their most targeted sectors) where the most complaints were received during the reporting year.

EU PILOT

First chart: Average response time in EU Pilot The pie chart indicates how the Member State's average response time in EU Pilot has changed over the past three years.

Second chart: New and processed EU Pilot files This chart starts from the Member State's "balance" of EU Pilot files at the end of the previous reporting year (first column). The second column indicates the number of new EU Pilot files received during the reporting year. This column is further broken down according to policy areas, which indicates the three policy areas where the most EU Pilot files were addressed to the Member State. Similarly to the previous break-downs, more or less policies might be mentioned, depending on the actual nuber of new EU Pilot files. The third column that shows the number of processed EU Pilot files indicates the number of dossiers where the Commission decided on the Member State's responses in EU Pilot. Finally, the fourth column indicates the "balance" of the Member State's EU Pilot files at the end of the reporting year (i.e. first figure *plus* the second *less* the third shall be equal to the fourth figure).

EARLY RESOLUTION OF INFRINGEMENTS

This section contains a list of the most important infringement procedures that the Commission had closed during the reporting year. The list should not be considered exhaustive.

IMPORTANT JUDGMENTS

This section contains two lists; the first contains the most important judgments of the Court against Member States. These judgments are almost exclusively passed under Article 258 or Articles 260(2) TFEU. The second list refers to the most important preliminary rulings that the Court has issued to the Member State's judiciary. These lists are not necessarily exhaustive.