



## The April infringements' package: key decisions

Brussels, 28 April 2016

In its monthly package of infringement decisions, the European Commission is pursuing legal action against Member States for failing to comply with their obligations under EU law. These decisions, covering various sectors and EU policy areas (see Annex I and II), aim to ensure the proper application of EU law for the benefit of citizens and businesses.

The key decisions taken by the Commission (including, 2 letters of formal notice, 35 reasoned opinions and 6 referrals to the Court of Justice of the European Union) are presented below and grouped by policy area. The Commission is also closing 113 cases where the issues with the Member States concerned have been solved without the Commission needing to pursue the procedure further.

On the general EU infringement procedure [an infograph](#) and a full memo are available [here](#). For more detail on all decisions taken, consult the [infringement decisions' register](#).

### 1. Digital Single Market

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*Reasoned opinions*

#### **Commission requests BELGIUM, FINLAND, LITHUANIA, LUXEMBOURG and PORTUGAL to implement the updated EU rules on the reuse of government-held information**

The Commission has called on **Belgium, Finland, Lithuania, Luxembourg and Portugal** to implement the revised [Public Sector Information Directive](#) (PSI Directive, [Directive 2013/37/EU](#)) which entered into force on 17 July 2013 and had to be transposed into national law by 18 July 2015. The PSI Directive provides a common legal framework for a European market for government-held data (public sector information). The Directive introduces a set of measures to make it easier for businesses and citizens to obtain access and permission to reuse information held by public authorities. The PSI Directive also encourages the Member States to publish information as much as possible. These five Member States have not notified the Commission of the full transposition of the PSI Directive. As a result, the Commission decided today to send reasoned opinions to Belgium, Finland, Lithuania, Luxembourg and Portugal. They now have two months to notify the Commission of measures taken to bring national legislation in line with EU law; otherwise, the Commission may decide to refer Belgium, Finland, Lithuania, Luxembourg and Portugal to the Court of Justice of the EU.

### 2. Energy

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*Reasoned opinions*

#### **Internal energy market: Commission urges GERMANY to fully comply with the Third Energy Package**

Today, the European Commission sent a reasoned opinion to Germany requesting to ensure a correct implementation of the Electricity Directive ([Directive 2009/72/EC](#)) and of the Gas Directive ([Directive 2009/73/EC](#)). Both directives are part of the [Third energy package](#) and contain key provisions for the proper functioning of energy markets, including new rules on the unbundling of transmission system operators from energy suppliers and producers, on strengthening the independence and the powers of national regulators and on the improved functioning of retail markets to the benefit of consumers. Germany has incorrectly transposed into national law several requirements concerning the independent transmission operator (ITO) unbundling model (for example, the rules on the independence of the staff and the management of the ITO do not fully respect these Directives and the definition of vertically integrated undertaking excludes activities outside the EU) and has not ensured full respect of some rules concerning the powers of the national regulatory authority (e.g., the regulator does not enjoy full discretion in the setting of network tariffs and other terms and conditions for access to networks and balancing services; the competence of the regulator to impose penalties of up to 10% of the annual turnover of the transmission system operator or vertically integrated undertaking is not fully ensured).

Furthermore, some deficiencies in the transposition of consumer protection rules exist. A letter of formal notice was sent to Germany in February 2015; since no compliance with EU law is in place yet, the Commission is now sending a reasoned opinion. Germany has two months to inform the Commission of the measures taken to remedy the situation; otherwise, the European Commission may decide to refer the case to the Court of Justice of the EU.

### **Energy efficiency: Commission requests DENMARK to fully transpose the EU Energy Efficiency Directive**

The European Commission has requested **Denmark** to ensure the full translation of the Energy Efficiency Directive ([Directive 2012/27/EU](#)) into national law. Under this Directive, Member States must achieve energy savings from 1 January 2014 to 31 December 2020. They have to do this by using [Energy efficiency obligations schemes](#) and/or other targeted policy measures to drive energy efficiency improvements in households, buildings, industry and transport. The Directive had to be transposed into national law by 5 June 2014. Today, the Commission sent a reasoned opinion to Denmark as the Commission identified gaps in the national legislation converting the Directive. Denmark now has two months to comply with its obligations; otherwise the Commission may decide to refer Denmark to the Court of Justice of the EU. In 2014, the Commission launched infringement procedures for the non-transposition of the Energy Efficiency Directive against 27 EU Member States (all except Malta; see Annex III). More information about energy efficiency is available on the website of [DG Energy](#).

### **Nuclear energy: Commission requests LATVIA to fully transpose the Radioactive Waste Directive**

The European Commission has requested **Latvia** to ensure the full transposition of the Radioactive Waste Directive ([Council Directive 2011/70/Euratom](#)). The Commission is of the opinion that Latvia did not fully transpose the Directive into national law. This Directive establishes a Community framework for ensuring the responsible and safe management of spent fuel and radioactive waste to avoid imposing undue burdens on future generations. The Directive ensures that Member States provide for appropriate national arrangements for a high level of safety in spent fuel and radioactive waste management; these arrangements aim at protecting workers and the general public from the dangers arising from ionising radiation. Moreover, it requires the provision of necessary public information and participation in relation to spent fuel and [radioactive waste](#) management issues while having due regard to security and proprietary information issues. Member States were required to transpose the Directive by 23 August 2013. Today, the European Commission sent a reasoned opinion to Latvia requesting this Member State to ensure full transposition of the Directive into national law. Latvia has two months to comply with this obligation; otherwise, the Commission may decide to refer Latvia to the Court of Justice of the EU. More information about nuclear waste is available on [DG Energy's website](#).

### **Renewable energy: Commission urges PORTUGAL to comply with the Renewable Energy Directive**

The Commission has sent to **Portugal** a reasoned opinion urging this Member State to ensure the full compliance of its biofuel legislation with the [Renewable Energy Directive](#) ([Directive 2009/28/EC](#)). The Directive sets the objective of reaching a 20% share of renewable energy in the EU's final energy consumption in 2020 which includes individual national targets in each Member State. With regard to transport, Member States have to ensure that 10 % of total energy consumption in that sector comes from renewable energy. One way of contributing to this specific transport target is promoting biofuels. In this context, the Directive requires biofuels to meet a set of harmonised sustainability requirements. Also, Member States are obliged to treat sustainable biofuels and the raw materials from which they were made equally, regardless of their country of origin. The Portuguese legislation on biofuels contradicts the Directive in two respects: First, it favours biofuels produced in Portugal over biofuels of other countries of origin that are equally suitable, but produced elsewhere. Second, the legislation imposes stricter sustainability requirements on some biofuels, without this being warranted by the Directive. Portugal now has two months to address the Commission's concerns; otherwise the Commission may decide to refer Portugal to the Court of Justice of the EU. More information about renewable energy is on the website of [DG Energy](#).

### **Offshore oil and gas: Commission requests GERMANY and ROMANIA to transpose the Offshore Safety Directive**

The European Commission formally requested **today that Germany and Romania** take actions to ensure the translation of the [Offshore Safety Directive](#) ([Directive 2013/30/EU](#)) into national law. The Directive requires that Member States put in place a set of rules to help prevent accidents as well as to respond promptly and efficiently in case such accidents occur in an offshore oil or gas installation. For instance, before exploration or production begins, companies must prepare a Major Hazard Report for their offshore installation. The Directive also states that when granting licenses, EU countries must

ensure that companies are well financed and have the necessary technical expertise. In addition, information on how companies and EU countries keep installations safe must be made available to citizens, and companies should be fully liable for environmental damages caused to protected marine species and natural habitats. The Directive should have been transposed into national law by 19 July 2015. The Commission sent reasoned opinions today to Germany and Romania asking them to comply with EU rules. If they do not comply with this obligation within two months, the Commission may decide to refer them to the Court of Justice of the EU. In 2015, the Commission launched infringement procedures for the non-transposition of the Offshore Safety Directive against 15 Member States (Bulgaria, Cyprus, Estonia, France, Germany, Greece, Ireland, Latvia, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain, the United Kingdom). More information about the offshore oil and gas safety is available on DG [Energy's](#) website.

### **3. Environment**

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*Referrals to the Court of Justice of the European Union*

#### **Water: Commission refers GERMANY to the Court of Justice of the EU over water pollution caused by nitrates**

The European Commission is referring Germany to the Court of Justice of the EU for failing to take stronger measures to combat water pollution caused by nitrates. Nitrates are essential for plants to grow and they are widely used as fertilisers. However, excess levels cause severe water pollution, with consequences for people's health, the economy and the environment. Today's decision follows a reasoned opinion sent to the German authorities in July 2014. The latest figures submitted by Germany in 2012 and several recent reports from the German authorities show worsening nitrate pollution in groundwater and surface waters, including the Baltic Sea. Despite these trends, Germany has not taken sufficient additional measures to effectively address nitrates pollution and revise its relevant legislation to comply with the EU rules on nitrates ([Council Directive 91/676/EEC](#)). Since the Commission considers that water pollution by nitrates is also not sufficiently addressed in the framework of the ongoing revision of the national [action programme](#), it has decided to refer Germany to the Court of Justice of the EU. For more information, please refer to the full [press release](#).

#### **Environmental Impact Assessment: Commission refers POLAND to the Court of Justice of the EU over inadequate assessment of exploratory mining drillings**

The European Commission is referring **Poland** to the Court of Justice of the EU for failing to ensure that the environmental impacts of exploratory mining drillings are properly assessed. Under Polish law, it is possible to drill down to depths of 5 000 metres without assessing the potential impact on the environment beforehand. The high threshold introduced under Polish law does not take into account all relevant criteria and standards established by the [Environmental Impact Assessment Directive \(Directive 2011/92/EU\)](#), which should be used when determining whether certain types of projects require an assessment. Under EU law, deep drillings need to be assessed, in particular for the waste they produce, their effects on water and soil, use of natural resources, the risk of accidents, and any cumulative effects they may have with other similar projects or activities. This was recently repeated by the Court of Justice of the EU (in the case [C-531/13](#)). Today's decision follows a reasoned opinion sent in February 2015. For more information, please refer to the full [press release](#).

*Reasoned opinions*

#### **Nature: Commission requests AUSTRIA to ensure the new hydropower plant 'Ferschnitz' does not harm protected species in a Natura 2000 site**

The Commission is urging **Austria** to comply with the Council Directive on the conservation of natural habitats and of wild fauna and flora ([Council Directive 92/43/EEC](#)) to ensure that the construction and operation of the hydro-power plant 'Ferschnitz' does not have adverse effects on the conservation objectives of the [Natura 2000](#) site in which it is to be situated. The site in question is one of the two most important areas in Austria for the conservation of the Danube salmon (Hucho hucho). This site as a whole is not in a satisfactory condition and the project would further increase some water pressures on the site. The Commission believes that the authorities have not assessed the effects of the project on this site in line with the [Habitats Directive \(Council Directive 92/43/EEC\)](#). This Directive requires the authorities to follow a procedure which aims at avoiding damage and if not possible, compensate for such damage when certain conditions are met. As the Austrian authorities did not apply this procedure correctly, the Commission is sending a reasoned opinion asking Austria to fully comply with the Habitats Directive. If Austria fails to act within two months, the case may be referred to the Court of Justice of the EU.

#### **Nature and Water: Commission urges SPAIN to step up nature protection in the Doñana area**

The European Commission is urging **Spain** to stop the deterioration of natural habitats in the area

around the Doñana National Park – home to several [Natura 2000](#) sites – resulting mainly from the overexploitation of aquifers, a porous deposit of rock that feed the wetlands. The Doñana area hosts unique biodiversity in Europe, featuring a great variety of ecosystems that constitute the habitat of critically endangered species, such as the Spanish imperial eagle and the Iberian lynx, as well as sheltering thousands of migratory birds. The overexploitation of the aquifers is triggered by the intensive irrigation farming and the demand from tourist facilities. Although the [Habitats Directive \(Council Directive 92/43/EEC\)](#), does not exclude human activities in Natura 2000 sites, it does require Member States to take action to avoid the deterioration of natural habitats and the habitats of species in the special areas of conservation. The Commission assessment showed that the Spanish authorities have also not complied with EU water legislation ([Directive 2000/60/EC](#)), preventing sustainable management of water resources in the Doñana area. The Commission sent a letter of formal notice to Spain in October 2014. As the breaches remain, the Commission is now sending a reasoned opinion. If Spain fails to act within two months, the case may be referred to the Court of Justice of the EU.

### **Water: Commission calls for FRANCE to enact EU rules on the chemical pollution of waters**

The Commission is requesting **France** to send additional information about how the Directive on priority substances in the field of water policy ([Directive 2013/39/EU](#)) is being enacted in their domestic law. This obligation had to be fulfilled by 14 September 2015. Priority substances are chemicals which present a significant risk to or via the aquatic environment within the EU. This Directive aims to reduce such pollution of waters at the source by setting levels of concentration which are safe for the aquatic environment and for human health. After France missed the original deadline, the European Commission sent a letter of formal notice on 20 November 2015. As the national legislation for the enactment of the Directive that the French authorities have submitted is incomplete, the Commission is now sending a reasoned opinion. If France fails to act within two months, the case may be referred to the Court of Justice of the EU.

### **Waste: Commission requests CROATIA to adopt measures on waste management and waste prevention**

The Commission is urging **Croatia** to draw up a [waste management plan](#) and a [waste prevention programme](#) which are the basis of any national policy on waste management, in line with the objectives of the [EU waste legislation \(Directive 2008/98/EC\)](#) and the [circular economy](#). They are also a prerequisite for using EU funds. The waste management plans and programmes aim to reduce the impact of waste on the environment and human health, and to improve resource efficiency across the EU. Croatia had a national waste management plan for the period 2007-2015 but failed to revise it, extend its validity or adopt a new plan for the coming period. Croatia is also lagging two years behind with the adoption of the waste prevention programme, which should have been in place by 12 December 2013. The programme should aim to reduce the amount of waste generated at the source by measures such as improving manufacturing methods and influencing consumers to demand greener products and less packaging. The Commission is, therefore, sending a reasoned opinion and if Croatia fails to act within two months, the case may be referred to the Court of Justice of the EU. This case is part of a horizontal enforcement action against several Member States.

### **Nature: Commission calls for IRELAND to step up nature protection measures**

The European Commission requests **Ireland** to protect habitats and species by introducing an appropriate level of protection for areas designated under the [Natura 2000](#) network. In line with the [Habitats Directive \(Council Directive 92/43/EEC\)](#), Member States have had six years to designate protected areas under their national law - technically, turning them from "[Sites of Community Interest](#)" (SCIs) into "[Special Areas of Conservation](#)" (SACs), and to adopt the required measures for improving the status of habitats and species present on these sites. Following the expiration of the six-year period, Ireland has formally designated only a minor proportion of its SCIs as SACs. Ireland has also not yet established the required conservation objectives and conservation measures for all of the remaining sites. This significant gap in the compliance with the key obligations under the Habitats Directive prevents the sound protection and management of the sites and constitutes a major threat to an appropriate functioning and the coherence of the Natura 2000 network as a whole. Therefore, the Commission is sending a reasoned opinion, giving Ireland two months to reply. If Ireland fails to act, the Commission may take the matter to the Court of Justice of the EU. This case is part of a horizontal enforcement action against several Member States.

### **Waste: Commission requests SLOVENIA to clean up landfills**

The Commission is requesting **Slovenia** to bring its existing landfills in line with EU landfill legislation ([Directive 1999/31/EC](#)). This is part of a horizontal exercise against several Member States. Under EU law, [landfilling](#) should only be used as a last resort, and it can only be done under conditions that avoid impacts on human health and the environment. Existing landfills either had to be upgraded to meet a

number of conditions in order to obtain an operating permit or be closed and rehabilitated. Slovenia had agreed to do this by 16 July 2009 at the latest. While clear progress has been made – none of the non-compliant landfills are still operating, and Slovenia has become an EU recycling champion – some 35 existing landfills are still in breach of EU legislation. One landfill for municipal waste (Ostri vrh), which is currently not operating, has yet to obtain a permit for operation. The other 34 existing landfills that Slovenia agreed to close have not been closed and/or rehabilitated. Following the first reasoned opinion issued in October 2012, the Commission is now sending a second reasoned opinion. If Slovenia fails to act within two months, the case may be referred to the Court of Justice of the EU.

### **Seveso III: Commission calls for GERMANY and POLAND to enact EU rules on the prevention of industrial accidents**

The European Commission is urging **Germany** and **Poland** to send information about how the [Seveso III Directive \(Directive 2012/18/EU\)](#) is being enacted in their national law. Such obligation had to be fulfilled by 31 May 2015. This Directive and its predecessors – [Seveso Directives I and II](#) – aim to prevent major accidents involving dangerous substances and limit their consequences on citizens and the environment. The Seveso III Directive, which entered into force on 1 June 2015, takes into account a number of changes in EU legislation, including on the classification of chemicals and increased rights for citizens to access information and justice. After Germany and Poland missed the initial deadline, the European Commission sent them letters of formal notice on 22 July 2015. The Commission is now sending reasoned opinions to Germany and Poland. If these two Member States fail to act within two months, they may be referred to the Court of Justice of the EU.

### **4. Financial Stability, Financial Services and Capital Markets Union**

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*Reasoned opinions*

### **Financial services: Commission requests BELGIUM, LATVIA, THE NETHERLANDS and SLOVAKIA to apply EU rules on prudential requirements for banks and investment firms**

The European Commission has today requested that **Belgium, Latvia, The Netherlands and Slovakia** fully implement the Capital Requirements Directive ([CRD IV; Directive 2013/36/EU](#)). This Directive sets out the [prudential requirements](#) for financial institutions established in the European Union. In particular, it sets out the rules on the licensing and supervision of institutions, supervisory cooperation, risk management, corporate governance (including remuneration) and capital buffers, which is the mandatory capital that financial institutions are required to hold in addition to other minimum capital requirements. The Directive is part of a wider package of measures designed to strengthen the regulation of the banking sector in the EU following the financial crisis; it also includes [Regulation \(EU\) No 575/2013](#) (also known as the Capital Requirements Regulation or CRR) which lays down the rules on the amount of capital that institutions must have in order to cover potential losses, as well as rules on liquidity, leverage and disclosure. Member States were required to implement the Directive by 31 December 2013. However, to date, Belgium, Latvia, the Netherlands and Slovakia have failed to fully implement this Directive into national law, with some provisions – mostly related to the national competent authorities' discretions - still incomplete. The Commission's request takes the form of a reasoned opinion. If the measures to fully enact Directive 2013/36/EU are not notified within two months, the Commission may decide to refer Belgium, Latvia, The Netherlands and Slovakia to the Court of Justice of the EU.

### **Financial services: Commission requests BELGIUM and SLOVENIA to apply EU rules on Bank Recovery and Resolution**

The European Commission has requested **Belgium** and **Slovenia** to fully implement the Bank Recovery and Resolution Directive (BRRD; [Directive 2014/59/EU](#)). This Directive is a centrepiece of the [EU's Banking Union](#) that was put in place to create a safer and sounder financial sector in the wake of the financial crisis. The new BRRD rules equip national authorities with the necessary tools and powers to mitigate and manage the distress or failure of banks or large investment firms in all EU Member States. The objective is to ensure that banks on the verge of insolvency – a situation where an organisation can no longer meet its financial obligations - can be restructured without taxpayers having to pay for failing banks to safeguard financial stability. To this end, the BRRD rules provide for a "bail-in" mechanism where shareholders and creditors of the banks to pay their share of the costs. The deadline for the transposition of these rules into national law was 31 December 2014 (see [IP/14/2862](#) of 31 December 2014). However, to date, Poland, Belgium and Slovenia have failed to implement these rules into their national law. Poland was referred to the Court of Justice of the EU in October 2015 (see [IP/15/5827](#) of 22 October 2015). The Commission's request for Belgium and Slovenia takes the form of a reasoned opinion. If these countries fail to comply within two months, the Commission may decide to refer them to the Court of Justice of the EU.

## 5. Justice, Consumers and Gender Equality

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*A letter of formal notice*

### Commission asks SPAIN to amend its consumer law

The European Commission is requesting Spain to bring its national laws on civil procedure regulating mortgage enforcement and payment orders in line with EU consumer law. The aim of the Commission's action is to ensure that consumers are fully protected against unfair contract terms. The Directive ([Council Directive 93/13/EEC](#)) on [unfair terms](#) in consumer contracts guarantees that, whenever the contract has not been individually negotiated, the consumer is not bound by unfair terms. A contract term is considered unfair if it is significantly imbalanced and against the requirement of good faith. Member States must make sure that national law provides effective means to enforce these rights and that such unfair terms are no longer used by businesses. Whilst welcoming the changes that the Spanish authorities brought to the civil procedure, following the Court of Justice's Mohamed Aziz ([C-415/11](#)) ruling of March 2013, the Commission still has a number of concerns. If Spain fails to reply in a satisfactory way within two months, the Commission may send to the Spanish authorities a reasoned opinion.

## 6. Mobility and Transport

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*Referrals to the Court of Justice of the European Union*

### Port labour: Commission refers SPAIN to the Court of Justice for the second time

The Commission has decided to refer **Spain** to the Court of Justice of the EU for failing to comply with a previous judgement of the Court concerning freedom of establishment at Spanish ports (a judgment of 11 December 2014 in the case [C-576/13](#)). In this judgement, the Court found that the obligations for cargo-handling companies in Spanish ports to register with a 'pool company' and to hold shares in that company and to employ as a priority workers provided by that company run counter of Article 49 of the Treaty on the Functioning of the European Union ([TFEU](#)). To date, Spain has not adequately addressed the issues identified in the Court's judgment; therefore, the European Commission has decided to refer Spain to the Court of Justice of the EU for failure to comply with the judgement of 11 December 2014. The Commission invites Spain to rapidly undertake the necessary reforms in order to comply with this judgement; otherwise, the Court may decide to impose financial penalties on Spain. For more information, please refer to the full [press release](#).

### Rail transport: Commission refers THE NETHERLANDS to the Court of Justice of the EU for failing to comply with safety and interoperability rules

The European Commission has decided to refer **the Netherlands** to the Court of Justice of the European Union for failing to comply with EU legislation applicable to rail transport. The Commission has issued two separate referrals to the Court, concerning EU railway safety on the one hand and railway interoperability on the other hand. On rail safety, [Directive 2004/49/EC](#) ("Railway Safety Directive") requires Member States to establish an independent safety authority and an [incident investigation body](#). The Dutch legislation does not comply with this Directive on two accounts: it does not set out the decision-making principles of the safety authority and does not require the respect of a four-month deadline to issue decisions on safety certificates or safety authorisations. Concerning rail interoperability, [Directive 2008/57/EC](#) lays down the conditions to achieve rail interoperability in Europe and guarantee the compatibility of infrastructure, rolling stock, signalling and other rail subsystems across the EU network. To date, the Netherlands has, however, failed to transpose into national law the rules on the authorisation to place vehicles into service. For more information, please refer to the full [press release](#).

*A letter of formal notice and a reasoned opinion*

### Commission protects the EU's Single Market and acts against discrimination of drivers from other Member States in Germany and the UK

Today the European Commission has stepped up legal action against discriminatory road charging systems in **Germany** and the **United Kingdom**, as they do not respect the rules of the EU Single Market. Firstly, the Commission has asked **Germany** not to introduce a system *de facto* exempting passenger cars registered in Germany – and only those – from the payment of the road-charge. This request has been sent in the form of a Reasoned Opinion and constitutes the second stage in the infringement proceedings. Germany now has two months to notify the Commission of measures taken to fulfil its Treaty obligations; otherwise, the Commission may decide to refer Germany to the Court of Justice of the EU. Secondly, the Commission requested further information from the **United Kingdom** on the levy for Heavy Goods Vehicles introduced in the UK in April 2014. The Commission is concerned

that it discriminates against non-UK hauliers. This request was sent in the form of a letter of formal notice – the first stage in the infringement proceedings. The United Kingdom now has two months to respond to the arguments put forward by the Commission. Should the Commission consider the reply unsatisfactory, it may address a Reasoned Opinion to the UK. More information on these two cases is available in a [press release](#).

*Reasoned opinions*

### **Passenger rights: Commission asks BELGIUM to correctly apply rules for waterborne travellers**

The European Commission has asked **Belgium** to adopt the necessary measures for the correct application of [Regulation 1177/2010](#) on the rights of passengers travelling by sea and inland waterways. Belgium has not yet set up a penalty system to ensure that passengers' rights are fully respected by transport companies. This Regulation became applicable on 18 December 2012, a date by which all Member States were bound to fulfil its requirements. The request has been sent in the form of a reasoned opinion. Belgium has two months to notify the Commission of measures taken to remedy this situation; otherwise, the Commission may decide to refer it to the Court of Justice of the EU.

### **Rail transport: Commission asks POLAND to fully transpose EU legislation on rail interoperability**

The Commission has requested **Poland** to bring its national rules in line with [Directive 2008/57/EC](#) on the interoperability, which is the ability of a rail system to allow the safe and uninterrupted movement of trains which accomplish the required levels of performance for these lines, of the European rail system. This Directive establishes the conditions for achieving rail interoperability, such as the compatibility of infrastructure, rolling stock and signalling within Europe Poland is, however, allowing its national rail system to derogate too much from the application of the European Technical Specifications for rail Interoperability ([TSIs](#)). Poland has also failed to transpose the procedure for the testing of vehicles on the railway network. The legislation should have been in place since 19 July 2010. Poland has two months to notify the Commission of all measures taken to ensure the full implementation of the Directive; otherwise, the Commission may decide to refer Poland to the Court of Justice of the EU.

### **Rail transport: Commission asks the UNITED KINGDOM to transpose the Directive establishing a Single European Railway area**

The Commission has requested the **United Kingdom** to transpose [Directive 2012/34](#) establishing a single European railway area. The Directive contains the basic provisions for market opening in the railway sector. Notably, it lays down the rules for the management of rail companies as well as the principles and procedures for setting and collecting infrastructure charges and for allocating infrastructure capacity. Member States had to bring into force the measures necessary to comply with the Directive by 16 June 2015. On 22 July 2015, the European Commission sent a letter of formal notice to a number of Member States, including the United Kingdom. The United Kingdom has so far not communicated any measures to the Commission. The United Kingdom now has two months to do so; otherwise, the Commission may refer the United Kingdom to the Court of Justice of the EU.

### **Transport: Commission requests CROATIA, GERMANY and SPAIN to ratify EU accession to the Eurocontrol international convention**

The European Commission has asked **Croatia, Germany and Spain** to ratify the [Protocol of Accession of the European Community to the Eurocontrol International Convention](#), and to **Germany and Spain** to ratify the Protocol consolidating the Eurocontrol International Convention of 13 December 1960. The European Organisation for the Safety of Air Navigation, [Eurocontrol](#), is supporting the EU in the implementation of the [European Single Sky](#), one of the priorities of the [Aviation Strategy for Europe](#). However, as long as the Protocols are not ratified, the European Union's accession to Eurocontrol cannot be completed. The Commission considers that Croatia, Germany and Spain are failing to fulfil their obligations under Article 4(3) of the Treaty on European Union ([TFEU](#)). This Article lays down the principle of sincere cooperation and underlines the obligation of the Member States to facilitate the achievement of the Union's tasks and to refrain from any measure that could jeopardise the attainment of the Union's objectives. Croatia, Germany and Spain have two months to respond; otherwise, the European Commission may decide to refer them to the Court of Justice of the EU.

## **7. Health and Food Safety**

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*A reasoned opinion*

### **Cross-border healthcare: Commission urges FINLAND to comply with rules on level of reimbursement**

The European Commission has sent a reasoned opinion to **Finland** requesting the Finnish authorities to ensure that the costs of healthcare received in another EU country under the [Cross-border Healthcare Directive \(Directive 2011/24/EU\)](#) are reimbursed up to the level of the refund made in Finland by the public healthcare scheme. This Directive lays down patients' rights to choose to receive healthcare in other Member State and to claim reimbursement for it when returning back home. As to the level of repayment, it states clearly that such reimbursement must be up to the level of the costs that would have been calculated by the Member State where healthcare had been provided, without exceeding the actual costs. Finland's healthcare system is a combination of public and private services. The healthcare's costs charged by private providers are partly reimbursed to patients by a separate statutory health insurance scheme. Under current Finnish law, such reimbursement to patients is calculated according to the private healthcare scheme in Finland. This reimbursement level is lower than the cost incurred by the statutory insurance when a patient receives public healthcare. The Commission considers that such an approach is not in line with the Directive. Patients treated abroad should rather be reimbursed according to the costs of the public healthcare scheme organised by municipalities. The level of reimbursement should not be a disincentive to receive healthcare abroad. If Finland fails to notify the Commission within two months of measures taken to ensure the level of reimbursement in accordance with this Directive, the Commission may refer the case to the Court of Justice of the EU.

## **8. Taxation and Customs Union**

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*A referral to the Court of Justice of the European Union*

### **Taxation: Commission refers GERMANY to Court for failing to amend VAT rules for travel agents**

The European Commission has decided to refer **Germany** to the Court of Justice of the European Union for its failure to properly apply the special value added tax (VAT) scheme for travel agents, as provided for in the VAT Directive ([Council Directive 2006/112/EC](#)). *The scheme aims to simplify and amend the VAT rules applicable to travel agencies selling travel packages within the EU.* It is obligatory for all travel agents to apply the scheme, provided the conditions required in the Directive are met. This stipulates that travel agents must set their profit margin (the difference between the actual cost to the agent and the total amount to be paid by the traveller, exclusive of VAT) as the taxable amount of VAT. The aim of this rule is to *create a level playing field for providers and to eliminate distortions of competition.* The European Commission sent a reasoned opinion to the German authorities on 24 September 2015. As Germany has failed to bring its legislation in line with EU law, the European Commission has decided to refer Germany to the Court of Justice of the EU. For more information, please refer to the full [press release](#).

*Reasoned opinions*

### **Taxation: Commission requests GERMANY to amend its VAT rules on cross-border road passenger transport**

The European Commission today formally requested Germany to amend its value added tax (VAT) rules on cross-border road passenger transport. Germany currently applies VAT rules that treat short cross-border passenger transport services (less than 10km) as a foreign service for tax purposes, meaning that these services are not taxable in Germany. According to EU law, passenger transport services must be taxed where the transport takes place and must be proportionate to the distances covered. For example, a cross-border bus service that takes place partially in Member State A and partially in Member State B must be taxable in Member State A for the distance travelled there, and in Member State B for the rest of the distance travelled. The rule applied in Germany is not allowed under the VAT Directive ([Council Directive 2006/112/EC](#)) and cannot be considered as a simplification measure since it is not intended to simplify the collection of the VAT, but rather not to collect VAT at all. The Commission's request takes the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer Germany to the Court of Justice of the European Union.

### **The Commission requests FRANCE to end the discriminatory tax treatment of dividends from non-resident subsidiaries**

The European Commission has today requested that France fully comply with a judgment (Case [C-310/09 Accor](#)) delivered by the Court of Justice of the European Union (ECJ) on 15 September 2011. The case concerned a request for a preliminary ruling by the French *Conseil d'État* in connection with a dispute over the refund of taxation paid by companies in France with subsidiaries in other countries of the European Union. The Commission maintains that the *Conseil's* subsequent restrictive judgment in

December 2012 is not in line with EU law in so far as: the tax paid by sub-subsidiaries in other EU countries was not taken into account, tax credits were systematically limited to one third of the dividend redistributed in France by non-resident subsidiaries, and formal and disproportionate evidence-based requirements were imposed. The Commission's request takes the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer France to the Court of Justice of the European Union.

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