



European  
Commission



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

*General  
Secretariat*

Complete report including COM (2012) 714 final, 30 November 2010 and SWD (2012) 399 final and SWD (2012) 400 final

# INTRODUCTION

The European Union cannot achieve its policy goals if Member States do not apply EU law effectively on the ground. The respective responsibilities for the Commission and the Member States are clearly defined in the Treaties. The Member States are responsible for the correct application of the *acquis*<sup>1</sup>, with the obligation to transpose directives in a correct and timely manner. The Commission has the responsibility for monitoring the Member States' efforts and ensuring compliance with EU law, including the resort to formal legal procedures.

With a view to effective policy implementation, the Commission works in partnership with the Member States to try to solve in an efficient and satisfactory manner, problems and complaints from citizens, business, NGOs and other stakeholders, concerning the application of EU law before starting formal infringement procedures.

Should these problem solving efforts not be successful, the Commission may launch formal infringement procedures (under Article 258 TFEU<sup>2</sup>). These procedures may concern late or incorrect transposition of directives or bad application of the law.

This Report reviews performance on key aspects of the application of EU law and provides an overview of strategic issues. Performance and challenges in the application of EU law by sector and by Member State are examined in the Staff Working Documents accompanying this Report.

1. By the end of 2011, the *acquis* of the EU consisted of 8862 regulations (2010: approx. 8400) and 1885 directives (2010: approx. 2000) in addition to the primary law (the Treaties).
2. It should be noted that infringement procedures can also be initiated under other provisions of EU law, for example Article 106 TFEU in combination with Articles 101 or 102 TFEU.

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# 1. TRANSPOSITION OF DIRECTIVES

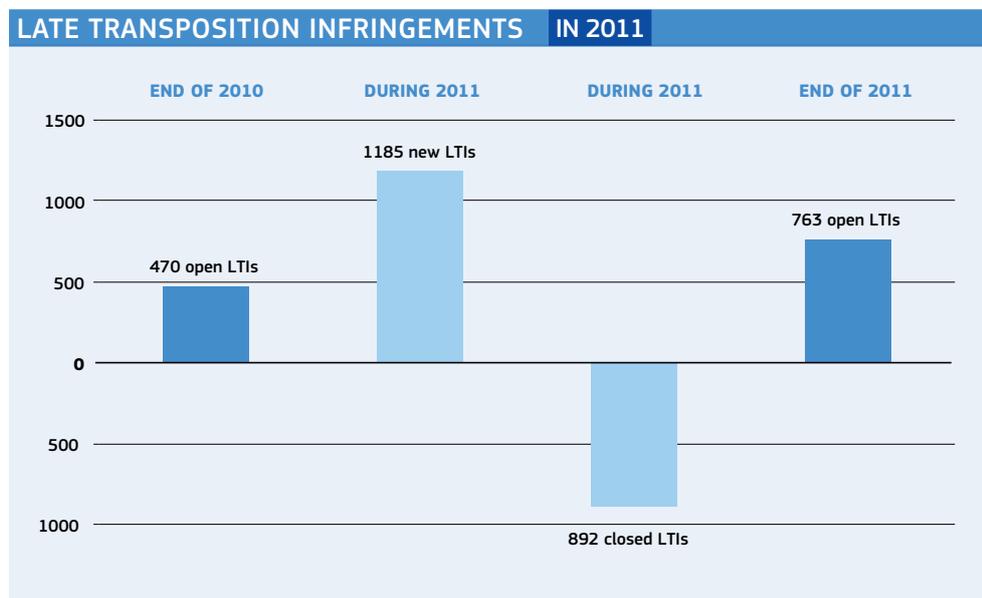
## 1.1. OVERVIEW OF THE 2011 TRANSPOSITION WORK

Member States had to transpose more directives in 2011 compared to the previous year (i.e. 131 in contrast to 111 directives in 2010).

There has been a significant increase in late transposition in 2011 compared to the previous year. The Commission launched 1185 late transposition infringements in 2011 compared to 855 in 2010 and 531 in 2009. Compared to the end of 2010, 763 late transposition cases were open at the end of 2011, representing a 60% increase. Monitoring late transposition is a Commission priority<sup>3</sup> and the Commission proposes fines under the special penalty regime established by Article 260(3) TFEU against Member States if they do not transpose directives in time (details in point 1.2 below).

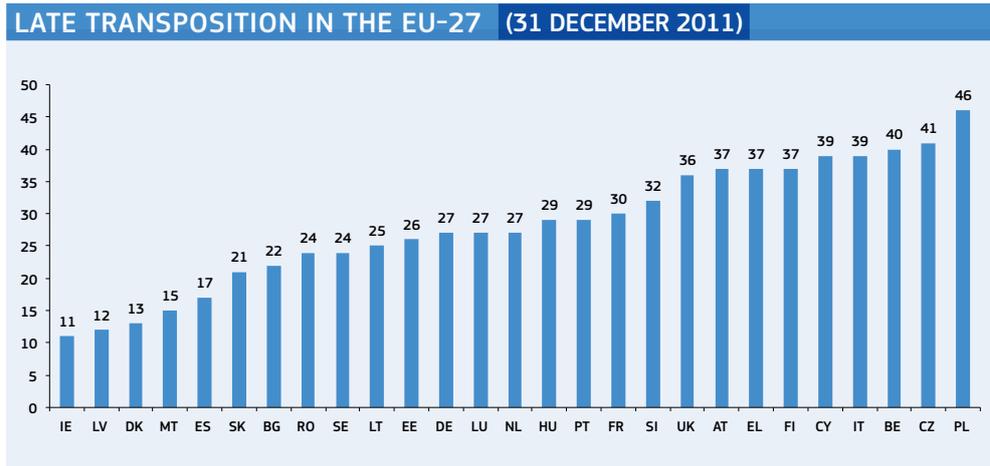
The following chart contains the key figures<sup>4</sup> on late transposition infringements initiated by the Commission during 2011:

3. Commission Communication on 'A Europe of results – Applying Community law', [COM\(2007\) 502 final](#), p. 9.
4. From the sum of the 2010 open LTIs and the 2011 new LTIs (470+1185=1655), the number of closed LTIs is deducted (1655-893=763).



5. The table below indicates the number of late transposition infringements open on 31 December 2011, irrespective of the year when the infringement was opened. By contrast, the section "Transposition of directives" in the Member State pages of Annex I shows how many new late transposition infringements were initiated against the Member States in 2011.
6. [Directive 2009/33/EC](#) on the promotion of clean and energy-efficient road transport vehicles
7. [Directive 2008/96/EC](#) on road infrastructure safety management
8. [Directive 2009/81/EC](#) on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security
9. [Directive 2009/65/EC](#) on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
10. [Directive 2009/53/EC](#) amending [previous directives], as regards variations to the terms of marketing authorisations for medicinal products
11. The [Commission Communication](#) on the Implementation of Article 260(3) of the Treaty on the Functioning of the European Union contains detailed guidelines on how the Commission applies this Article.

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



The three policy areas where the most late transposition infringements were launched in 2011 were transport (240 procedures), internal market & services (198) and health & consumer (164).

Many of these cases concerned a large number of Member States. For example, the Commission launched procedures against 23 Member States concerning late transposition of the directive on energy-efficient transport vehicles.<sup>6</sup> Similarly, 22 Member States were involved in late transposition infringements under the directive on road infrastructure safety management,<sup>7</sup> 23 were launched concerning the directive on public procurement in the defence and security sector<sup>8</sup> and the UCITS recast directive<sup>9</sup> triggered the same number. Late transposition infringements were launched against 12 Member States concerning the market authorisation of medicinal products.<sup>10</sup>

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

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

The Commission referred the first late transposition infringement to the Court with a request for financial sanctions under Article 260(3) TFEU in late 2011.<sup>11</sup> Five Member States were involved in nine such decisions in 2011: Austria (1 case), Germany (3), Greece (1) Italy (1) and Poland (3). The proposed daily penalty ranged from € 44,876.16 to € 215,409.60 (lump sum payments were not requested).

The Member States' infringement profiles in the Staff Working Document contain more detailed information on these cases.

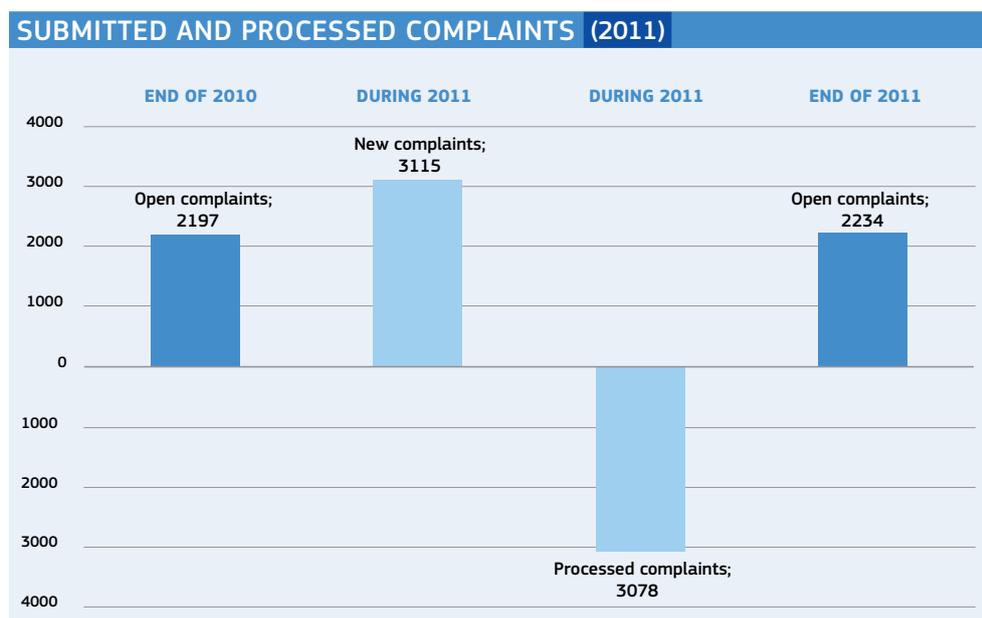
## 2. INCORRECT TRANSPOSITION AND BAD APPLICATION OF EU LAWS

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

### 2.1. DETECTION OF PROBLEMS AND INFORMAL SOLUTIONS

#### 2.1.1. COMPLAINTS

Complaints are submitted by citizens, businesses, NGOs or other organisations. They are handled in line with the Commission's Communication on the handling of relations with the complainant in respect of application of Union law<sup>12</sup> which sets a target of 12 months for the closure of a case or the launch of the formal procedure from the registration of a complaint. The chart below shows the key data<sup>13</sup> on citizens' complaints in 2011:



**3115 new complaints** – The three Member States against which the most complaints have been filed were Italy (386 complaints), Spain (306) and Germany (263). Citizens, businesses and organisations reported irregularities especially in connection with environment, internal market & services and justice affairs (604, 530 and 434 complaints, respectively).

**3078 processed complaints** – Following an initial assessment of more than three thousand submissions in 2011, the Commission opened bilateral discussions with the Member State concerned in relation to 619 complaints in order to clarify whether EU rules had been breached.<sup>14</sup> Complaints that led to bilateral discussions were most frequently related to environment, internal market & services and taxation & customs union (149, 101 and 87 pre-infringement files, respectively). Bilateral discussions with Member States are dealt with within EU Pilot (see under point 2.1.3).

12. [COM\(2002\)141 final](#)  
This Communication has been replaced by [COM\(2012\)154](#) on 2 April 2012.
13. From the sum of the 2010 open complaints and the 2011 new complaints (2197+3115=5312), the number of processed complaints is deducted (5312-3078=2234).
14. The rest of the complaints have not been further processed because either EU laws were not breached or the Commission lacked competence or the correspondence did not qualify as complaint. It is also noted that in urgent and exceptional cases, the Commission may decide to address a letter of formal notice (Article 258 TFEU) to the Member State without prior bilateral discussion.

Petitions by citizens to the European Parliament continued to point out deficiencies in the way how Member States apply EU law. Environment, employment, justice & fundamental rights, regional policy and health & consumers issues received particular attention from the European Parliament. Detailed information on petitions is provided in the Staff Working Document (Part II).

## 2.1.2. OWN INITIATIVE CASES

The Commission's own findings also reveal potential EU law infringements. Similarly to complaints, the Commission initiates first a bilateral discussion with the Member State concerned with a view to find a speedy solution. 1271 investigations were launched during 2011. Environment, transport and taxation & customs union were the three policy areas where the most potential infringements were identified (376, 178 and 177 new files, respectively). The Member States primarily concerned were Italy, Spain and Poland (125, 113 and 81 new files, respectively).

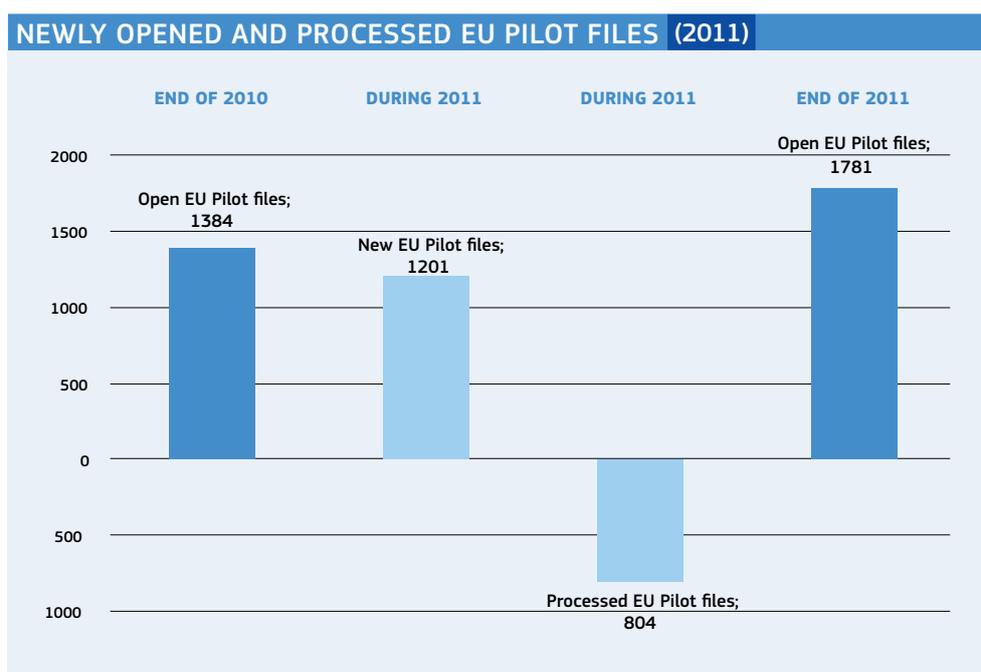
Some formal infringement procedures were launched directly by the Commission, without using EU Pilot, by sending a letter of formal notice under Article 258 TFEU. These exceptional cases included:

- The actions of 20 Member States within the OIV (Organisation Internationale de la Vigne et du Vin); and
- The bilateral agreement between Italy and China exempting holders of diplomatic passports from the visa requirement.

## 2.1.3. PARTNERSHIP WITH MEMBER STATES: EU PILOT

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

Participation of Member States in EU Pilot has been phased in gradually. By the end of 2011, 25 Member States had signed up and preparatory work was well advanced with the remaining two.<sup>15</sup> The following chart contains the main EU Pilot figures<sup>16</sup> for 2011:



15. Belgium, Poland Latvia and Romania joined EU Pilot in January 2011, followed by Cyprus in March. After France and Greece had entered in September 2011, only Luxembourg and Malta remained outside the system in 2011.

16. From the sum of the 2010 open EU Pilot files and the 2011 new EU Pilot files (1384+1201=2585), the number of processed files is deducted (2585-804=1781).

**1201 new dossiers during 2011** – This figure is composed of 510 complaints confirmed by the Commission and 691 new own initiative files.

**700 files were closed during 2011** – Of the 700 EU Pilot files in 2011, the Commission closed 508 files because the Member State provided a satisfactory response. This is a 72.5 % resolution rate for the Member States (an 8.5 % decrease from the 2010 rate of 81%).<sup>17</sup>

**1096 files remained pending** – By the end of 2011, most of the EU Pilot files were addressed to Italy (371), followed by Spain (365) and Germany (193). From the point of view of policy areas, environment was the leading field with 335 open dossiers before internal market & services (129) and taxation & customs union (117).

The Commission closed 183 EU Pilot files last year by launching formal infringement procedures. Negative outcomes of the procedure under EU Pilot were most frequent in dossiers on environment (49 such cases), taxation and customs union (24) and transport (21 refusals). Italy, Poland and Spain had the highest number of such transfers to infringement proceedings (21, 15 and 14 files, respectively).

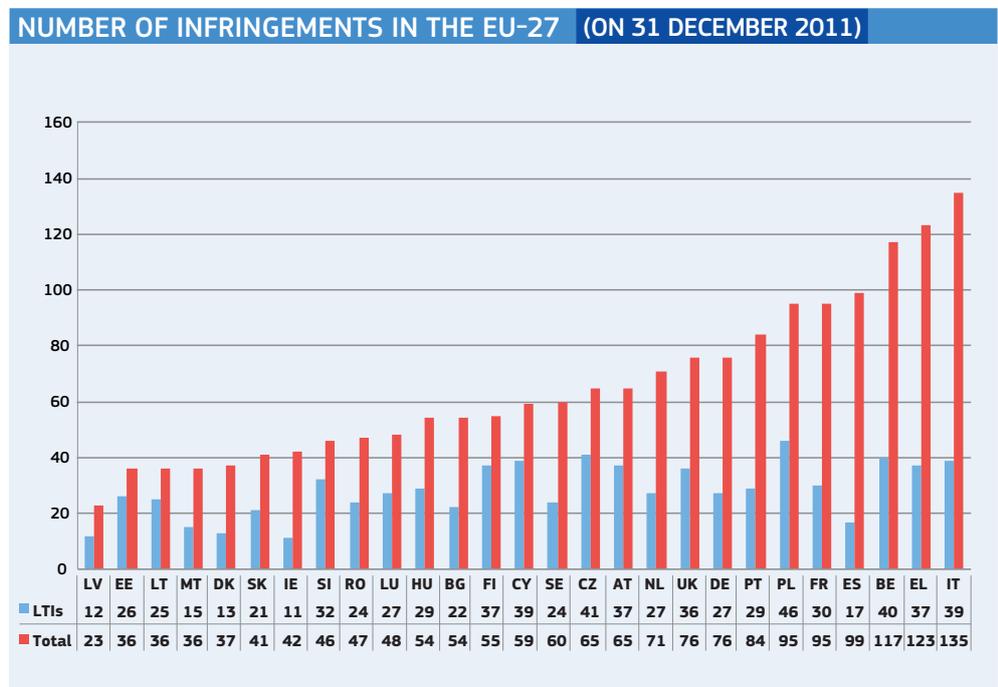
The latest Evaluation Report on EU Pilot<sup>18</sup> provides more detailed information.

- 17. 28<sup>th</sup> [Annual Report](#) on Monitoring the Application of EU Law (2010)
- 18. [Second Evaluation Report](#) on EU Pilot, published on 21 December 2011
- 19. Or under other provisions of the TFEU, see footnote 2 above.
- 20. This includes all procedures where the Member State has received at least a letter of formal notice from the Commission under Article 258 TFEU.

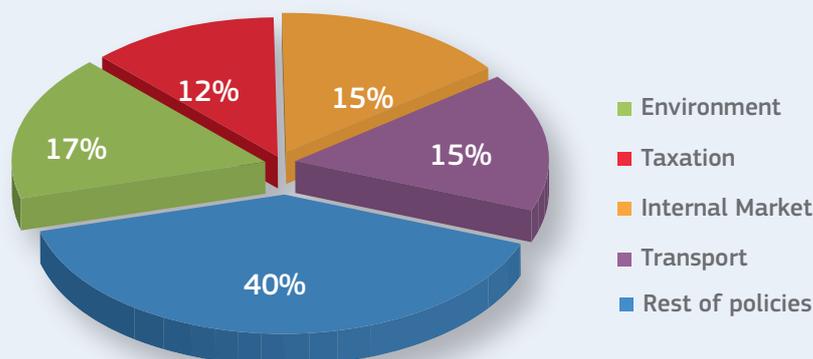
## 2.2. INFRINGEMENT PROCEDURES

If a Member State does not resolve the alleged breach of EU law, the Commission launches infringement procedures under Art 258 TFEU<sup>19</sup> and may refer the dispute to the Court of Justice of the European Union (the “Court”).

At the end of 2011, 1775 infringement cases were open.<sup>20</sup> The number of open infringement cases has been falling year on year - 2100 cases in 2010 and nearly 2900 cases in 2009. The following charts break down infringements according to Member States and policy areas:



## THE FOUR MOST INFRINGEMENT-PRONE POLICY AREAS IN 2011



21. The following figures were calculated for complaint-based and own initiative cases and do not include data on late transposition infringements, which are discussed in point I above.

22. Commission v Greece, [C-407/09](#) (lump sum payment amounting to € 3.000.000,00)

23. Commission v Italy, [C-496/09](#) (lump sum payment amounting to € 30.000.000,00)

Discussions between the Member State and the Commission continue during the formal procedure, in order to bring national law in line with EU legislation. Statistics confirm that Member States make serious efforts to settle their infringements without Court procedures.<sup>21</sup> During 2011:

- the Commission closed 203 infringements after sending the letter of formal notice;
- a further 167 cases were solved after reasoned opinion were sent to the Member State; and
- 29 infringements were closed (or withdrawn from the Court) after the Commission decided to refer the case to the Court.

In total, 399 infringement cases were closed because the Member State has demonstrated its compliance with EU law. The Court had delivered 62 judgements under Article 258 TFEU in 2011, out of which 53 judgments (85 %) were in favour of the Commission.

Member States usually take the necessary measures to comply with the judgment of the Court in a timely manner. However, at the end of 2011, the Commission still had to continue 77 infringement procedures under Article 260(2) TFEU given that Member States failed to comply with Court judgments. Most of these cases concerned Greece (13), Italy (12) and Spain (8). Almost half of the Article 260(2) TFEU infringements related to environment (36) with a few cases also in the fields of internal market & services (10) and transport (8).

Out of these 77 cases, 11 had already been referred to the Court for the second time at end-2011. Only two Court judgements were delivered under Article 260(2) TFEU last year, against Greece<sup>22</sup> and Italy<sup>23</sup>. In principle, a Court judgment under Article 260(2) TFEU imposes lump sum and / or daily penalty on the defaulting Member State. The latter must pay immediately the lump sum while paying the daily penalty until it reaches full compliance with the first Court judgment.

## 3. INFRINGEMENTS IN THE POLICY CYCLE

### 3.1. INFRINGEMENT DATA – A TRIGGER FOR ACTION

The data on performance of Member States in the application of law feeds into the policy cycle. A high frequency of infringements points to possible implementation problems which need solutions (e.g. amending existing rules, clarifying the interpretation of existing laws or possibly preparing new laws). Some of the strategic initiatives in the 2011 Commission Work Programme were designed specifically in response to implementation problems:

- The new legislative proposal for posting of workers aimed at improving “the implementation and application in practice of Directive 96/71/EC on Posting of Workers”<sup>24</sup>;
- The proposal for a new legal framework on the freezing and confiscation of proceeds of crime acknowledges that due to the unclear existing EU legal framework, “several provisions have not been transposed or properly implemented into national legislation”<sup>25</sup>;
- The initiative to amend the Capital Requirements Directives (CRD IV) argued that “numerous national options and discretions in the earlier CRD prevented a consistent implementation of the capital requirements across Europe...”<sup>26</sup>.

24. [Roadmap and Proposal](#) to a directive on the enforcement of Directive 96/71/ec on posting of workers
25. [Roadmap and Proposal](#) for a directive on the freezing and confiscation of proceeds of crime
26. [Roadmap and Proposals \(1, 2\)](#) to amend the Capital Requirements Directives (CRD IV) 2006/48/EC and 2006/49/EC
27. [COM\(2011\) 651 final](#)
28. [COM\(2011\) 370 final](#)
29. [COM\(2011\) 793 final](#)
30. [COM\(2011\) 778](#)
31. [COM\(2011\) 121/4](#)

### 3.2. BETTER PREPARATION AND PLANNING FOR IMPLEMENTATION

Understanding the challenges of transposition and application of law are essential at the early stages of policy development (for example, at the stage of the impact assessment). In order to be able to assess whether a proposal is sound, the Commission needs to have an idea at an early stage of how it might be implemented in the Member States.

Looking at the implementation challenge at the impact assessment phase facilitates further work on implementation downstream. The Commission can support the competent national authorities in ensuring the correct transposition and application of EU rules by identifying the main risks for timely and correct implementation of new (or amended) pieces of legislation and recommending actions to mitigate those risks in implementation plans.

The Commission prepared a number of implementation plans for strategic initiatives in 2011. These included insider dealing and market manipulation (market abuse)<sup>27</sup>; energy efficiency<sup>28</sup>; alternative dispute resolution for consumer disputes<sup>29</sup>; amendments to Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts<sup>30</sup>; and the Common Consolidated Corporate Tax Base<sup>31</sup>.

Other forms of support to the Member States include bilateral contact between the national administrations and the Commission, convening of expert groups and the release of guidelines, handbooks, interpretative notes and working papers.

### 3.3. SHARING INFORMATION – TOWARDS A BETTER KNOWLEDGE BASE

It is essential for ‘Smart Regulation’ objectives that citizens and businesses understand how EU legislation is being applied in Member States. In 2011 a long-standing disagreement between EU institutions in this area could be solved. The disagreement concerned the way Member States have to explain in detail how they transpose directives into their legal order (see the section on “Correlation tables” in the previous Annual Reports on Monitoring the Application of EU Law).

32. Joint Political Declarations on explanatory documents dated 28 September 2011 ([OJ C 369, 17.12.2011](#), p. 14–14) and 27 October 2011 ([OJ C 369, 17.12.2011](#), p. 15–15)

The solution agreed between the EU institutions is set up in Joint Political Declarations and took effect as from 1 November 2011<sup>32</sup>. Under these arrangements the Commission may request, on a case-by-case basis and with proper justification, the transmission of 'explanatory documents' by the Member States. If the Member States consider it useful these documents can also take the form of a correlation table. Explanatory documents have to illustrate the relationship between national transposing rules and the specific provisions of a given directive. The directive's preamble will contain a recital referring to the Member States' political commitment to submit to the Commission one or more explanatory documents.

The first review to see whether these Declarations achieved their objectives will be done by 1 November 2013.

## 4. CONCLUSIONS

The correct application of EU law continues to present challenges for the Member States. Problems are frequent in the early stages of implementation, with late transposition becoming increasingly problematic. Late transposition infringements have steadily increased for the past three years, indicating a worrisome trend. However, once the Commission opens infringement procedures, national measures are usually notified swiftly.

Problem solving mechanisms are working. During 2011, a further 7 Member States joined EU Pilot, bringing the total number of participants up to 25. The problem solving discussions under EU Pilot allowed for timely resolution of nearly two thirds of potential infringements in 2011.

The number of formal infringement procedures launched continued to decrease as did the number of cases referred to the ECJ. This reflects in part the success of EU Pilot and that Member States have made serious efforts to bring their laws or practices in line with EU law once a procedure is launched.

The Commission as Guardian of the Treaties will continue to actively monitor the application of EU law. With implementation being key for successful and efficient policy-making at EU level and an integral component of the Commission's Smart Regulation agenda, infringement performance data is also being more systematically fed into the policy development cycle, into evaluations in particular.

# STAFF WORKING DOCUMENTS

ANNEX I

MEMBER STATES

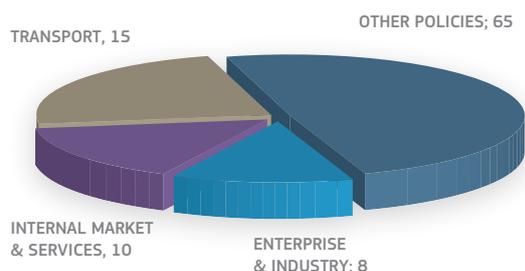
## AUSTRIA

## GENERAL STATISTICS

With 65 open infringements at the end of 2011, Austria had the eleventh-highest number of infringements (along with the Czech Republic) among the EU-27.

However, Austria's performance is the worst in its reference group<sup>33</sup>: Bulgaria had 54 open infringements and there were 60 against Sweden. Austria closed the year with more infringements than in 2010 (57) and almost the same number as in 2009 (66). The following chart shows the three policy areas where Austria was subject most frequently to infringement procedures:

## 65 INFRINGEMENTS AGAINST AUSTRIA



Only two Court cases were brought against Austria during 2011 (10 cases in 2010). The Commission argued that the students transport pricing system discriminated against foreigners<sup>34</sup> and that some installations were not properly licensed under the directive on integrated air pollution prevention.<sup>35</sup> Within the reference group, one case reached the Court against each of Bulgaria and Sweden. No decisions were taken by the Commission to refer Austria to the Court for the second time under Article 260(2) TFEU.

## TRANSPOSITION OF DIRECTIVES

The Commission opened 46 infringement procedures against Austria for late transposition of various directives in 2011. Austria faced 29 such procedures in 2010. Ranking as the 18<sup>th</sup> in the EU-27, this result is poorer for the other two Member States in the reference group.

The policy areas where Austria experienced serious challenges in transposing EU directives are transport (13 late transposition infringements), internal market & services and enterprise & industry (7 infringements in each area).

Despite the progress made by the Austrian authorities in transposing the Services Directive<sup>36</sup>, the process was still not complete more than two years after the implementation deadline. Accordingly, the Commission referred Austria to the Court with a proposal for financial sanctions (Article 260(3) TFEU).<sup>37</sup>

## COMPLAINTS

In 2011, the Commission received 97 complaints against Austria, which is the tenth-highest figure in the EU-27.

Areas with the most claimed irregularities include environment (exemptions from impact assessment, access to justice, nature protection; 26 complaints), internal market (public procurement and professional recognition; 21), and fundamental rights (free movement of family members and double-barrelled surname registration; 11). Other complaints concerned obstacles to car registration, breach of green car procurement rules, limited access to transport services market, violation of rights to family benefits, and discriminatory taxation of foreign pensioners and workers.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Austrian authorities were working on 102 open files in EU Pilot, including 43 new dossiers opened during 2011. Austria is among the 11 Member States whose average response time in EU Pilot (77 days) fails to meet the 10-week benchmark.

In 2011 Austria successfully closed a number of infringements launched earlier by the Commission: it has properly designated all Special Protection Areas under the Birds Directive, amended the rules on acquiring agricultural land in Vorarlberg so that rules on the free movement of capital, brought the VAT exemptions for postal services within the limits allowed by the VAT Directive, ensured equal tax treatment for domestic and foreign investments funds, and made the conditions for accessing the natural gas market transparent.

## IMPORTANT JUDGMENTS

The Court found once again that the reinstated traffic ban for lorries on the A12 motorway was incompatible with the free movement of goods<sup>38</sup> and the nationality condition for notaries could not be justified by the exercise of official authority.<sup>39</sup> The Court also found against the reduced VAT rate for race horses<sup>40</sup> and the discriminatory tax incentive for donations for research and development.<sup>41</sup>

In preliminary rulings handed down to the Austrian judiciary, the Court further clarified the conditions under which EU citizens' family members, who are third country nationals, may be refused the right to reside in that citizen's Member State.<sup>42</sup> It also ruled that excluding a significantly higher proportion of female pensioners than male ones from a pension adjustment scheme constitutes sex discrimination.<sup>43</sup>

## KEY INFRINGEMENTS

- Ban on internet sales of contact lenses
- Failure to ensure transparent and non-discriminatory airport charges for airlines<sup>44</sup>
- Restrictions on extended family members' rights protected by Free Movement Directive<sup>45</sup>
- Restricted access to justice in environmental impact assessment matters

33 Member States with equal or close to equal voting weights in the Council; for Austria: Bulgaria and Sweden.

34 [IP/10/1227](#)

35 [IP/11/433](#)

36 Directive [2006/123/EC](#)

37 [IP/11/1283](#)

38 Commission v Austria, [C-28/09](#)

39 Commission v Austria, [C-53/08](#)

40 Commission v Austria, [C-441/09](#)

41 Commission v Austria, [C-10/10](#)

42 Dereci and others, [C-256/11](#)

43 Brachner, [C-123/10](#)

44 [IP/11/1410](#)

45 [IP/11/981](#)

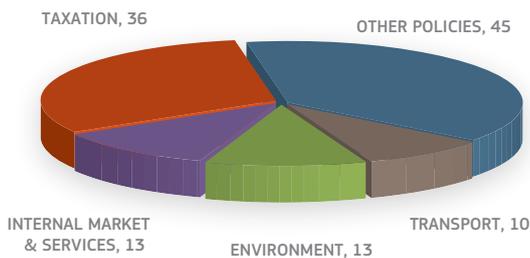
# BELGIUM

## GENERAL STATISTICS

There were 117 open infringements against Belgium at the end of 2011, which is the third-worst result among the EU-27.

Belgium's performance is below average in its reference group<sup>46</sup>: Romania had 47 open infringements, Hungary 54, the Czech Republic 65, the Netherlands and Portugal 71 and 84 respectively and Greece 123. However, Belgium closed the year with fewer infringements than in 2010 (126) and 2009 (128). The following chart shows the four policy areas where Belgium was most frequently subject to infringement procedures

### 117 INFRINGEMENTS AGAINST BELGIUM



Six cases were submitted to the Court against Belgium during 2011 (by contrast to the 11 submissions in 2010). The Commission contested: the discriminatory nature of the *de facto* exemption granted to Belgian (but not to EU) investment companies from interest and dividend tax,<sup>47</sup> the failure to adopt river basin management plans<sup>48</sup> and the lack of indexation of Belgian pensions when paid to certain non-resident persons.<sup>49</sup> Within the reference group, no cases were brought against Romania or Hungary; there were three against Portugal and four each against the Netherlands, the Czech Republic and Greece.

The Commission filed one case against Belgium under Article 260(2) TFEU with a request for financial sanctions due to Belgium's failure to collect and/or treat urban waste water properly in some areas of the country.<sup>50</sup>

## TRANSPOSITION OF DIRECTIVES

The Commission opened 45 infringement procedures against Belgium for late transposition of various directives in 2011. Belgium faced 14 such procedures in 2010. Ranking as the 17<sup>th</sup> in the EU-27, this result is still better than for the other Member States in the reference group except for the Netherlands.

The policy areas where Belgium experienced serious challenges in transposing EU directives are transport and internal market & services (10 late transposition infringements in each area) and energy (6).

In no case in 2011 did the Commission refer Belgium to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

In 2011, the Commission received 82 complaints against Belgium, which is the thirteenth lowest figure in the EU-27. Areas with the most alleged irregularities include taxation (discriminating against foreign

workers, inheritance and securities income; 23 complaints), environment (inadequate impact assessments, potential damages to Natura 2000 sites, nitrates pollution and urban waste water treatment; 14), free movement of persons (blocking family reunification with non-EU nationals and registration of double barrelled surnames; 9). Complaints also invoked car registration problems, passenger rights and mutual recognition of professional qualifications.

## EARLY RESOLUTION OF INFRINGEMENTS

Belgium joined EU Pilot in early 2011. By the end of the year, the Commission and the Belgian authorities were working on 42 newly opened files. Belgium's average response time in EU Pilot (71 days) is only slightly above the 10-week benchmark.

Alignment of certain disputed Belgian laws with EU rules resulted in the closure of several infringements in 2011 in particular: the barriers to parallel imports of drugs were removed; unit rates for air terminal charges were notified<sup>51</sup> the independence of the rail safety authority was ensured<sup>52</sup> Belgian pensions were made payable to any bank account within the EU compliance was achieved with the drinking water directive,<sup>53</sup> and two discriminatory tax regimes were adjusted (a flat-rate tax reduction available only to Flemish residents and tax deduction of interests paid to Belgian banks).<sup>54</sup>

## IMPORTANT JUDGMENTS

The three Belgian regions were found to have failed to lay down the necessary criteria and thresholds making projects subject to environmental impact assessment.<sup>55</sup> Belgium was also found guilty of not requiring an impact assessment for projects likely to damage Natura 2000 sites such as the *Étangs de Roly*.<sup>56</sup> In addition, the Court rejected the exercise of official authority as a justification for maintaining the nationality condition for public notaries.<sup>57</sup> However, safeguarding the tax system's cohesion did justify a discriminatory tax credit that was granted only to residents moving house within Flanders.<sup>58</sup>

The Court's preliminary rulings clarified, among other things, that the mere conversion of an administrative decision into a national law does not automatically exempt a project from the requirements laid down in the Environmental Impact Assessment Directive.<sup>59</sup>

## KEY INFRINGEMENTS

- Restrictions on extended family members' rights, expulsion safeguards and hindering the issuing of entry visa for non-EU family members.<sup>60</sup>
- Non-transposition of the directive on buildings energy performance<sup>61</sup>
- Discriminatory additional taxation of certain types of income from capital<sup>62</sup>
- Discriminatory inheritance tax provisions<sup>63</sup>

<sup>46</sup> Member States with equal or close to equal voting weights in the Council; for Belgium: Romania, Hungary, the Czech Republic, the Netherlands, Portugal and Greece

<sup>47</sup> [IP/11/422](#)

<sup>48</sup> [IP/11/438](#)

<sup>49</sup> [IP/11/165](#)

<sup>50</sup> [IP/10/835](#)

<sup>51</sup> [IP/11/1252](#) on the earlier reasoned opinion

<sup>52</sup> [IP/11/72](#) on the earlier reasoned opinion

<sup>53</sup> Directive [98/83/EC](#)

<sup>54</sup> [IP/10/1403](#) on the earlier reasoned opinion

<sup>55</sup> *Commission v Belgium*, [C-435/09](#)

<sup>56</sup> *Commission v Belgium*, [C-538/09](#)

<sup>57</sup> *Commission v Belgium*, [C-47/08](#)

<sup>58</sup> *Commission v Belgium*, [C-250/08](#)

<sup>59</sup> *Boxus and others*, [C-128/09](#)

<sup>60</sup> [IP/11/981](#)

<sup>61</sup> [IP 11/733](#), Directive 2002/91/EC

<sup>62</sup> [IP/11/1424](#)

<sup>63</sup> [IP/11/425](#)

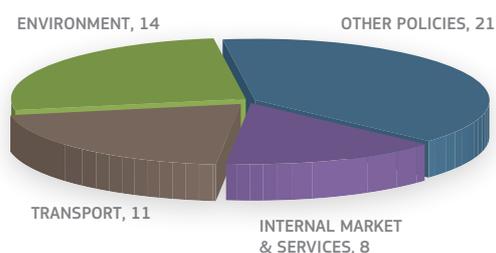
## BULGARIA

### GENERAL STATISTICS

The Commission had 54 open infringements against Bulgaria at the end of 2011, which is the eleventh best result (along with Hungary) among the EU-27.

Bulgaria's performance is the best in its reference group<sup>64</sup>: Sweden had 60 open infringements and Austria 65 were opened against Austria. However, Bulgaria closed the year with more infringements than in 2010 (44) and 2009 (45). The following chart shows the three policy areas where Bulgaria was most frequently subject to infringement procedures:

### 54 INFRINGEMENTS AGAINST BULGARIA



One case was submitted to the Court against Bulgaria during 2011 due to the non-transparent access conditions to the natural gas transmission networks<sup>65</sup>. Within the reference group, one case was submitted against Sweden and two against Austria.

No decisions were taken by the Commission to refer Bulgaria to the Court for the second time under Article 260(2) TFEU.

### TRANSPOSITION OF DIRECTIVES

The Commission opened 36 infringement procedures against Bulgaria for late transposition of various directives in 2011. Bulgaria faced 29 such procedures in 2010. Ranking as 9th in the EU-27 (with Slovakia), this result is better than for Austria but poorer than that for Sweden.

The policy areas where Bulgaria experienced serious challenges in transposing EU directives include transport (10 late transposition infringements), internal market & services (5), health & consumers and energy (4 in each).

In no case in 2011 did the Commission refer Bulgaria to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

### COMPLAINTS

In 2011, the Commission received 97 complaints against Bulgaria, which is the 10th highest figure in the EU-27.

Areas where the most anomalies were raised include environment (illegal activities, especially hunting, in Natura 2000 sites, poor waste management; 23 complaints) and internal market (public procurement, free movement of capital and free provision of services; 16). Further complaints were about the restricted movement right of persons with outstanding debts, the non-recognition of foreign diplomas (in particular from franchised institutions), renewable energy and energy efficiency as well as roadside inspections of commercial vehicles.

### EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Bulgarian authorities were working on 75 open files in EU Pilot, which is an average caseload. The Commission opened 62 new dossiers in relation to Bulgarian issues during 2011. Bulgaria is among the 13 Member States whose average response time in EU Pilot (67 days) is below the 10-week benchmark.

Bulgaria acted to eliminate a number of inconsistencies in its national law vis-à-vis EU rules, which prompted the Commission to close numerous infringements in 2011, including cases on: the non-portability of landline numbers when changing telephone operator,<sup>66</sup> disproportionate restrictions on the establishment and operation of pharmacies, and the lack of transposition rules for more than 30 directives, including the one on capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies.<sup>67</sup>

### IMPORTANT JUDGMENTS

In a preliminary ruling in response to a request from the Bulgarian judiciary, the Court clarified that Member States may restrict the free movement of their nationals who have been convicted of a criminal offence; however, such restriction should be justified by the person's conduct, proportionate to the objective of crime prevention and subject to effective judicial review.<sup>68</sup>

### KEY INFRINGEMENTS

- Failure to control all risks to human health and the environment arising from the use of GMOs<sup>69</sup>
- Distortion of the market for electronic/broadcasting services (prohibition of certain market players, e.g. network infrastructure owners, from applying for digital spectrum)
- Lack of transparent conditions for access to the natural gas distribution networks<sup>70</sup>
- Inadequate waste disposal installations in the municipality of Sofia

64 Member States with equal or close to equal voting weights in the Council; for Bulgaria: Sweden and Austria.

65 [IP/11/1437](#)

66 [IP/10/521](#) on the earlier reasoned opinion

67 Directive [2010/76/EU](#)

68 [Gaydarov, C-430/10](#)

69 [IP/11/291](#)

70 [IP/11/1437](#)

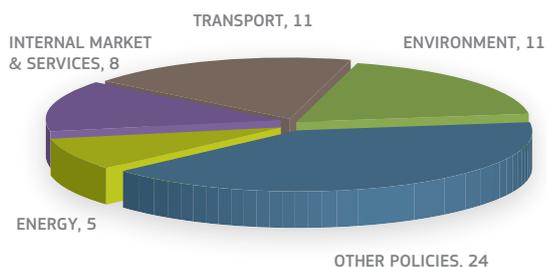
# CYPRUS

## GENERAL STATISTICS

The Commission had 59 open infringements against Cyprus at the end of 2011, which ranks Cyprus 14<sup>th</sup> among the EU-27 (the median value).

However, Cyprus's performance is the worst in its reference group:<sup>71</sup> Latvia had only 23 open infringements; Malta and Estonia had 36 each, Slovenia 46, and Luxembourg 48. Cyprus closed 2011 with considerably more infringements than in 2010 (44) and 2009 (31). The following chart indicates the four areas where Cyprus was subject most frequently to infringement procedures:

### 59 INFRINGEMENTS AGAINST CYPRUS



One case against Cyprus was brought before the Court in 2011 (the same number as in 2010: the Commission claimed that the restrictive provisions on the acquisition of secondary residences by EU citizens, which benefited from a five-year moratorium after Cyprus' accession, should have been repealed.<sup>72</sup> Within the reference group, no cases were brought against Latvia and one each was brought against Estonia, Malta, Slovenia and Luxembourg.

In no case did the Commission refer Cyprus to the Court for the second time under Article 260(2) TFEU.

## TRANSPOSITION OF DIRECTIVES

During the course of 2011, the Commission opened 63 infringement procedures against Cyprus for late transposition of national implementing measures of various directives (compared to 44 in 2010). This substantial increase means that Cyprus ranks 25<sup>th</sup> in the EU-27 and performed worse than all Member States in the reference group.

The policy areas where Cyprus had to face particularly serious challenges in transposing EU directives are transport (12 late transposition infringements), health & consumers (11) and internal market & services (9).

In no case did the Commission refer Cyprus to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 79 complaints against Cyprus in 2011, which is the eleventh-lowest figure in the EU-27.

They were concentrated in these areas: free movement of persons (expulsion safeguards, delays in issuing residence cards; 18 complaints), environment (detrimental impact of inappropriate project assessments and improper functioning of waste facilities; 14) and indirect taxation (especially car taxes; 12).

In addition, citizens warned the Commission that the authorities were refusing to recognise, for the purposes of pension rights, the periods spent in foreign service by Cypriot civil servants. Numerous complaints covered flaws in public procurement procedures and pointed out problems in relation to the recognition of professional qualifications.

## EARLY RESOLUTION OF INFRINGEMENTS

Cyprus joined EU Pilot in the first half of 2011 and the Cypriot authorities were working on 23 newly opened files with the Commission in EU Pilot by the end of the year. This was the lowest EU Pilot caseload among the EU-27. Cyprus's average response time is on a par with the benchmark (70 days).

Some important infringement procedures were closed during 2011, given that Cyprus: abolished the residence condition for seafarers for access to the social security system;<sup>73</sup> adopted river basin management plans;<sup>74</sup> justified the restrictions on the establishment of pharmacies with reference to public health; and updated the national civil aviation security programme.<sup>75</sup>

## IMPORTANT JUDGMENTS

The Court delivered one judgment in 2011 on a public award procedure for the construction of a power station in Vassilikos. The Court declared that, on the basis of the elements made available to it, the Commission could not demonstrate that the Cypriot authorities had not treated applicants equally and had hindered the complaining applicant in resorting to legal remedies.<sup>76</sup>

## KEY INFRINGEMENTS

- The free movement of persons is restricted in particular by: disproportionately high fines and document costs; and no (or inadequate) transposition rules for the Free Movement Directive<sup>77</sup> (relating to spouses, dependants and expulsion safeguards)<sup>78</sup>
- Failure to designate sufficient Special Protection Areas for endangered and migratory birds<sup>79</sup> (only nine areas were designated out of the sixteen locations that are proven to be important)

71 Member States with equal or close to equal voting weights in the Council; for Cyprus: Latvia, Malta, Slovenia, Estonia, and Luxembourg.

72 [IP/11/1442](#)

73 [IP/10/1210](#) on the earlier reasoned opinion

74 [IP/10/1413](#) on the earlier reasoned opinion

75 [IP/11/297](#) on the earlier reasoned opinion

76 *Commission v Cyprus*, [C-2009/251](#)

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

78 [IP/11/981](#)

79 [IP/09/1793](#)

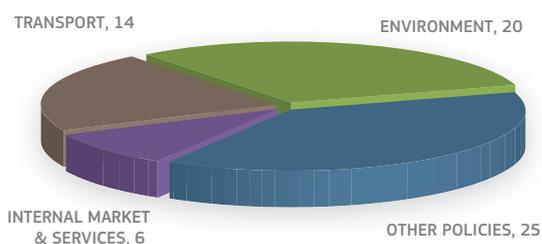
## CZECH REPUBLIC

## GENERAL STATISTICS

With 65 open infringements at the end of 2011, the Czech Republic had the 11<sup>th</sup> highest number of infringements (along with Austria) among the EU-27.

This performance is around average in the Czech Republic's reference group.<sup>80</sup> Romania had 47 open infringements, Hungary 54, Netherlands and Portugal 71 and 84 respectively, Belgium 117 and Greece 123. Czech Republic closed the year with more infringements than in 2010 (48) and 2009 (60). The following chart shows the three policy areas where the Czech Republic was most frequently subject to infringement procedures:

## 65 INFRINGEMENTS AGAINST THE CZECH REPUBLIC



Four cases were taken to the Court against the Czech Republic during 2011 (by contrast to the two during 2010). The Commission contested the sales designation '*Pomazánkové máslo*' (butter spread) as the milk-fat content was not high enough to be called butter ('*máslo*') under EU law,<sup>81</sup> the failure to update biocides legislation,<sup>82</sup> the incorrect application of VAT grouping rules,<sup>83</sup> and the erroneous implementation of VAT rules for travel agents.<sup>84</sup> Within the reference group, no cases were submitted against Romania or Hungary, there were 3 cases against Portugal, 4 each against the Netherlands and Greece, and 6 against Belgium. The Commission decided to refer the Czech Republic to the Court for the second time under Article 260(2) TFEU, with a request for financial sanctions, because of non-conformity in the implementation of the directive on occupational pension funds.<sup>85</sup>

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 54 infringement procedures against the Czech Republic for late transposition of various directives in 2011. The Czech Republic faced 41 such procedures in 2010. Ranking as 21<sup>st</sup> in the EU-27, this result is poorer than for the Netherlands, Belgium, Romania and Portugal but is ahead of Greece and Hungary.

The policy areas where the Czech Republic experienced serious challenges in transposing EU directives are environment (10 late transposition infringements), transport (9) and internal market & services (8). In no case in 2011 did the Commission refer the Czech Republic to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

In 2011, 81 complaints were received against Czech Republic, which is the twelfth-lowest figure in the EU-27.

Areas where the most irregularities were detected include employment (in particular the mandatory insurance required from labour agencies; 31 complaints), internal market (intellectual property rights and free provision of services; 10) and regional policy (fraudulent use of EU funds and discrimination in selection procedures; 8). Further complaints were about inconsistencies in the field of renewable energy, the lack of environmental impact assessment and poor urban waste water treatment.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission was working on 73 open EU Pilot files with the Czech authorities, a regular caseload. The Czech Republic received 30 new EU Pilot dossiers from the Commission during 2011. The average response time in EU Pilot (72 days) was slightly above the 10-week benchmark.

By taking into account the Commission's position, the Czech Republic took many necessary measures in 2011 to achieve compliance with EU law and to have the corresponding infringements closed. For example, it demonstrated improved national quality control on aviation security, modified its legislation on the sale of consumer goods and related guarantees, designated all Special Protection Areas required by the Birds Directive,<sup>86</sup> amended its public procurement rules to cover certain military purchases,<sup>87</sup> introduced equal tax treatment for domestic and foreign insurance pension schemes<sup>88</sup> and adjusted the VAT rate for race horses to comply with the VAT Directive.

## IMPORTANT JUDGMENTS

In a preliminary ruling, the Court interpreted the Brussels I Regulation<sup>89</sup> on the applicable jurisdiction for the Czech judiciary so that the plaintiff may launch legal proceedings before the court that has jurisdiction according to the defendant's last known place of residence, if his/her current residence is unknown; however, this court remains obliged to take all necessary steps to locate the defendant's current place of residence.<sup>90</sup>

## KEY INFRINGEMENTS

- Non-application of the working time rules to self-employed drivers
- Residence cards are issued subject to proof of accommodation; residence rights are not sufficiently explained to victims of domestic violence<sup>91</sup>
- Incomplete transposition of the Renewable Energy Directive<sup>92</sup>

80 Member States with equal or close to equal voting weights in the Council; for Czech Republic: Romania, Hungary, the Netherlands, Portugal, Belgium and Greece.

81 [IP/10/1224](#)

82 [IP/11/591](#)

83 [IP/10/795](#)

84 [IP/11/76](#)

85 [IP/11/290](#)

86 [IP/07/938](#) on the earlier reasoned opinion

87 [IP/10/1438](#) on the earlier Court referral

88 [IP/10/1406](#)

89 Regulation (EC) No 44/2001

90 Hypoteční banka, [C-327/10](#)

91 [IP/11/981](#) and [IP/12/75](#)

92 [IP/11/1446](#)

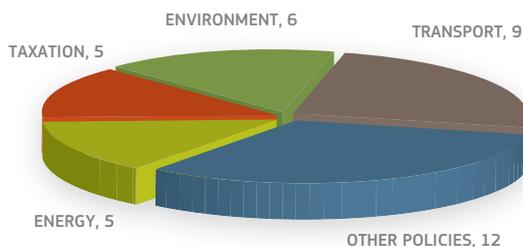
# DENMARK

## GENERAL STATISTICS

The Commission had 37 open infringements against Denmark at the end of 2011, which is the fifth-best result among the EU-27.

Denmark's performance is also above average in its reference group<sup>93</sup>: Lithuania had 36 open infringements, Slovakia and Ireland 41 and 42 respectively, and Finland 55. Denmark closed the year with more infringements than in 2010 (29) and almost the same number as in 2009 (36). The following chart shows the four policy areas where Denmark was most frequently subject to infringement procedures:

### 37 INFRINGEMENTS AGAINST DENMARK



Three cases were taken to the Court against Denmark during 2011 (by contrast to one case during 2010). The Commission contested: the failure to adopt river basin management plans;<sup>94</sup> the incorrect application of VAT grouping rules;<sup>95</sup> and the exit tax levied on companies relocating their headquarters to another Member State.<sup>96</sup> Within the reference group, no cases were brought against Lithuania, one case against Slovakia, and two each against Ireland and Finland.

No decisions were taken by the Commission to refer Denmark to the Court for the second time under Article 260(2) TFEU.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 28 infringement procedures against Denmark for late transposition of various directives in 2011. Denmark faced 14 such procedures in 2010. Ranking as the 2<sup>nd</sup> in the EU-27 (with Estonia and Ireland), this result is the best in Denmark's reference group.

The policy areas where Denmark experienced serious challenges in transposing EU directives are transport and energy (6 late transposition infringements in each area) and health & consumers (4).

In no case in 2011 did the Commission refer Denmark to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

In 2011, the Commission received 77 complaints against Denmark, which is the tenth-lowest figure in the EU-27.

Areas where the most irregularities were complained include taxation (discriminatory taxes on cars, cross-border workers and pensions; 25 complaints), internal market (public procurement and services; 11), environment (permission for mussel dredging in Natura 2000 sites; 10). Several Danish nationals are worried about the potential legal barriers to reunification of their family upon returning to Denmark. The Commission is also aware of concerns relating to protection from ionising radiation.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Danish authorities were working on 84 files in EU Pilot, which counts as a medium caseload. Relatively few new dossiers (35) were opened during 2011; however, the average EU Pilot response time for Denmark (81 days) was above the 10-week benchmark.

Upon Denmark's compliance with EU law, the Commission decided to discontinue in 2011 infringements pertaining to such matters as: the ban on certain energy drinks, refusals to reimburse medical expenses incurred in another Member State, infrequent monitoring under the national programme for the quality control of civil aviation security, improper assignment of the competences of the gender equality body and non-compliance of national implementing rules with the directive on wild birds.<sup>97</sup>

## IMPORTANT JUDGMENTS

There were no such judgments.

## KEY INFRINGEMENTS

- Discriminatory treatment of Dutch sailing ships
- Inadequate environmental assessments under the Habitats Directive<sup>98</sup>

<sup>93</sup> Member States with equal or close to equal voting weights in the Council; for Denmark: Lithuania, Slovakia, Ireland and Finland.

<sup>94</sup> [IP/11/438](#)

<sup>95</sup> [IP/10/795](#)

<sup>96</sup> [IP/10/1565](#)

<sup>97</sup> Directive [2009/147/EC](#)

<sup>98</sup> Directive [1992/43/EC](#)

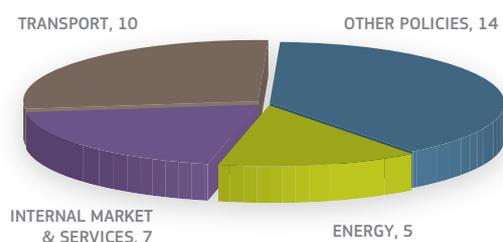
## ESTONIA

## GENERAL STATISTICS

The Commission had 36 open infringements against Estonia at the end of 2011, which is the second-best result (along with Latvia and Malta) among the EU-27.

Estonia's performance (along with that of Malta) is also above average in its reference group<sup>99</sup>: Latvia had 23 open infringements, Slovenia and Luxembourg 46 and 48 respectively, and Cyprus 59. Estonia closed the year with fewer infringements than in 2010 (40) but slightly more than in 2009 (34). The following chart shows the three policy areas where Estonia was most frequently subject to infringement procedures:

## 36 INFRINGEMENTS AGAINST ESTONIA



One case was brought before the Court against Estonia during 2011 (a notable decrease when compared with the 7 cases submitted during 2010). Even in this case, in which the Commission claimed a lack of national laws on spatial data infrastructure,<sup>100</sup> Estonia adopted the necessary rules shortly after the case had reached the Court. Within the reference group, no cases were filed against Latvia and only each against Malta, Slovenia, Luxembourg and Cyprus. In no case did the Commission refer Estonia to the Court for the second time under Article 260(2) TFEU.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 28 infringement procedures against Estonia for late transposition of various directives in 2011. Estonia faced 21 such procedures in 2010. Ranking as the 2nd in the EU-27 (with Denmark and Ireland), this result is the second best in Estonia's reference group (Latvia performed even better).

The policy areas where Estonia experienced serious challenges in transposing EU directives are transport (9 late transposition infringements), internal market & services (8) and energy (5).

In no case in 2011 did the Commission refer Estonia to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

Estonia received the least complaints of all the Member States in 2011: just 19. The areas with alleged irregularities include environment (for example, designation of Natura 2000 sites; 4 complaints), home affairs (such as passport controls at intra-EU borders; 4) and taxation (e.g., discriminatory taxes on foreign income; 3).

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Estonian authorities were working on 30 open files, quite a light caseload. The Commission opened 19 new EU Pilot files on Estonia during 2011. Despite the moderate caseload, Estonia's average response time in EU Pilot (72 days) is slightly above the 10-week benchmark.

Quite a few infringements were terminated during 2011 as a result of Estonia's cooperation with the Commission. Examples of such successful action include: amendments to the national rules to comply with EU consumer protection rules on advertised guarantees; the effective opening of the electricity market;<sup>101</sup> remedies for shortcomings in Estonian laws implementing the directive on integrated pollution prevention and control<sup>102</sup> and new legislation complying with the directive on capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies.<sup>103</sup>

## IMPORTANT JUDGMENTS

There were no such judgments.

## KEY INFRINGEMENTS

- No obligation for public authorities and transport operators to purchase clean and energy-efficient vehicles<sup>104</sup>
- Non-transposition of the directive on public procurement in the fields of defence and security<sup>105</sup>

99 Member States with equal or close to equal voting weights in the Council; for Estonia: Latvia, Malta, Slovenia, Luxembourg and Cyprus.

100 [IP/10/1566](#)

101 [IP/06/1768](#) on the earlier reasoned opinion

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

103 Directive [2010/76/EU](#)

104 [IP/11/726](#)

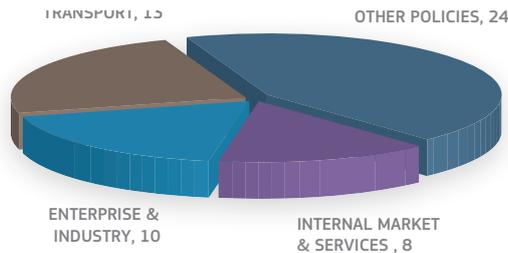
105 Directive [2009/81/EC](#)

## FINLAND

## GENERAL STATISTICS

The Commission had 55 open infringements against Finland at the end of 2011, which is the thirteenth-best result among the EU-27. However, Finland's performance is the worst in its reference group<sup>106</sup>: Lithuania had 36 open infringements, Denmark and Slovakia 37 and 41 respectively, and Ireland 42. Finland closed the year with more infringements than in 2010 (42) and 2009 (37). The following chart shows the three policy areas where Finland was subject most frequently to infringement procedures:

## 55 INFRINGEMENTS AGAINST FINLAND



Two Court cases were brought against Finland during 2011 (the same number as in 2010). The Commission found unacceptable the application of VAT grouping rules;<sup>107</sup> and the implementation of VAT rules for travel agents.<sup>108</sup> Within the reference group, there were no cases against Lithuania, one against Slovakia, 2 against Ireland and 3 against Denmark.

No decisions were taken by the Commission to refer Finland to the Court for the second time under Article 260(2) TFEU.

## TRANSDITION OF DIRECTIVES

The Commission opened 62 infringement procedures against Finland for late transposition of various directives in 2011. Finland faced 49 such procedures in 2010. Ranking 24th in the EU-27, this result is easily the poorest in Finland's reference group.

The policy areas where Finland experienced serious challenges in transposing EU directives are health & consumers (14 late transposition infringements), transport (12) and enterprise & industry (10).

In no case in 2011 did the Commission refer Finland to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

In 2011, the Commission received 46 complaints against Finland, which is the seventh-lowest figure in the EU-27.

Citizens and businesses pointed out possible errors in the areas of taxation (especially discrimination against cross-border workers; 11 complaints), internal market (particularly the free provision of services; 9) and fundamental rights (sex discrimination in pension schemes; 9). In addition complaints addressed illegal bird hunting and disputed the residence requirement as an eligibility criteria for certain social security benefits.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Finnish authorities were working on 57 open files in EU Pilot. This is deemed a regular caseload, including the 20 new dossiers the Commission opened on Finnish issues during 2011. Finland belongs to the 13 Member States whose average response time in EU Pilot (80 days) exceeds the 10-week benchmark. The Commission was able to close a number of infringements because Finland ensured compliance with EU law. For example, Finland broadened the scope of its personal data protection rules, achieved full compliance with the directive on waste electrical and electronic equipment,<sup>109</sup> transposed fully the directive on capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies<sup>110</sup> and applied the VAT exemption for universal postal services as required by the VAT directive.<sup>111</sup>

## IMPORTANT JUDGMENTS

There were no such judgments

## KEY INFRINGEMENTS

- Failure to ensure enhanced consumer protection against errors in measuring instruments (such as household meters or petrol pumps)<sup>112</sup>
- Non-application of the working time rules to self-employed drivers
- Lack of adequate protection of the Saimaa ringed seal (freshwater subspecies, found only in the Saimaa lake system in south-eastern Finland)<sup>113</sup>
- Non-transposition of the directive on public procurement in the defence and security sector<sup>114</sup>

<sup>106</sup> Member States with equal or close to equal voting weights in the Council; for Finland: Lithuania, Denmark, Slovakia and Ireland.

<sup>107</sup> [IP/10/795](#)

<sup>108</sup> [IP/11/76](#)

<sup>109</sup> Directive [2002/96/EC](#)

<sup>110</sup> Directive [2010/76/EU](#)

<sup>111</sup> Directive [2006/112/EC](#)

<sup>112</sup> [IP/11/1110](#)

<sup>113</sup> [IP/10/523](#)

<sup>114</sup> Directive [2009/81/EC](#)

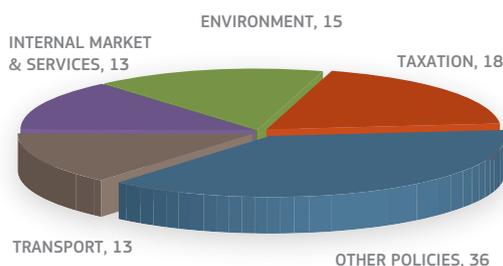
## FRANCE

## GENERAL STATISTICS

The Commission had 95 open infringements against France at the end of 2011, which is the fifth-highest number (together with Poland) among the EU-27.

France's performance is average in its reference group<sup>115</sup>: at the end of 2011, Germany and the UK had 76 open infringements each, Spain had 99 and 135 were ongoing against Italy. France closed 2011 and 2010 with the same number of infringements (95), which was a slight increase compared to 2009 (92). The following chart shows the four policy areas with the most frequent infringement procedures:

## 95 INFRINGEMENTS AGAINST FRANCE



The Commission brought seven Court cases against France (8 during 2010), including the sector-specific tax imposed on telecommunication companies<sup>116</sup> and the non-conformity of its energy tax system with the corresponding EU directive.<sup>117</sup> Within the reference group, no cases were brought against Germany; there were 2 cases against the UK; 4 against Italy; 6 against Spain and 7 against Poland.

In no case did the Commission refer France to the Court for the second time under Article 260(2) TFEU in 2011.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 42 infringement procedures against France during 2011 for late communication of national implementing measures of various directives. France faced 15 such procedures at the end of 2010. This is the twelfth-best in the EU-27 and better than all Member States in the reference group, except for Germany.

The policy areas where France experienced serious challenges in transposing EU directives are transport and internal market & services (9 late transposition infringements each) and energy (5).

In no case did the Commission refer France to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives in 2011.

## COMPLAINTS

France ranked 4<sup>th</sup> among the EU-27 in terms of total complaints (223) at the end of 2011.

Complaints focused on environment (e.g. inadequate or no impact assessments: 56); taxation (e.g. foreign charities, 'exit tax' on companies transferring their headquarters to other Member States, and the obligation on non-residents to appoint a tax representative); internal market & services (e.g. public procurement: 30). Car registration and access for non-French nationals to the CMU (sickness benefit scheme) also attracted several complaints.

## EARLY RESOLUTION OF INFRINGEMENTS

France joined EU Pilot in September 2011. By the end of 2011 the Commission had invited the French authorities to provide an opinion on 53 new EU Pilot files. This high initial caseload reflected in an average response time (84 days) above the target 10-week benchmark.

By notifying its corrected measures implementing the Free Movement Directive,<sup>118</sup> France has satisfactorily addressed the problem of repatriating Roma EU citizens. Other infringements against France that the Commission was able to close due to compliance during 2011 concerned: rules on the parallel import and repackaging of phytopharmaceutical products; VAT-rate for bundled purchases of TV, internet and telephone services; and the trading book requirements and re-securitisations for credit institutions.<sup>119</sup>

## IMPORTANT JUDGMENTS

Reserving access to the profession of notary to French citizens was deemed contrary to the right of establishment.<sup>120</sup> The treatment of asbestos-cement waste was found to be incompatible with the corresponding EU rules.<sup>121</sup> The lack of a programme ensuring the strict protection of the European hamster was also held to be unlawful.<sup>122</sup>

In addition, the Court's preliminary rulings guided the French judiciary in relation to the personal scope of EU product liability rules (Directive 85/374/EEC as amended)<sup>123</sup> and the discriminatory nature of granting the "bonus écologique" to demonstration vehicles registered abroad before their import to France.<sup>124</sup>

## KEY INFRINGEMENTS

- Refusal to apply EU scrapie<sup>125</sup>control measures in favour of national rules<sup>126</sup>
- Violation of EU rules on marketing wine spirits and wine distillates<sup>127</sup>
- Recovery of illegal state aid provided for the takeover of firms in difficulties<sup>128</sup>
- Refusal to grant jobseekers' allowances to non-French EU nationals
- Regulated gas prices for non-household users <sup>129</sup>
- Channel tunnel: violation of rail transport rules aimed at market opening and fair competition.<sup>130</sup>
- Failing to comply with the Energy Tax Directive <sup>131</sup> - system for taxing electricity<sup>132</sup>
- Sector-specific tax on electronic communication services <sup>133</sup>

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

119 Directive [2010/76/EU](#)

120 Commission v France, [C-50/08](#)

121 Commission v France, [C-515/10](#)

122 Commission v France, [C-383/09](#)

123 Dutruieux and Caisse primaire d'assurance maladie du Jura, [C-495/10](#)

124 Bonnarde, [C-443/10](#)

125 Scrapie is the "mad cow disease" equivalent for sheep and goats.

126 [IP/11/601](#)

127 [IP/12/179](#)

128 Procedure under Article 260(2) TFEU due to the failure to comply with the Court's judgment in the case Commission v France, [C-214/07](#)

129 [IP/12/542](#)

130 [IP/11/1099](#)

131 Directive [2003/96/EC](#)

132 [IP/10/1575](#)

133 [IP/11/309](#)

115 Member States with equal or close to equal voting weights in the Council; for France: the United Kingdom, Germany, Italy, Spain and Poland.

116 [IP/11/309](#)

117 [IP/10/1575](#)

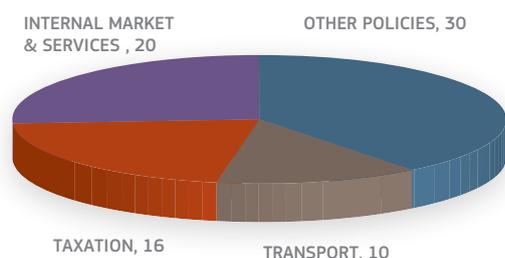
# GERMANY

## GENERAL STATISTICS

The Commission had 76 open infringements against Germany at the end of 2011, which is the eighth-highest number of infringements (along with the United Kingdom) among the EU-27.

However, Germany's performance (along with that of the UK) is the best in its reference group:<sup>134</sup> France and Poland had 95 open infringements each, Spain 99 and Italy 135. Germany closed the year with fewer infringements than in 2010 (79) and 2009 (90). The following chart shows the three policy areas where Germany was most frequently subject to infringement procedures:

### 76 INFRINGEMENTS AGAINST GERMANY



No cases were brought to the Court against Germany during 2011 (by contrast to the 7 cases during 2010). Within the reference group, 2 cases were brought against the UK, 4 against Italy, 6 against Spain and 7 against Poland and France.

The Commission decided to refer Germany to the Court for the second time under Article 260(2) TFEU in the 'Volkswagen case'.<sup>135</sup>

## TRANSPOSITION OF DIRECTIVES

The Commission opened 31 infringement procedures against Germany for late communication of national implementing measures of various directives. Though Germany faced only 21 such procedures in 2010, its 2011 result is still the fifth-best in the EU-27 (with Sweden) and better than all Member States in the reference group.

The policy areas where Germany experienced serious challenges in transposing EU directives are transport (9 late transposition infringements), internal market & services (5) and home affairs (4).

The Commission referred Germany to the Court, with a request for financial sanctions (Article 260(3) TFEU), due to the late transposition of the Services Directive<sup>136</sup> but the case has been closed following compliance by Germany. Two cases related to railway transport<sup>137</sup> were referred to the Court with a proposal for financial sanctions.

## COMPLAINTS

Germany registered the third-highest number of complaints of all the Member States in 2011 (263 complaints).

The areas with the most alleged irregularities were internal market (especially public procurement and services; 69 complaints), environment (damages to Natura 2000 sites; 47) and taxation (discrimination against cross-border workers, pension payments and dividends with cross-border elements; 40). Several complaints dealt with shortcomings in the enforcement of passenger rights, the free movement of family members, the lack of independence of the data protection supervisory body and preventive services at the workplace (such as first aid or reaction to dangers).

<sup>134</sup> Member States with equal or close to equal voting weights in the Council; for Germany: the United Kingdom, France, Italy, Spain and Poland.

<sup>135</sup> [IP/11/1444](#)

<sup>136</sup> Directive [2006/123/EC](#)

<sup>137</sup> Directives [2008/57/EC](#) and [2008/110/EC](#)

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the German authorities were working on 193 open files in EU Pilot. This counts as the third highest caseload in the EU-27, even though a relatively modest number of new dossiers (60) were opened during 2011. Despite the numerous ongoing discussions, Germany achieved an average EU Pilot response time of 65 days, which is below the 10-week benchmark.

Of the infringements eliminated by Germany during 2011, the following are worth highlighting: inclusion of foreign insurance periods when calculating old age pensions; changing the financial assets valuation rules for insurance companies to comply with EU norms; and reducing VAT exemptions for postal services to fit into the limits set by the VAT Directive.

## IMPORTANT JUDGMENTS

Allowing a *de facto* tax exemption for domestic dividends while taxing dividends paid to foreign shareholders was found to be contrary to the free movement of capital.<sup>138</sup> Making the grant of benefits for disabled persons conditional upon a residence in the *Land* was declared as incompatible with Regulation 1408/71.<sup>139</sup> The Court condemned Germany also for refusing the Court of Auditors to carry out verifications in the field of VAT cooperation (established by Regulation 1798/2003).<sup>140</sup> In addition, a number of preliminary judgments guided the German judiciary in the area of justice and fundamental rights. The Court ruled that the five-year residence period, which is a condition for any permanent stay, must include terms spent in the host country before the accession of the citizen's Member State;<sup>141</sup> and that a registered partner in a same-sex life partnership is entitled to a supplementary retirement pension in the same way as a married partner.<sup>142</sup>

## KEY INFRINGEMENTS

- Trade barriers on CE-marked construction products<sup>143</sup>
- Restrictions on family members' rights protected by the Free Movement Directive <sup>144</sup>
- Inappropriate management of electricity network cogestion and lack of transparency of cross-border trade data on energy<sup>145</sup>
- Late transposition of the directive on public procurement in the defence and security sector (2009/81/EC)
- Discriminatory tax rules on hidden reserves<sup>146</sup>

<sup>138</sup> Commission v Germany, [C-284/09](#)

<sup>139</sup> Commission v Germany, [C-206/10](#)

<sup>140</sup> Ziolkowski and Szeja, [C-424/10](#)

<sup>141</sup> Ziolkowski and Szeja, [C-424/10](#)

<sup>142</sup> Jürgen Römer v Freie und Hansestadt Hamburg, [C-147/08](#)

<sup>143</sup> [IP/11/713](#)

<sup>144</sup> [IP/11/981](#)

<sup>145</sup> [IP/10/836](#) and [MEMO 10/275](#)

<sup>146</sup> [IP/11/1127](#)

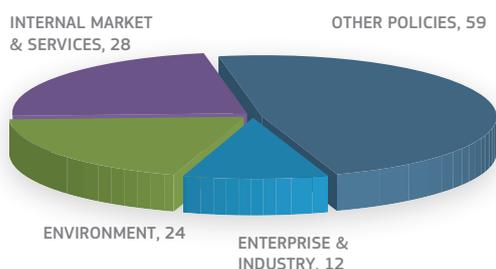
## GREECE

## GENERAL STATISTICS

The Commission had 123 open infringements against Greece at the end of 2011, which is the second worst result among the EU-27.

Greece's performance is also the worst in its reference group:<sup>147</sup> Romania had 47 open infringements, Hungary 54, the Czech Republic 65, the Netherlands and Portugal had 71 and 84 respectively, and Belgium 117. However, Greece closed the year with fewer infringements than in 2010 (125) and 2009 (137). The following chart shows the three policy areas where Greece was subject most frequently to infringement procedures:

## 123 INFRINGEMENTS AGAINST GREECE



Four Court cases were brought against Greece during 2011 (compared to the 11 cases filed during 2010). The Commission contested the failure to adopt river basin management plans;<sup>148</sup> the lack of progress protecting Lake Koroneia (despite partial EU financing);<sup>149</sup> the investment restrictions in 'strategic companies';<sup>150</sup> and the incorrect implementation of VAT rules for travel agents.<sup>151</sup> Within the reference group, no cases were brought against Romania and Hungary; 3 cases were brought against Portugal, 4 each against the Netherlands and the Czech Republic, and 6 against Belgium.

In no case did the Commission decide to refer Greece to the Court for the second time under Article 260(2) TFEU.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 55 infringement procedures against Greece for late transposition of various directives in 2011. Greece had to face only 49 such procedures in 2010. Ranking 22nd in the EU-27, this result is poorer than for all the other Member States in the reference group except for Hungary.

The policy areas where Greece experienced serious challenges in transposing EU directives are health & consumers (13 late transposition infringements), transport (11) and internal market & services (8).

Despite the progress made by the Greek authorities in transposing the Services Directive<sup>152</sup>, the process could not be deemed complete even more than two years after the implementation deadline had expired. Accordingly, the Commission referred Greece to the Court with a proposal for financial sanctions.<sup>153</sup>

## COMPLAINTS

The Commission received 193 complaints against Greece in 2011, which is the sixth highest figure among the EU-27.

Areas that attracted the most complaints were internal market (especially public procurement, the free provision of services and mutual recognition of qualifications; 69 complaints), environment (damages to Natura 2000 sites and illegal landfills; 47) and fundamental rights (such as age discrimination in recruitment and retirement from diplomatic service; 16). Other complaints were about the refusal to recognise foreign diplomas for employment purposes in the public sector, food safety and the discriminatory application of the rules on minimum personal income tax for non-residents.

## EARLY RESOLUTION OF INFRINGEMENTS

Greece joined EU Pilot in the second half of 2011. By the end of the year the Commission and the Greek authorities were already working on 43 new EU Pilot files. Despite this high initial caseload, Greece was among the 11 Member States whose average response time in EU Pilot (63 days) beat the 10-week benchmark.

Greece has corrected several of its national rules to comply with EU law. The Commission closed cases on barriers to access in the road haulier profession, the restrictions on maritime cabotage, the absence of a national air surveillance authority, the prohibition on repacking potatoes, other fresh fruits and vegetables, the functioning of the Skalis-tiri landfill without proper licensing and the discriminatory tax amnesty granted to repatriated funds vis-à-vis funds held abroad.

## IMPORTANT JUDGMENTS

The Court found against Greece for the late transposition of the directive on compensation to crime victims and ordered it to pay a lump sum penalty of €3 million.<sup>154</sup> The use of the less transparent negotiated procedure was also found to be unjustified in a public tender concerned with urban planning and land registration even if these services were provided on a complementary basis.<sup>155</sup> The Court also refused to accept the exercise of official authority as a justification for the nationality condition for public notaries.<sup>156</sup>

In preliminary rulings, the Court found that while certain restrictions on the transporting, storing, processing and packing of dried grapes may protect the quality, they are nonetheless equivalent to measures of quantitative restrictions.<sup>157</sup> The Court also confirmed that a project must undergo an environmental assessment under the SEA Directive,<sup>158</sup> if it may have a significant effect on natural habitats or wild fauna and flora.<sup>159</sup>

## KEY INFRINGEMENTS

- Total ban of games machines (non-compliance with Court judgement despite financial sanctions)<sup>160</sup>
- Excessive working hours for doctors in public hospitals<sup>161</sup>
- Bad transposition of the directive on late payments<sup>162</sup>, outstanding debts of public bodies (including hospitals)

<sup>147</sup> Member States with equal or close to equal voting weights in the Council; for Greece: Romania, Hungary, the Czech Republic, the Netherlands, Portugal and Belgium.

<sup>148</sup> [IP/11/438](#)

<sup>149</sup> [IP/11/89](#)

<sup>150</sup> [IP/11/179](#)

<sup>151</sup> [IP/11/76](#)

<sup>152</sup> Directive [2006/123/EC](#) on services in the internal market

<sup>153</sup> [IP/11/1283](#)

<sup>154</sup> *Commission v Greece*, [C-407/09](#) and [IP/12/168](#)

<sup>155</sup> *Commission v Greece*, [C-601/10](#)

<sup>156</sup> *Commission v Greece*, [C-61/08](#)

<sup>157</sup> *Kakavetsos-Fragkopoulou*, [C-161/09](#)

<sup>158</sup> Directive [2001/42/EC](#)

<sup>159</sup> *Sylogos Ellinon Poleodomon kai chorotakton*, [C-177/11](#)

<sup>160</sup> *Commission v Greece*, [C-65/05](#)

<sup>161</sup> [IP/11/1121](#)

<sup>162</sup> Directive [2000/35/EC](#)

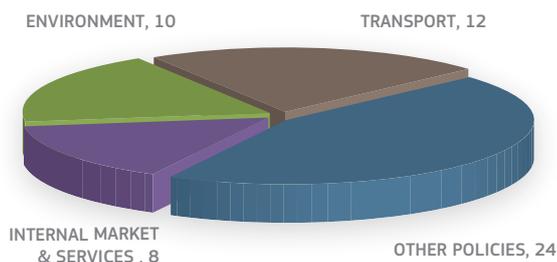
# HUNGARY

## GENERAL STATISTICS

The Commission had 54 open infringements against Hungary at the end of 2011, which is the eleventh-best result (along with Bulgaria) among the EU-27.

Hungary's performance is also above average in its reference group<sup>163</sup>: Romania had 47 open infringements, the Czech Republic 65, the Netherlands and Portugal 71 and 84 respectively, Belgium 117, and Greece 123. Hungary closed the year with slightly more infringements than in 2010 (53) and 2009 (50). The following chart shows the three policy areas where Hungary was subject most frequently to infringement procedures:

### 54 INFRINGEMENTS AGAINST HUNGARY



At the end of 2011, the Commission expressed serious concerns regarding the compatibility of draft Hungarian legislation with EU law. One of these draft laws concerned the retirement age of judges, prosecutors and public notaries. Another related to the independence of the data protection supervisory authority. A third raised doubts about the independence of the Hungarian National Bank. In addition, the Commission announced that certain Hungarian draft laws had to be assessed against the core principle of an independent judiciary.<sup>164</sup>

No Court cases were brought against Hungary during 2011 (3 in 2010). Within the reference group, there were no cases against Romania, 3 against Portugal, 4 each against the Netherlands, the Czech Republic and Greece, and 6 against Belgium.

In no case did the Commission refer Hungary to the Court with a request for financial sanctions under Article 260(2) TFEU.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 70 infringement procedures against Hungary for late transposition of various directives in 2011. Hungary faced 57 such procedures in 2010. Ranking 26th in the EU-27, this result is the poorest in Hungary's reference group.

The policy areas where Hungary experienced serious challenges in transposing EU directives are health & consumers (17 late transposition infringements), transport (12) and environment (8).

In no case in 2011 did the Commission refer Hungary to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 83 complaints against Hungary in 2011, which is the fourteenth-highest figure in the EU-27.

Areas where citizens and businesses raised the most problems include taxation (discriminative nature of sector-specific taxes in retail and telecommunications; 26 complaints) and fundamental rights (independence of the judiciary and the data protection authority, sensitive data processing and video surveillance by employer; 9). Other complaints alleged that Natura 2000 sites were not subject to adequate environmental impact assessment in connection with infrastructure developments, illegal landfills were being operated, hazardous waste treatment was deficient, and internal market rules were being misapplied especially those relating to free provision of services.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Hungarian authorities were working on 87 open files in EU Pilot, which suggests an average caseload. 42 new Hungarian dossiers were opened in EU Pilot during 2011. The country is one of the 13 Member States whose average response time (66 days for Hungary) remains under the 10-week benchmark.

The Commission was able to close a number of infringements against Hungary in 2011 due to action to eliminate inconsistencies in its national law vis-à-vis EU rules. For example, the restrictions on foreign currency mortgages were lifted, amendments to the tax legislation granted non-discriminatory treatment to second-hand cars imported from other Member State,<sup>165</sup> an aerial power line that passed through an area protected by the Birds Directive was removed,<sup>166</sup> and the new legislation on pyrotechnic articles achieved compliance with the new EU rules.

## IMPORTANT JUDGMENTS

There were no such judgments.

## KEY INFRINGEMENTS

- Compatibility of laws implementing the new Hungarian constitution with EU rules especially as regards the independence of the central bank, the judiciary and the data protection supervisory authority
- Sector-specific tax on electronic communication services<sup>167</sup>
- Absence of measures on driving licences<sup>168</sup>
- Failure to meet limit values on air quality (so-called 'PM10' values) in several zones and agglomerations<sup>169</sup>

<sup>163</sup> Member States with equal or close to equal voting weights in the Council; for Hungary: Romania, the Czech Republic, the Netherlands, Portugal, Belgium and Greece.

<sup>164</sup> [IP/12/24](#) and [IP/12/222](#)

<sup>165</sup> [IP/09/1643](#) on the earlier reasoned opinion

<sup>166</sup> [IP/11/437](#) on the earlier reasoned opinion

<sup>167</sup> [IP/11/1108](#)

<sup>168</sup> [IP/11/1250](#)

<sup>169</sup> [IP/10/1577](#)

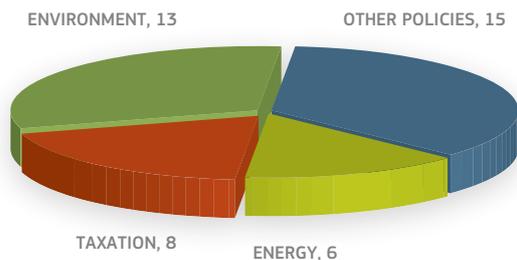
## IRELAND

## GENERAL STATISTICS

The Commission had 42 open infringements against Ireland at the end of 2011, which is the seventh-best result among the EU-27.

Ireland's performance is below average in its reference group:<sup>170</sup> Lithuania had 36 open infringements, Denmark and Slovakia 37 and 41 respectively, and Finland 55. Ireland closed the year with fewer infringements than in 2010 (58) and 2009 (98). The following chart shows the three policy areas where Ireland was most frequently subject to infringement procedures:

## 42 INFRINGEMENTS AGAINST IRELAND



Two cases were referred to the Court against Ireland during 2011 (4 cases were brought during 2010). The Commission held that the application of VAT grouping rules<sup>171</sup> and the reduced VAT rate for supplies of horses and greyhounds<sup>172</sup> were incompatible with EU rules. Within the reference group, no cases were brought against Lithuania; one case was brought against Slovakia, 2 against Finland and 3 against Denmark.

The Commission referred two Irish environmental cases to the Court against with a request for financial sanctions under Article 260(2) TFEU: one because the criteria system for making a project subject to environmental impact assessment ignored sensitive countryside features (such as wetlands, habitats and archaeological remains);<sup>173</sup> and another due to the lack of adequate checks and inspections on septic tanks for collecting domestic waste water.<sup>174</sup>

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 28 infringement procedures against Ireland for late transposition of various directives in 2011. Ireland faced 31 such procedures in 2010, so there has been an improvement in an area where almost all Member States' performance weakened in 2011. Ranking as 2nd in the EU-27 (with Estonia and Denmark), this result is the best in Ireland's reference group.

The policy areas where Ireland experienced serious challenges in transposing EU directives are transport (6 late transposition infringements), internal market & services (5) and energy (5).

In no case in 2011 did the Commission refer Ireland to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 90 complaints against Ireland in 2011 which is the thirteenth-highest figure in the EU-27.

Areas with the most alleged irregularities include environment (negative impact of infrastructural developments on Natura 2000 sites and inadequate environmental assessment; 29 complaints), fundamental rights (especially, restrictions on family members' rights, if not EU citizens; 26) and internal market (free provision of services and public procurement; 12). Additional complaints criticised discriminatory taxes on cars and inheritance, and the restricted access to special non-contributory benefits.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Irish authorities were working on 118 open files in EU Pilot, which is a higher than average caseload. 44 new dossiers were opened on Irish issues during 2011. Ireland's average EU Pilot response time (75 days) failed to meet the 10-week benchmark.

By respecting the Commission's position, Ireland took many necessary measures in 2011 to achieve compliance with EU law. For example, it overhauled the discriminatory air travel tax,<sup>175</sup> provided for the opening of the gas and electricity markets,<sup>176</sup> amended its legislation to comply with the directive on waste originating from electronic and electric equipment<sup>177</sup> and created a new legal framework to implement the directive on postal services.<sup>178</sup> As result, the corresponding infringements were closed.

## IMPORTANT JUDGMENTS

The Court closed an environmental dispute by ruling that: Ireland had failed to transpose properly the impact assessment directive;<sup>179</sup> there were shortcomings in cooperation on the competent Irish authorities, which prevented the efficient performance of impact assessments; and demolition works were unduly excluded from the scope of the Irish legislation implementing the relevant directive.<sup>180</sup>

## KEY INFRINGEMENTS

- Failure to ensure animal welfare during transport as regards journey times and resting periods
- Excessive working hours for doctors in public hospitals<sup>181</sup>
- Restrictive exit tax rules for companies<sup>182</sup>
- Discriminatory tax treatment of cars leased or rented from another Member States<sup>183</sup>
- Non-transparent conditions as regards access to natural gas transmission networks<sup>184</sup>

<sup>170</sup> Member States with equal or close to equal voting weights in the Council; for Ireland: Lithuania, Denmark, Slovakia, and Finland.

<sup>171</sup> [IP/10/795](#)

<sup>172</sup> [IP/10/1576](#)

<sup>173</sup> [IP/11/168](#)

<sup>174</sup> [IP/11/592](#)

<sup>175</sup> [IP/11/734](#)

<sup>176</sup> [IP/06/1768](#)

<sup>177</sup> Directive [2002/96/EC](#)

<sup>178</sup> Directive [2008/6/EC](#)

<sup>179</sup> Directive [85/337/EEC](#)

<sup>180</sup> *Commission v Ireland*, [C-50/09](#)

<sup>181</sup> [IP/11/1121](#)

<sup>182</sup> [IP/11/78](#)

<sup>183</sup> [IP/11/1281](#)

<sup>184</sup> [IP/12/52](#)

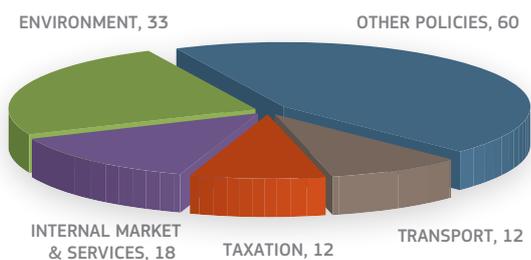
# ITALY

## GENERAL STATISTICS

The Commission had 135 open infringements against Italy at the end of 2011, which is the worst result among the EU-27.

Italy's performance is also the worst in its reference group:<sup>185</sup> Germany and the UK had 76 open infringements each, France and Poland 95 each, and Spain 99. Italy closed the year with more infringements than in 2010 (128) but fewer than in 2009 (151). The following chart shows the four policy areas where Italy was subject most frequently to infringement procedures:

### 135 INFRINGEMENTS AGAINST ITALY



Four Court cases were brought against Italy during 2011 (5 in 2010). The Commission contested the Italian implementation of VAT rules for travel agents;<sup>186</sup> the unjustified excess of EU air quality limit values for airborne particles ('PM10' values);<sup>187</sup> the incorrect transposition of the First Railway Package;<sup>188</sup> and the incomplete transposition of the EU directive prohibiting discrimination in employment on the grounds of, among other, disability.<sup>189</sup> Within the reference group, no cases were brought against Germany, 2 against the UK, 6 against Spain and 7 each against Poland and France.

No decisions were taken by the Commission to refer Italy to the Court for the second time under Article 260(2) TFEU.

## TRANSPOSITION OF DIRECTIVES

The Commission opened 73 infringement procedures against Italy for late transposition of various directives. Italy faced only 55 such procedures in 2010. Ranking as the last in its reference group, Italy's result is also the poorest in the EU-27.

The policy areas where Italy experienced serious challenges in transposing EU directives are health & consumer protection (15 late transposition infringements), internal market & services (11), transport and environment (10 in each area).

The Commission referred Italy to the Court, with a request for financial sanctions (Article 260(3) TFEU), due to the late transposition of the directive modifying capital requirements for the trading book and for re-securitisations as well as the supervisory review of remuneration policies.<sup>190</sup>

## COMPLAINTS

There were more complaints submitted against Italy in 2011 than against any other Member State: 386 complaints were received by the Commission.

The areas with the most alleged irregularities include internal market (in particular, public procurement, free provision of services and recognition of professional qualifications; 114 complaints), environment (inadequate environmental impact assessments, damages to Natura 2000 sites, illegal landfills, substandard waste management systems; 69) and fundamental rights (discriminatory access to social benefits and civil mediation; 47). The health and safety of employees at the workplace continues to generate many complaints, as does the discriminatory tax on foreign real estate and companies' exit tax. The proper functioning of electricity and gas markets was also questioned. Finally, the Commission was requested to examine discriminatory charges at an airport and certain maritime cabotage restrictions.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Italian authorities were working on 371 open files in EU Pilot, which was the highest caseload within the EU-27. Italy also received the highest number of new EU Pilot dossiers from the Commission during 2011 (125). Despite such pressure, Italy's average response time in EU Pilot (72 days) was only slightly above the 10-week benchmark.

Italy made serious efforts in 2011 to comply with EU law, e.g.: it eliminated the obstacles to the importation and use of radio receivers; acted to recognise, from all other Member States, the certificates of origin issued for renewable electricity;<sup>191</sup> cleaned up industrial and urban waste landfills in Manfredonia and Pioltello-Rodano; brought the VAT exemptions for postal services within the limits of the VAT Directive<sup>192</sup> and abolished the discriminatory taxes on foreign investment funds. The infringements in question were thus discontinued.

## IMPORTANT JUDGMENTS

Because of its failure to recover illegal state aid, Italy was ordered to pay a lump sum penalty of €30 million as well as periodic penalties which can decrease proportionately to any aid remaining unrecovered.<sup>193</sup> Hunting derogations introduced in Sardinia were also deemed to go beyond the limits established by the Birds Directive.<sup>194</sup> Finally, the Court found that Italy had failed to take the necessary measures to ensure that all existing installations be subject to integrated pollution prevention control via new permits or re-verified and/or updated permits.<sup>195</sup>

## KEY INFRINGEMENTS

- Incorrect transposition of the First Railway Package
- Discriminatory rules against workers with experience and qualifications from another EU country<sup>196</sup>
- Restrictions on extended family members' rights under the EU free movement rules<sup>197</sup>
- Lack of compliance with the Energy Performance of Buildings Directive (2002/91/EC)<sup>198</sup>
- Inadequate waste management in Campania region<sup>199</sup>

<sup>185</sup> Member States with equal or close to equal voting weights in the Council; for Italy : Germany, the United Kingdom, France, Poland and Spain.

<sup>186</sup> [IP/11/76](#)

<sup>187</sup> [IP/10/1586](#)

<sup>188</sup> [IP/10/807](#)

<sup>189</sup> [IP/11/408](#)

<sup>190</sup> Directive [2012/76/EU](#)

<sup>191</sup> [IP/09/1799](#) (on the earlier Court referral)

<sup>192</sup> Directive [2006/112/EC](#)

<sup>193</sup> Commission v Italy, [C-496/09](#)

<sup>194</sup> Commission v Italy, [C-508/09](#)

<sup>195</sup> Commission v Italy, [C-50/10](#)

<sup>196</sup> [IP/11/167](#)

<sup>197</sup> [IP/11/981](#)

<sup>198</sup> [IP/11/1100](#)

<sup>199</sup> [IP/11/1102](#)

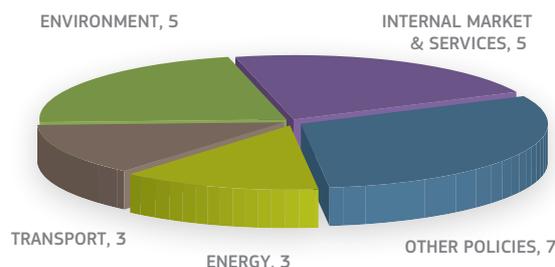
## LATVIA

## GENERAL STATISTICS

The Commission had just 23 open infringements against Latvia at the end of 2011, which is the best result among the EU-27.

Latvia's performance is also the best in its reference group:<sup>200</sup> Estonia and Malta had 36 open infringements each, Slovenia and Luxembourg 46 and 48 respectively, and Cyprus 59. Latvia closed the year 2011 with fewer infringements than in 2010 (26) and 2009 (30). The following chart shows the policy areas where Latvia was subject most frequently to infringement procedures:

## 23 INFRINGEMENTS AGAINST LATVIA



No Court cases were brought against Latvia during 2011 (none either in 2009 and 2010). Within the reference group, there was one case each against Estonia, Malta, Slovenia, Luxembourg and Cyprus. Likewise, no decisions were taken by the Commission to refer Latvia to the Court for the second time under Article 260(2) TFEU.

## TRANSPOSITION OF DIRECTIVES

The Commission opened 24 infringement procedures against Latvia for late transposition of various directives in 2011. This is more than the 18 in 2010, but its result is still the best within its reference group and also in the EU-27.

The policy areas where Latvia experienced serious challenges in transposing EU directives are internal market & services (5 late transposition infringements) transport (4), health & consumers and energy (3 in each area).

In no case in 2011 did the Commission refer Latvia to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

Latvia was ranked second in terms of complaints received: 21 complaints in 2011.

Areas where the most anomalies were claimed include regional policy (errors in the implementation of various EU-funded regional projects; 6 complaints), internal market (especially public procurement matters; 4) and transport (for example, towage services in a Latvian port; 3).

## EARLY RESOLUTION OF INFRINGEMENTS

Latvia started to use EU Pilot at the beginning of 2011. By the end of the year, the Commission and the Latvian authorities were working on 30 newly opened dossiers, which is one of the lightest caseloads in the EU-27. Latvia's average EU Pilot response time (62 days) is in line with the 10-week benchmark.

Latvia has properly addressed a number of concerns regarding the compatibility of its national measures and practices with EU law. As a result, the Commission was able to put an end, for example, to the infringement relating to the incomplete transposition of the directive on waste originating from electric and electronic equipment.<sup>201</sup> In addition, a child abduction complaint demonstrated that, in matrimonial matters, the Latvian authorities apply correctly the mutual recognition and enforcement rules laid down by the 'Brussels IIA Regulation'<sup>202</sup>.

## IMPORTANT JUDGMENTS

In a preliminary ruling, the Court ruled that if a private company does not bear a significant share of risk under a contract signed with a public body, such contract should fall within the scope of EU rules on public procurement (in this case, Directive 2004/17/EC).<sup>203</sup>

## KEY INFRINGEMENTS

- Non-transposition of the directive on airport charges<sup>204</sup>
- Insufficient designation of Special Protection Areas for migratory and vulnerable wild bird species<sup>205</sup>

200 Member States with equal or close to equal voting weights in the Council; for Latvia: Estonia, Malta, Slovenia, Luxembourg and Cyprus.

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

202 Regulation (EC) No [2201/2003](#)

203 Norma-A and Dekom, [C-348/10](#)

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

205 [IP/07/938](#)

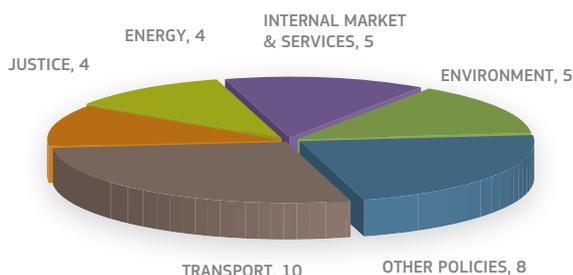
# LITHUANIA

## GENERAL STATISTICS

The Commission had 36 open infringements against Lithuania at the end of 2011, which is the second best result (along with Estonia and Malta) among the EU-27.

Lithuania's performance is also the best in its reference group:<sup>206</sup> Denmark had 37 open infringements, Slovakia and Ireland 41 and 42 respectively, and Finland 55. However, Lithuania closed the year with more infringements than in 2010 (24) and 2009 (28). The following chart shows the five policy areas where Lithuania was subject most frequently to infringement procedures:

### 36 INFRINGEMENTS AGAINST LITHUANIA



No Court cases were brought against Lithuania during 2011 (none either in 2009 and 2010). Within the reference group, there was one case against Slovakia, 2 each against Ireland and Finland and 3 against Denmark.

Likewise, no decisions were taken by the Commission to refer Lithuania to the Court for the second time under Article 260(2) TFEU.

## TRANSPOSITION OF DIRECTIVES

The Commission opened 34 infringement procedures against Lithuania for late transposition of various directives in 2011. Lithuania had to face only 15 such procedures in 2010. Ranking 5<sup>th</sup> in the EU-27 and 3<sup>rd</sup> in the reference group, this result is better than for Finland and Slovakia but poorer than for Denmark and Ireland.

The policy areas where Lithuania experienced serious challenges in transposing EU directives are transport (9 late transposition infringements), internal market & services and energy (5 in each area).

In no case in 2011 did the Commission refer Lithuania to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 25 complaints against Lithuania in 2011, which is the third-lowest figure in the EU-27.

Areas with most alleged failures were internal market (especially public procurement; 5 complaints), enterprise & industry (in particular the 'buy Lithuanian' campaign; 3) and information society (e.g. the proper functioning of the telecommunication authority; 3). Complainants were also concerned about the obstacles to registering the name and the surname of a child with dual nationality and the lack of permits being issued under the directive on integrated pollution prevention control.<sup>207</sup>

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Lithuanian authorities were working on 61 open files in EU Pilot, which is an average workload. The Commission has opened 28 new dossiers on Lithuanian matters. One of the 13 Member States whose average EU Pilot response time meets the 10-week benchmark in the EU-27, Lithuania's average was 62 days.

Furthermore, the Lithuanian authorities actively sought to settle a number of infringements in 2011; for example, they abolished the system of regulated electricity prices to comply with the second electricity directive<sup>208</sup> and improved the laws transposing the directive on strategic environmental impact assessment so that the public can be fully informed about new projects with a likely significant effect on the environment.<sup>209</sup> As a result, the Commission was able to halt the corresponding infringements in 2011.

## IMPORTANT JUDGMENTS

The Court handed down two preliminary rulings of special importance in order to guide Lithuanian courts on points of EU law. In the first, it ruled that national authorities may transliterate forenames and surnames of citizens from other Member States when issuing certificates on civil status, provided this does not cause serious inconvenience to those citizens at administrative, professional and private levels.<sup>210</sup> In the second, the Court ruled that the SEA Directive<sup>211</sup> does not allow to exempt small areas of land at local level from environmental impact assessment in a general way, without case-by-case analysis.<sup>212</sup>

## KEY INFRINGEMENTS

- Ban on registration of right-hand drive cars<sup>213</sup>
- Klaipėda State Seaport — priority right for leasing port land for the incumbent lessee<sup>214</sup>
- Lack of measures requiring individual and proportionate assessment when applying restrictions on the right to free movement on the basis for public policy and public security reasons<sup>215</sup>

<sup>206</sup> Member States with equal or close to equal voting weights in the Council; for Latvia: Estonia, Malta, Slovenia, Luxembourg and Cyprus.

<sup>207</sup> Directive [2008/1/EC](#)

<sup>208</sup> [IP/09/1035](#) on the earlier letter of formal notice

<sup>209</sup> [IP/11/306](#) on the earlier reasoned opinion

<sup>210</sup> [Runevič-Vardin and Wardyn, C-391/09](#)

<sup>211</sup> Directive [2001/42/EC](#)

<sup>212</sup> [Valčiukienė and Others, C-295/10](#)

<sup>213</sup> [IP/11/1251](#)

<sup>214</sup> [IP/12/636](#)

<sup>215</sup> [IP/11/981](#) and [IP/12/75](#)

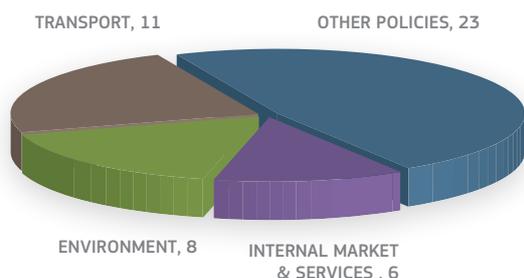
## LUXEMBOURG

## GENERAL STATISTICS

The Commission had 48 open infringements against Luxembourg at the end of 2011, which is the tenth-best result among the EU-27.

However, Luxembourg's performance is below average in its reference group:<sup>216</sup> Latvia had 23 open infringements, Estonia and Malta 36 each, Slovenia 46, and Cyprus 59. Luxembourg closed the year with more infringements than in 2010 (41) but fewer than in 2009 (53). The following chart shows the three policy areas where Luxembourg was subject most frequently to infringement procedures:

## 48 INFRINGEMENTS AGAINST LUXEMBOURG



Only one Court case was brought against Luxembourg during 2011 (a remarkable decrease in comparison to the 8 cases brought during 2010). The Commission challenged the incorrect transposition of the First Railway Package.<sup>217</sup> Within the reference group, there were no cases against Latvia and one case each against Estonia, Malta, Slovenia and Cyprus.

The Commission decided to refer Luxembourg to the Court with a request for financial sanctions under Article 260(2) TFEU for failure to provide for the proper treatment and/or disposal of urban waste water in some areas of the country (including the capital).<sup>218</sup>

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 44 infringement procedures against Luxembourg for late transposition of various directives in 2011. Luxembourg had to face only 33 such procedures in 2010. Ranking as the 15th in the EU-27, this result is poorer than that of all other Member States in the reference group except for Cyprus.

The policy areas where Luxembourg experienced serious challenges in transposing EU directives are transport (11 late transposition infringements), internal market & services (7) and health & consumers (5).

In no case in 2011 did the Commission refer Luxembourg to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 31 complaints against Luxembourg, in 2011, which is the fourth-lowest figure in the EU-27.

Areas where the most irregularities were alleged include taxation (companies' exit tax, VAT refund, discriminatory treatment of capital gains; 20 complaints), education (discriminative access to study grants; 5) and fundamental rights (for example, refusal to grant the right of residence despite the expiry of the five-year period laid down in EU law; 3). Further complaints reported problems in recognising foreign professional qualifications and inadequate environmental impact assessments.

## EARLY RESOLUTION OF INFRINGEMENTS

In 2011, Luxembourg had not yet joined EU Pilot; however, the Commission and Luxembourg authorities continued making preparations for Luxembourg's participation in the project in the near future.<sup>219</sup>

Luxembourg also remedied several infringements during 2011, e.g. by opening up access to financial aid to all students who acquired the right of permanent residence under the free movement directive,<sup>220</sup> by amending its legislation to comply with the extended Seveso II Directive (on the control of major-accident hazards),<sup>221</sup> by revoking the preferential VAT rate accorded to race horses<sup>222</sup> and by eliminating the discriminatory treatment of non-resident heirs (in terms of securing the inheritance tax payment with an 'additional guarantee').<sup>223</sup> Accordingly, these procedures were terminated.

## IMPORTANT JUDGMENTS

The Court ruled that Luxembourg's social security laws failed to allow the reimbursement of patients' medical costs arising from laboratory analyses and tests carried out in another Member State.<sup>224</sup> The directive on the quality of drinking water was not correctly transposed as regards the information to be provided in the event of derogations from certain limit values established for drinking water.<sup>225</sup> The nationality condition could not be justified for public notaries on the ground of the exercise of official authority.<sup>226</sup>

The Court also delivered an important preliminary ruling as regards the interpretation of the Rome I Regulation relating to the law applicable to employment contracts: for an employee who works in more than one Member State, the country where he habitually carries out his work is the one where he performs the greater part of his contractual obligations.<sup>227</sup>

## KEY INFRINGEMENTS

- Restrictive access to study grants for family members of migrant workers
- Non-transposition of the directive on public procurement in the defence and security sector<sup>228</sup>

216 Member States with equal or close to equal voting weights in the Council; for Luxembourg: Latvia, Estonia, Malta, Slovenia and Cyprus.

217 [IP/10/807](#)

218 [IP/11/1273](#)

219 Luxembourg joined EU Pilot in June 2012.

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

221 Directive [96/82/EC](#)

222 [IP/08/1812](#)

223 [IP/10/794](#)

224 Commission v Luxembourg, [C-490/09](#)

225 Commission v Luxembourg, [C-458/10](#)

226 Commission v Luxembourg, [C-51/08](#)

227 Koelzsch, [C-29/10](#)

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

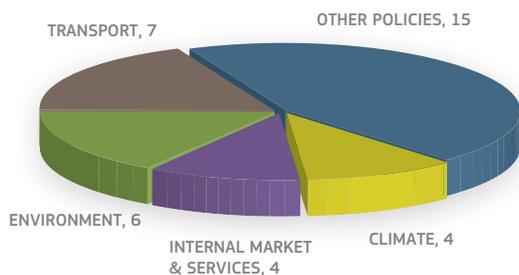
## MALTA

## GENERAL STATISTICS

The Commission had 36 open infringements against Malta at the end of 2011, which is the second-best result (along with Estonia and Lithuania) among the EU-27.

Malta's performance (along with that of Estonia) is also above average in its reference group<sup>229</sup>. Latvia had 23 open infringements, Slovenia and Luxembourg 46 and 48 respectively, and Cyprus 59. However, Malta closed the year with more infringements than in 2010 (22) and 2009 (30). The following chart shows the four policy areas where Malta was subject most frequently to infringement procedures:

## 36 INFRINGEMENTS AGAINST MALTA



One case was brought against Malta during 2011 (none in 2010). The Commission contested the failure to adopt, under the corresponding EU directive,<sup>230</sup> ambient noise maps.<sup>231</sup> Within the reference group, there were no cases against Latvia and one each against Estonia, Slovenia, Luxembourg and Cyprus.

No decisions were taken by the Commission to refer Malta to the Court for the second time under Article 260(2) TFEU.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 40 infringement procedures against Malta for late transposition of various directives in 2011. Malta faced only 19 such procedures in 2010. Ranking 11th in the EU-27, this result is better than for Slovenia, Luxembourg, and Cyprus, but poorer than for Latvia and Estonia.

The policy areas where Malta experienced serious challenges in transposing EU directives are transport (9 late transposition infringements), health & consumers (6) and internal market & services (5).

In no case in 2011 did the Commission refer Malta to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

In 2011, the Commission received 38 complaints against Malta, which is the sixth-lowest figure in the EU-27.

Areas that citizens and businesses targeted with the most complaints were the free movement of persons (nationality-based discrimination in accessing public services at reduced tariffs; 9 complaints), internal market (mainly public procurement issues; 7) and car taxation (4). One complainant also alleged the abusive treatment of Natura 2000-protected sites.

## EARLY RESOLUTION OF INFRINGEMENTS

In 2011, Malta had not yet joined EU Pilot; however, the Commission and the Maltese authorities continued to make preparations with a view to Malta's participation in the project in the near future.<sup>232</sup>

Malta acted to eliminate a number of inconsistencies in its national law vis-à-vis EU rules. In 2011, for example, it lifted the maritime cabotage restrictions on the ferry line between the Malta mainland and Gozo, renewed or updated the permits of all installations falling under the directive on integrated pollution prevention and control,<sup>233</sup> enacted new legislation to comply with the directive on capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies,<sup>234</sup> and amended the rules on car registration tax with a view to achieving non-discriminatory treatment of second-hand cars imported from other Member States.<sup>235</sup> These actions prompted the Commission to close the related infringements.

## IMPORTANT JUDGMENTS

There were no such judgments.

## KEY INFRINGEMENTS

- Limited access to the ground-handling market at Luqa Airport: fuel and oil handling services
- Restrictions on extended family members' rights under EU rules on free movement<sup>236</sup>
- Illegal hunting of migratory birds<sup>237</sup>
- Lack of conformity with EU public procurement rules especially as regards the directive on effective review procedures<sup>238</sup>

229 Member States with equal or close to equal voting weights in the Council; for Malta: Latvia, Estonia, Luxembourg, Slovenia and Cyprus.

230 Directive [2002/49/EC](#)

231 [IP/10/1416](#)

232 Malta joined EU Pilot in June 2012.

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

234 Directive [2010/76/EU](#)

235 [IP/08/511](#) on the earlier reasoned opinion

236 [IP/11/981](#)

237 [IP/10/1409](#)

238 Directive [2007/66/EC](#)

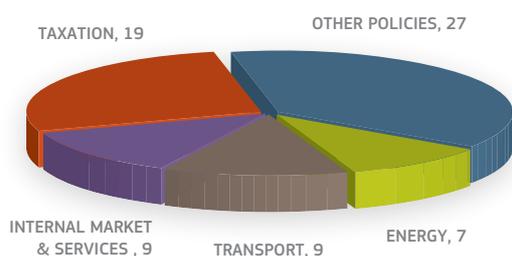
## THE NETHERLANDS

### GENERAL STATISTICS

The Commission had 71 open infringements against the Netherlands at the end of 2011, which is the tenth-highest number of infringements among the EU-27.

However, the Netherlands's performance is above average in its reference group.<sup>239</sup> Romania had 47 open infringements, Hungary 54, the Czech Republic 65, Portugal and Belgium 84 and 117 respectively, and Greece 123. The Netherlands closed the year with more infringements than in 2010 (62) and 2009 (58). The following chart shows the four policy areas where the Netherlands was subject most frequently to infringement procedures:

### 71 INFRINGEMENTS AGAINST THE NETHERLANDS



Four Court cases were brought against the Netherlands during 2011 (in 2010). The Commission contested the incorrect application of VAT grouping rules;<sup>240</sup> the flawed implementation of VAT rules for travel agents;<sup>241</sup> the exit tax levied on companies which relocate their headquarters to another Member State;<sup>242</sup> and the limited employee participation in cross-border mergers.<sup>243</sup> Within the reference group, there were no cases against Romania and Hungary, 3 against Portugal, 4 each against the Czech Republic and Greece, and 6 against Belgium. In no case did the Commission refer the Netherlands to the Court for the second time under Article 260(2) TFEU.

### TRANSPPOSITION OF DIRECTIVES

The Commission opened 32 infringement procedures against the Netherlands for late transposition of various directives in 2011. The Dutch authorities faced only 18 such procedures in 2010. Ranking 7th in the EU-27, the Dutch performance is the best in the reference group.

The policy areas where the Netherlands experienced serious challenges in transposing EU directives include internal market & services (7 late transposition infringements), transport (5), enterprise & industry, and energy (4 in each area).

In no case in 2011 did the Commission refer the Netherlands to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

### COMPLAINTS

The Commission received 71 complaints against the Netherlands in 2011, which is the ninth-figure in the EU-27.

Areas with the most alleged irregularities include internal market (mainly public procurement and regulated professions; 15 complaints) and social security (non-exportability of benefits for the old and the disabled; 14). Further complaints invoked potential damage to Natura 2000 sites and the deterioration of an estuary in the south-western

Netherlands. Discrimination in the taxation group relief regime also triggered a number of complaints.

### EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Dutch authorities were working on 98 open files in EU Pilot, which represents a slightly above average caseload. 43 new EU Pilot dossiers were opened during 2011. The Netherlands is among the 13 Member States whose average EU Pilot response time (67 days) is in line with the 10-week benchmark.

The Dutch authorities took many necessary measures in 2011 to improve compliance with EU law and to have the relevant infringements terminated. In particular, they undertook to honour the EU's external competences and the principle of loyal cooperation after voting for a proposed bluefin tuna ban (within the Convention on International Trade in Endangered Species of Wild Fauna and Flora) that contravened the common position of the EU. They also enabled cross-border sponsoring between Dutch companies and EU-based institutions for occupational retirement provision (IORPs) as well as between EU-based companies and Dutch IORPs. They revoked discriminatory income tax rules that allowed the deduction of maintenance costs for monumental buildings only if they were located in the Netherlands.

### IMPORTANT JUDGMENTS

The Court ruled that the reduced VAT rate that the Dutch tax laws applied to all horses (especially pet and race horses) contravened the Sixth VAT Directive because the reduced rate of VAT was available only for animals destined to enter into the food chain.<sup>244</sup>

In addition, the Dutch judiciary received preliminary rulings in which the Court: interpreted the copyright directive<sup>245</sup> in relation to the collection of private copy levies in a case when the reproduction equipment was obtained via distance selling;<sup>246</sup> declared that the Dutch authorities were not entitled to withdraw a supplement to an invalidity benefit from third country nationals, even after their return to their home state;<sup>247</sup> and clarified the relation between the directives<sup>248</sup> on integrated pollution prevention control and national emission ceilings;<sup>249</sup> confirmed that companies transferring their place of effective management into another Member State may invoke the freedom of establishment against the Member State of incorporation (however, the latter may tax the exiting company's unrealized capital gains under certain conditions).<sup>250</sup>

### KEY INFRINGEMENTS

- Refusal of the purchasing power allowance to pensioners residing abroad
- Non-transposition of the directive on public procurement in the defence and security sector<sup>251</sup>
- Tax discrimination on donations to foreign charities<sup>252</sup>
- Discriminatory inheritance and gift tax rules<sup>253</sup>

<sup>239</sup> Member States with equal or close to equal voting weights in the Council; for the Netherlands: Romania, Hungary, the Czech Republic, Portugal, Belgium and Greece."

<sup>240</sup> IP/10/795

<sup>241</sup> IP/11/76

<sup>242</sup> IP/10/1565

<sup>243</sup> IP/11/1422

<sup>244</sup> Commission v the Netherlands, [C-41/09](#)

<sup>245</sup> Directive [2001/29/EC](#)

<sup>246</sup> Stichting de ThuisKopie, [C-462/09](#)

<sup>247</sup> Akdas and Others, [C-485/07](#)

<sup>248</sup> Directives [2008/1/EC](#) and [2001/81/EC](#)

<sup>249</sup> Stichting Natuur en Milieu and Others, [C-165/09](#)

<sup>250</sup> National Grid Indus, [C-371/10](#)

<sup>251</sup> Directive [2009/81/EC](#)

<sup>252</sup> [IP/11/429](#)

<sup>253</sup> [IP/11/1425](#)

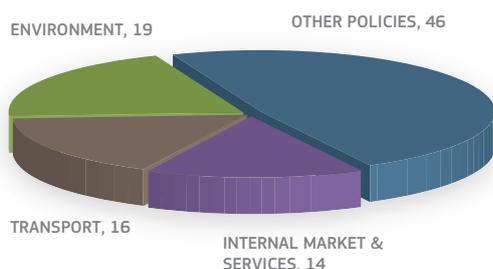
## POLAND

## GENERAL STATISTICS

95 infringements were open against Poland at the end of 2011, which is the fifth-worst result among the EU-27.

Poland's performance (along with that of France) is average in its reference group:<sup>254</sup> Germany and the UK had 76 open infringements each, Spain 99, and Italy 135. Poland closed the year with more infringements than in 2010 (91) but slightly fewer than in 2009 (97). The following chart shows the three policy areas where Poland was subject most frequently to infringement procedures:

## 95 INFRINGEMENTS AGAINST POLAND



Seven Court cases were brought during 2011 (9 in 2010). The Commission challenged the failure to investigate all possible risks in implementing the directive on genetically modified (GM) organisms control;<sup>255</sup> the adoption of a general ban on GM animal feed;<sup>256</sup> the further exemptions from the strict EU protection system for wild birds;<sup>257</sup> the *de facto* on registering cars with right-hand drive;<sup>258</sup> and the mistaken implementation of VAT rules for travel agents.<sup>259</sup> Within the reference group, there were no cases against Germany, 2 against the UK, 4 against Italy, 6 against Spain and 7 against France.

The Commission did not refer Poland to the Court for the second time under Article 260(2) TFEU.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 44 infringement procedures against Poland for late transposition of national implementing measures (2010: only 39). Ranking 15th in the EU-27 (with Luxembourg), this result is better than for the UK and Italy but poorer than for France, Spain and Germany.

The policy areas with the most serious transposition challenges are transport (10 infringements), internal market & services (9) and energy (6). Poland was brought to the Court, with a request for financial sanctions (Article 260(3) TFEU), due to the late transposition of 3 directives: (1) on modifying the capital requirements for the trading book<sup>260</sup> (2) on ambient air quality<sup>261</sup> and (3) on the marine strategy framework.<sup>262</sup>

## COMPLAINTS

206 complaints were launched against Poland in 2011, which is the fifth-highest figure in the EU-27.

The areas most concerned are: environment (inadequate impact assessment and management plans, damage to Natura 2000 sites, non-compliant water projects and programmes; 43 complaints), free movement of persons (conditions for obtaining registration certificates, extended family members' rights; 36) and agriculture (e.g. wrong information on temporary exceptional support measures; 27). Other areas were: discriminatory airport charges, public procurement, food safety, and employment in the public sector.

## EARLY RESOLUTION OF INFRINGEMENTS

Poland joined EU Pilot at the beginning of 2011. At the end of 2011 there were 78 newly opened files, a high initial caseload. Nevertheless, Poland kept its average EU Pilot response time (65 days) within the 10-week benchmark.

Poland's willingness to resolve cases at an early stage helped to close many files in 2011. For instance: national rules were completed or modified in order to comply with EU rules on environment (public participation in authorisation of projects, access to justice), sale of consumer goods (validity of non-compliant guarantees), package travel (protection against organiser's insolvency), equal treatment (material scope of relevant directives<sup>263</sup>, prohibition of victimisation and harassment, rights of disabled persons), transport (approval of imported 'Class 66' locomotives, 'small' airports' security standards<sup>264</sup>), health (registration requirements for imported medical devices) and taxation (late reimbursement of VAT). On the internal gas market, importers can now access to the Yamal pipeline and are no longer required to store gas in Poland.<sup>265</sup>

## IMPORTANT JUDGMENTS

The Court ruled that Poland had failed to protect all species of naturally occurring birds and to define correctly the conditions under which derogation may be granted from the Birds and Habitats Directives.<sup>266</sup> It also found against Poland for not transposing into its national law in time a vital directive for the competitiveness of the European automotive industry.<sup>267</sup>

In addition, the Court provided guidance to the Polish judiciary by interpreting, for example, the regulation on national courts' cooperation in evidence-taking<sup>268</sup> as regards reimbursing the expenses of a witness examined by the requested court.<sup>269</sup>

## KEY INFRINGEMENTS

- Failure to comply with the Court judgment outlawing the total ban on GM seed<sup>270</sup>
- Restrictions on the right to free movement of extended family members<sup>271</sup>
- Regulated prices on the wholesale gas market<sup>272</sup>
- Unjustified exclusion criteria in the public procurement law and insufficient defence rights for any excluded undertaking

254 Member States with equal or close to equal voting weights in the Council; for Poland: Germany, the United Kingdom, France, Spain and Italy.

255 [IP/11/293](#)

256 [IP/11/292](#)

257 [IP/11/171](#)

258 [IP/11/1111](#)

259 [IP/11/76](#)

260 Directive [2010/76/EU](#)

261 Directive [2008/50/EC](#)

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

263 Directive [2000/43/EC](#) and Directive [2000/78/EC](#)

264 [IP/11/187](#) on the earlier reasoned opinion

265 [IP/10/945](#) on the earlier reasoned opinions

266 *Commission v Poland*, [C-192/11](#) and [C-46/11](#)

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

268 Regulation No [1206/2001](#)

269 *Artur Weryński v Mediatel 4B spółka z o.o.*, [C-283/09](#)

270 *Commission v Poland*, [C-165/08](#)

271 [IP/11/981](#)

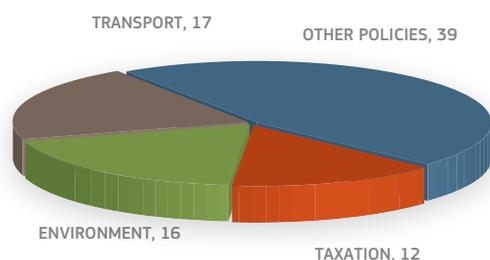
272 [IP/11/414](#)

# PORTUGAL

## GENERAL STATISTICS

The Commission had 84 open infringements against Portugal at the end of 2011, which is the seventh-worst result among the EU-27. Portugal's performance is average in its reference group<sup>273</sup>: Romania had 47 open infringements, Hungary 54, the Czech Republic and the Netherlands 65 and 71 respectively, Belgium 117 and Greece 123. However, Portugal closed the year with fewer infringements than in 2010 (98) and 2009 (100). The following chart shows the three policy areas where Portugal was subject most frequently to infringement procedures:

### 84 INFRINGEMENTS AGAINST PORTUGAL



Three Court cases were brought against Portugal during 2011 (10 in 2010). The Commission challenged the incorrect implementation of VAT rules for travel agents;<sup>274</sup> the failure to adopt river basin management plans;<sup>275</sup> and the unjustified excess of EU air quality limit values for airborne particles ('PM10 values').<sup>276</sup> Within the reference group, there were no cases against Romania and Hungary, 4 each against the Netherlands, the Czech Republic and Greece, and 6 against Belgium. No decisions were taken by the Commission to refer Portugal to the Court for the second time under Article 260(2) TFEU.

## TRANSPOSITION OF DIRECTIVES

The Commission opened 50 infringement procedures against Portugal for late transposition of various directives in 2011. Portugal had to face only 41 such procedures in 2010. Ranking 20th in the EU-27, this result is poorer than for the Netherlands, Belgium and Romania but is still ahead of the Czech Republic, Greece and Hungary.

The policy areas where Portugal experienced serious challenges in transposing EU directives are transport and internal market & services (10 late transposition infringements in each area) and health & consumers (9).

In no case in 2011 did the Commission refer Portugal to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 92 complaints against Portugal in 2011, which is the eleventh-highest figure in the EU-27.

Areas that attracted the most complaints from the public include environment (insufficient impact assessment of some dams causing serious consequences and damage to Natura 2000 sites; 22 complaints) and fundamental rights (refused entry into Portugal on the grounds of posing a threat to public security; 18).

Other complaints pointed out the discriminatory capital gains tax on real estate, the requirement to appoint a fiscal representative for non-residents, and the restricted access to the ground-handling market at an airport in southern Portugal.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Portuguese authorities were working on 153 open files in EU Pilot, one of the higher caseloads in the EU-27. The Commission opened 46 new dossiers on Portuguese issues during 2011. Portugal managed this workload successfully: its average EU Pilot response time (60 days) counts as one of the best within the EU-27.

Portugal also remedied a number of infringements during 2011, e.g. by carrying out a proper revision on the expired construction authorisation for a tourist resort located in a site of community importance (Costa Sudoeste / Montinho da Ribeira), by procuring notebooks and internet services for students, teachers and trainees by means of an open tender rather than a direct award<sup>277</sup> and by eliminating discriminatory tax rules as regards outbound dividends (i.e., paid to foreign companies)<sup>278</sup> and non-residents' income.<sup>279</sup> These procedures were therefore terminated.

## IMPORTANT JUDGMENTS

The Court ruled that the Portuguese legislation in the field of reimbursement of non-hospital medical care provided in another Member State, which does not involve the use of major and costly equipment, is in breach of the Treaty provisions guaranteeing the free movement of services.<sup>280</sup> Portugal's 2005 tax amnesty laws (i.e., reduced tax on financial assets repatriated to Portugal from abroad, if they are, or are reinvested into, securities issued by the Portuguese State), the obligation to appoint a fiscal representative and the rules on the taxation of dividends paid to foreign pension funds were all found incompatible with the free movement of capital.<sup>281</sup>

## KEY INFRINGEMENTS

- In adequate transposition of the directive on distance marketing of financial services<sup>282</sup>
- Ground-handling market<sup>283</sup>
- Illegal disposal of hazardous waste in an old mine near Oporto
- Maintaining regulated prices in the market of electricity<sup>284</sup>

<sup>273</sup> Member States with equal or close to equal voting weights in the Council; for Portugal: Romania, Hungary, the Czech Republic, the Netherlands, Belgium and Greece.

<sup>274</sup> [IP/11/76](#)

<sup>275</sup> [IP/11/438](#)

<sup>276</sup> [IP/10/1586](#)

<sup>277</sup> [IP/11/83](#)

<sup>278</sup> [IP/10/662](#)

<sup>279</sup> [IP/10/300](#)

<sup>280</sup> Commission v Portugal, [C-255/09](#)

<sup>281</sup> Commission v Portugal, [C-20/09](#), [C-493/09](#) and [C-267/09](#)

<sup>282</sup> [IP/12/50](#)

<sup>283</sup> [IP/11/588](#)

<sup>284</sup> [IP/11/590](#)

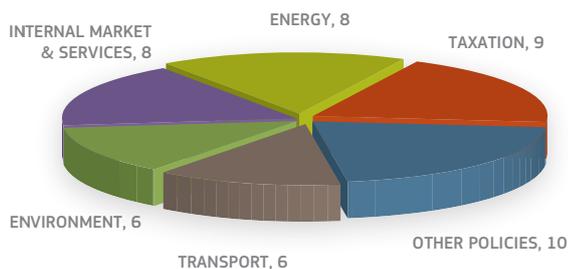
# ROMANIA

## GENERAL STATISTICS

The Commission had 47 open infringements against Romania at the end of 2011, which is the ninth-best result among the EU-27.

Romania's performance is the best in its reference group:<sup>285</sup> Hungary had 54 open infringements, the Czech Republic and the Netherlands 65 and 71 respectively, Portugal 84, Belgium 117, and Greece 123. However, Romania closed the year 2011 with more infringements than in 2010 (36) and 2009 (32). The following chart shows the five policy areas where Romania was subject most frequently to infringement procedures:

### 47 INFRINGEMENTS AGAINST ROMANIA



No Court cases were brought against Romania during 2011 (none in 2010 either). Within the reference group, there were no cases against Hungary, 3 cases against Portugal, 4 each against the Netherlands, the Czech Republic and Greece, and 6 against Belgium.

Likewise, no decisions were taken by the Commission to refer Romania to the Court for the second time under Article 260(2) TFEU.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 46 infringement procedures against Romania for late transposition of various directives in 2011. Romania had to face the same number of such procedures in 2010. Ranking 18th in the EU-27, this result is poorer than for the Netherlands and Belgium but is still better than for Portugal, the Czech Republic, Greece and Hungary. The policy areas where Romania experienced serious challenges in transposing EU directives include health & consumers (10 late transposition infringements), transport and internal market & services (7 in each area).

In no case in 2011 did the Commission refer Romania to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 130 complaints against Romania in 2011, which is the eighth-highest figure in the EU-27.

Areas where the most potential errors were reported include taxation (discriminatory treatment of permanent establishments, tax relief for research and development expenses and excise duties; 44 complaints), environment (inadequate impact assessment, degradation of Natura 2000 sites by infrastructure projects; 18) health & consumers (food safety and animal welfare; 12). Other complaints were about the refusal to pay pensions to EU citizens who had worked in Romania. Finally, the allocation of agricultural funds and subsidies triggered several investigation requests from citizens

## EARLY RESOLUTION OF INFRINGEMENTS

Romania joined EU Pilot at the beginning of 2011. By the end of the year, the Commission and the Romanian authorities were working on 64 newly opened cases, which suggests a weighty initial caseload. With an average EU Pilot response time of 67 days, Romania is among the 13 Member States which managed to stay within the 10-week benchmark.

Romania remedied a number of infringements during 2011, e.g. by modifying its laws on water policy to comply with the water framework directive<sup>286</sup> (especially the rules on river basin districts and management plans, public consultation and control measures) and by cancelling the tender procedure for public works in the Craiova power plant due to procedural deficiencies which violate public procurement legislation.<sup>287</sup>

## IMPORTANT JUDGMENTS

Concerning the insufficient designation of Special Protection Areas, the Court found that the letter of formal notice did not sufficiently identify the grievance in the reasoned opinion and the Commission's referral was dismissed<sup>288</sup>.

## KEY INFRINGEMENTS

- Restrictive access to the natural gas transmission networks<sup>289</sup>
- Insufficiently opened gas and electricity markets due to the regulated prices schemes<sup>290</sup>
- Negative impact of tourism development on the environment in Sulina (Danube Delta)<sup>291</sup>
- Non-transposition of the data retention directive<sup>292</sup>

<sup>285</sup> Member States with equal or close to equal voting weights in the Council; for Romania: Hungary, the Czech Republic, the Netherlands, Portugal, Belgium and Greece.

<sup>286</sup> Directive [2000/60/EC](#)

<sup>287</sup> Directive [2004/17/EC](#)

<sup>288</sup> Commission v Romania, [C-522/09](#)

<sup>289</sup> [IP/11/14737](#)

<sup>290</sup> [IP/11/414](#)

<sup>291</sup> [IP/11/92](#)

<sup>292</sup> Directive [2006/24/EC](#)

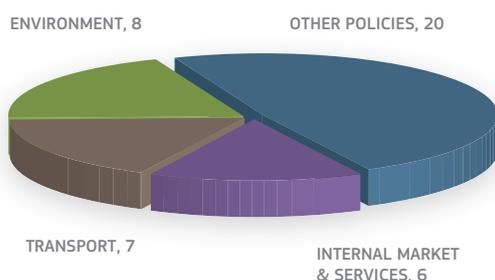
## SLOVAKIA

## GENERAL STATISTICS

The Commission had 41 open infringements against Slovakia at the end of 2011, which is the sixth-best result among the EU-27.

Slovakia's performance is average in its reference group:<sup>293</sup> Lithuania had 36 open infringements, Denmark 37, Slovakia and Ireland 41 and 42 respectively, and Finland 55. Slovakia closed the year with more infringements than in 2010 (38) but fewer than in 2009 (49). The following chart shows the three policy areas where Slovakia was subject most frequently to infringement procedures:

## 41 INFRINGEMENTS AGAINST SLOVAKIA



One Court case was brought against Slovakia during 2011 (2 in 2010). The Commission argued that the landfill site near Žilina did not have the documentation required by EU waste rules.<sup>294</sup> Within the reference group, there were no cases against Lithuania, 2 each against Ireland and Finland, and 3 against Denmark.

No decisions were taken by the Commission to refer Slovakia to the Court for the second time under Article 260(2) TFEU.

## TRANSPOSITION OF DIRECTIVES

The Commission opened 36 infringement procedures against Slovakia for late transposition of various directives in 2011. Slovakia faced only 14 such procedures in 2010. Ranking 9th in the EU-27 (with Bulgaria), this result is poorer than for all other Member States in the reference group except for Finland.

The policy areas where Slovakia experienced serious challenges in transposing EU directives are transport, internal market & services (7 late transposition infringements in each area), health & consumers, energy, and justice and fundamental rights (4 in each area).

In no case in 2011 did the Commission refer Slovakia to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 63 complaints against Slovakia in 2011, which is the eighth-lowest figure in the EU-27.

Areas with the most alleged irregularities include consumer protection (in particular, unfair terms in consumer credit contracts; 27 complaints), environment (inadequate impact assessment of projects affecting Natura 2000 sites and illegal hunting; 9) and social security (non-exportability of annual pension supplement; 8). Further complaints called for Commission investigations in relation to public procurement procedures and insurance law.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Slovak authorities were working on 42 open files in EU Pilot, which is well below the average caseload in the EU-27. The Commission invited Slovakia to give its opinion in 32 new EU Pilot dossiers during 2011. Slovakia achieved the best average EU Pilot response time (57 days) among the Member States. Slovakia acted to eliminate a number of inconsistencies in its national law vis-à-vis EU rules. In 2011, the Commission was able to close, for example, infringements contesting the incorrect transposition of the water framework directive (especially as regards river basin management plans and revision of protected areas), the unjustified use of restricted procurement for legal services relating to the construction of the D1 motorway<sup>295</sup> and the discriminatory tax deduction granted to supplementary pension insurance contributions only if paid to Slovak schemes.

## IMPORTANT JUDGMENTS

The Court's preliminary ruling gave guidance in relation to the Aarhus Convention on the availability of effective judicial protection.<sup>296</sup>

## KEY INFRINGEMENTS

- Failure to comply with EU rules on consumers' collective interest under the Injunctions Directive (2009/22/EC)<sup>297</sup>
- Non-conformity with EU requirements of the national rules on the use of GMOs

293 Member States with equal or close to equal voting weights in the Council; for Slovakia: Lithuania, Denmark, Ireland and Finland.

294 [IP/11/177](#)

295 [IP/09/1470](#)

296 [Lesoochránárske zoskupenie, C-240/09](#)

297 [IP/12/184](#)

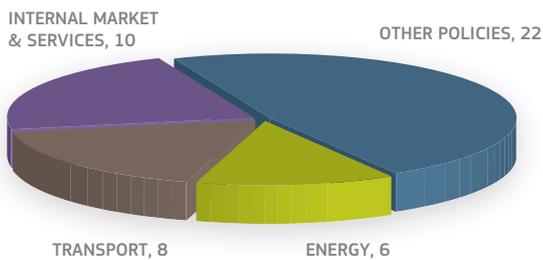
## SLOVENIA

## GENERAL STATISTICS

The Commission had 46 open infringements against Slovenia at the end of 2011, which is the eighth-best result among the EU-27.

However, Slovenia's performance is less than average in its reference group.<sup>298</sup> Latvia had 23 open infringements, Estonia and Malta 36 each, Luxembourg 48, and Cyprus 59. Slovenia closed the year with more infringements than in 2010 (33) and 2009 (25). The following chart shows the three policy areas where Slovenia was subject most frequently to infringement procedures:

## 46 INFRINGEMENTS AGAINST SLOVENIA



One Court case was brought against Slovenia during 2011 (3 in 2010). The Commission concluded that the Slovenian rules on complementary health insurance unjustifiably restricted the freedom of establishment (by requiring a resident representative for insurers based outside the country) and the free movement of capital (by prohibiting the distribution of profits to the shareholders).<sup>299</sup> Within the reference group, there were no cases against Latvia and one each against Estonia, Malta, Luxembourg and Cyprus.

No decisions were taken by the Commission to refer Slovenia to the Court for the second time under Article 260(2) TFEU.

## TRANSPPOSITION OF DIRECTIVES

The Commission opened 43 infringement procedures against Slovenia for late transposition of various directives in 2011. Slovenia faced only 30 such procedures in 2010. Ranking 13th in the EU-27 (with Spain), this result is poorer than for Latvia, Estonia and Malta but is still ahead of Luxembourg and Cyprus.

The policy areas where Slovenia experienced serious challenges in transposing EU directives are transport (8 late transposition infringements), internal market & services, and enterprise & industry (7 in each area).

In no case in 2011 did the Commission refer Slovenia to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 33 complaints against Slovenia in 2011, which is the fifth-lowest figure in the EU-27.

Complaints targeted especially environment (imperfect impact assessments and screenings, lack of or poor-quality permits for activities with high pollution potential, sub-standard landfills; 11 complaints) and internal market (free provision of services, insurance and public procurement; 9). Several complaints contested the academic recognition of foreign diplomas, including certificates issued by franchised institutions.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Slovene authorities were working on 67 open files in EU Pilot, which is an average caseload. The Commission initiated relatively few new EU Pilot dossiers vis-à-vis the Slovene authorities. Slovenia's average EU Pilot response time, 67 days, remains under the 10-week benchmark.

Furthermore, the Slovene authorities created a new legal framework to address the shortcomings in the transposition of the directive on end-of-life vehicle,<sup>300</sup> amended the country's consumer protection laws to cover the scope of goods covered by the relevant EU directive<sup>301</sup> and to provide in more detail for commercial guarantees and extended the VAT exemption for universal postal services and postal stamps to the degree required by the VAT directive.<sup>302</sup> As a result, the corresponding infringements were terminated in 2011.

## IMPORTANT JUDGMENTS

The Court had to decide on a disagreement between Slovenia and the Commission pertaining to air quality. It declared that Slovenia had failed to comply with the EU's air quality standards for dangerous airborne particles known as PM10 for the years 2005 to 2007.<sup>303</sup>

## KEY INFRINGEMENTS

- Operation of several landfills falling short of EU requirements
- Inadequate transposition of the directive on injunctions to protect consumers' collective interest<sup>304</sup>
- Maintaining nationality condition for access to study grants
- Late transposition of the directive relating to public procurement in the defence and security sector<sup>305</sup>

<sup>298</sup> Member States with equal or close to equal voting weights in the Council; for Slovenia: Latvia, Estonia, Malta, Luxembourg and Cyprus.

<sup>299</sup> [IP/11/181](#)

<sup>300</sup> Directive [2000/53/EC](#)

<sup>301</sup> Directive [1999/44/EC](#)

<sup>302</sup> Directive [2006/112/EC](#)

<sup>303</sup> Commission v Slovenia, [C-365/10](#)

<sup>304</sup> Directive [2009/22/EC](#)

<sup>305</sup> Directive [2009/81/CE](#)

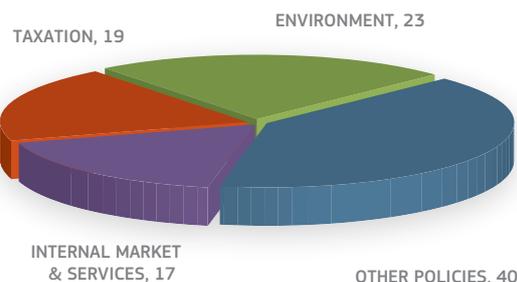
## SPAIN

### GENERAL STATISTICS

99 infringements were open against Spain at the end of 2011, which is the fourth-worst result among the EU-27.

Spain's performance is below average in its reference group.<sup>306</sup> Germany and the UK had 76 infringements each, France and Poland 95 each, and Italy 135. However, Spain closed the year with fewer infringements than in 2010 (109) and 2009 (129). The following chart shows the three policy areas where Spain was subject most frequently to infringement procedures:

### 99 INFRINGEMENTS AGAINST SPAIN



Six Court cases were brought against Spain during 2011 (the same number as in 2010). The areas concerned included the sector-specific tax imposed on telecommunication companies;<sup>307</sup> the incorrect implementation of VAT rules for travel agents;<sup>308</sup> the reduced VAT rate for medical equipment;<sup>309</sup> and the exit tax of companies relocating their headquarters to another Member State.<sup>310</sup> Within the reference group, there were no new cases against Germany, 2 against the UK, 4 against Italy and 7 each against Poland and France.

The Commission filed a case to the Court with a request for financial sanctions (Article 260(2) TFEU) as the Basque Provinces' incompatible state aid had not been recovered.<sup>311</sup>

### TRANSPOSITION OF DIRECTIVES

43 infringement procedures were opened against Spain for late transposition of various directives (in 2010: 44), which is an average performance. Ranking 13th in the EU-27 (with Slovenia), this result is better than for Poland, the UK and Italy, but poorer than for France and Germany.

The policy areas where Spain experienced serious transposition challenges are health & consumers (17 infringements), internal market & services (7) and energy (5).

The Commission did not refer Spain to the Court with a request for financial sanctions under Article 260(3) TFEU.

### COMPLAINTS

In 2011, Spain ranked second with regard to the number of complaints (306).

The areas most concerned are environment (inadequate impact assessment and water management, damage to Natura 2000 sites; 97 complaints), internal market (e.g. free provision of services and professional recognition; 46) and fundamental rights (e.g. mistreatment of persons in detention and delays in issuing residence cards; 40).

Other complaints concerned discriminatory taxes on inheritance, gifts and capital gains realised on real estate, the European Health Insurance Card and animal welfare rules in a slaughterhouse.

### EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, 365 files were open in EU Pilot, the second-highest caseload in the EU-27. Spain also received the second-highest number of new EU Pilot dossiers during 2011 (113). Accordingly, Spain's average EU Pilot response time (82 days) was substantially above the 10-week benchmark.

The Commission closed a few infringements against Spain because compliance with EU law was reached. For instance, the Spanish authorities repealed the geographical indication 'Viñedos de España' (the names of Member States can only exceptionally be protected). The Spanish transposition of the directive on insurance against civil liability<sup>312</sup> was corrected so that the national guarantee fund covers damages caused by stolen or violently obtained cars of all origins. Minor inconsistencies in the rules implementing the directive on distance marketing of financial services<sup>313</sup> (e.g. scope of the consumer's withdrawal right) were eliminated. Postal services' VAT exemption was also aligned with the VAT directive.<sup>314</sup>

### IMPORTANT JUDGMENTS

The Court ruled that Spanish law was contravening the freedom of establishment as regards certain restrictions on opening shopping centres. Other rulings concern the operation of an open-cast coal mine without a full impact assessment and protective measures under the EIA and Habitats Directives;<sup>315</sup> and the failure to establish, adopt and apply conservation priorities and measures to prevent the deterioration of habitats in the Macaronesian biogeographical region.<sup>316</sup>

The Spanish judiciary received guidance from the Court's preliminary rulings in relation to police and judicial cooperation in criminal matters. The Court ruled that a mandatory stay away injunction may be maintained in domestic violence cases, even if the victim wishes to restart cohabitation with the offender.<sup>317</sup>

### KEY INFRINGEMENTS

- Non-compliance with the directive on buildings' energy performance<sup>318</sup>
- Free movement of persons: granting the right of residence for third country family members<sup>319</sup>
- Refusal to issue European Health Insurance Card to persons insured under regional schemes<sup>320</sup>
- Animal welfare at slaughter<sup>321</sup>
- APIE monopoly granted by Spanish Port legislation
- Authorisation for supplementary private transport<sup>322</sup>
- Sector-specific tax on electronic communication services<sup>323</sup>

312 Directive [2009/103/EC](#)

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

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

315 Commission v Spain, [C-400/08](#)

316 Commission v Spain, [C-404/09](#)

317 Commission v Spain, [C-90/10](#)

318 Magatte Gueye, [C-483/09](#)

319 [IP/11/1447](#)

320 [IP/11/981](#)

321 [IP/11/1092](#)

322 [IP/11/611](#)

323 [IP/11/309](#)

306 Member States with equal or close to equal voting weights in the Council; for Spain: Germany, the United Kingdom, France, Poland and Italy.

307 [IP/11/309](#)

308 [IP/11/76](#)

309 [IP/11/605](#)

310 [IP/10/1565](#)

311 [IP/10/1544](#)

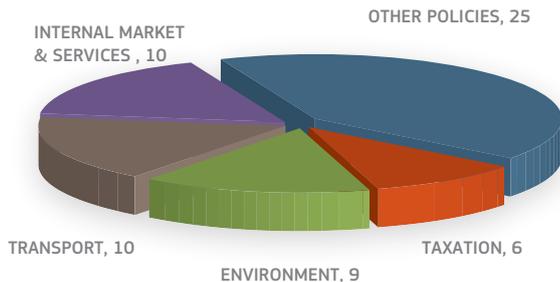
# SWEDEN

## GENERAL STATISTICS

The Commission had 60 open infringements against Sweden at the end of 2011, which is the twelfth-highest number of infringements among the EU-27.

Sweden's performance is average in its reference group:<sup>324</sup> Bulgaria had 54 open infringements, and Austria 65. Sweden closed the year with more infringements than in 2010 (53) and 2009 (58). The following chart shows the four policy areas where Sweden was subject most frequently to infringement procedures:

### 60 INFRINGEMENTS AGAINST SWEDEN



One Court case was brought against Sweden during 2011 (4 in 2010). The Commission concluded that the Swedish transposition of the directive on distance marketing of consumer financial services was incorrect.<sup>325</sup> Within the reference group, there were no cases against Bulgaria and 2 against Austria.

The Commission referred Sweden to the Court under Article 260(2) TFEU with a request for financial sanctions for failure to implement the directive on data retention.<sup>326</sup>

## TRANSPOSITION OF DIRECTIVES

The Commission opened 31 infringement procedures against Sweden for late transposition of various directives in 2011. Sweden faced only 21 such procedures in 2010. Ranking 5th in the EU-27, this result is better than for the other two Member States in the reference group. The policy areas where Sweden experienced serious challenges in transposing EU directives are internal market & services (9 late transposition infringements), transport and energy (5 infringements in each area).

In no case in 2011 did the Commission refer Sweden to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

## COMPLAINTS

The Commission received 91 complaints against Sweden in 2011, which is the twelfth-highest figure in the EU-27.

Areas that attracted the most complaints include environment (especially illegal wolf hunting; 22 complaints), taxation (for example, inheritances, capital gains and excise duties; 13) and internal market (public procurement, free provision of services and professional recognition; 12). Further complaints covered public health, passenger rights and road safety.

## EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the Swedish authorities were working on 84 open files; this was a similar caseload to many other Member States. The Commission opened a relatively small number of new Swedish EU Pilot dossiers during 2011 (29). Sweden's average response time in EU Pilot (81 days) remained above the 10-week benchmark.

By taking into account the Commission's position, Sweden took many necessary measures in 2011 to achieve compliance with EU law and to have the corresponding infringements closed. For example, Sweden remedied its waste legislation to comply with the directive on end-of-life vehicles<sup>327</sup> and abolished a number of restrictions applicable to foreign branches (e.g. mandatory establishment, naming restrictions, obligation to appoint a resident agent).<sup>328</sup>

## IMPORTANT JUDGMENTS

The Court had to rule on a disagreement between Sweden and the Commission over air quality. Sweden was found to have failed to comply with the EU's air quality standards for dangerous airborne particles known as PM10 for the years 2005 to 2007.<sup>329</sup>

## KEY INFRINGEMENTS

- Free movement of persons: inconsistencies with EU law in procedural safeguards in the event of expulsion of EU citizens and their family members and in issuing entry visas and residence cards for third country family members<sup>330</sup>
- Wolf hunting practices inconsistent with EU nature protection directives<sup>331</sup>
- Incorrect application of EU law governing the working time of self-employed drivers<sup>332</sup>
- Distance marketing of financial services<sup>333</sup>

<sup>324</sup> Member States with equal or close to equal voting weights in the Council; for Sweden: Austria and Bulgaria.

<sup>325</sup> [IP/11/98](#)

<sup>326</sup> [IP/11/409](#)

<sup>327</sup> Directive [2000/53/EC](#)

<sup>328</sup> [IP/11/1125](#)

<sup>329</sup> Commission v Sweden, [C-479/10](#)

<sup>330</sup> [IP/11/981](#)

<sup>331</sup> [IP/11/732](#)

<sup>332</sup> Directive [2002/15/EC](#)

<sup>333</sup> [IP/11/98](#)

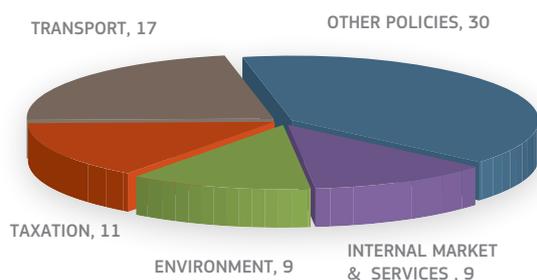
## UNITED KINGDOM

### GENERAL STATISTICS

The Commission had 76 open infringements against the UK at the end of 2011. This is the eighth-highest number of infringements among the EU-27 (ranking equal with Germany).

However, the UK's performance (along with that of Germany) is the best in its reference group:<sup>334</sup> France and Poland had 95 open infringements each, Spain 99, and Italy 135. The UK closed the year with more infringements than in 2010 (72) but fewer than in 2009 (98). The following chart shows the four policy areas where the UK was subject most frequently to infringement procedures:

### 76 INFRINGEMENTS AGAINST THE UNITED KINGDOM



The Commission brought two Court cases against the UK during 2011 (only one in 2010): one because of the prohibitively high costs of challenging licences issued to industrial plans with potential effect on the environment;<sup>335</sup> the other due to allowing the inclusion of economically passive holding companies in VAT groups;<sup>336</sup> Within the reference group, there were no cases against Germany; 4 against Italy, 6 against Spain and 7 each against Poland and France.

No decisions were taken by the Commission to refer the UK to the Court for the second time under Article 260(2) TFEU.

### TRANSPOSITION OF DIRECTIVES

The Commission opened 57 infringement procedures against the UK for late transposition of various directives in 2011. The UK faced only 35 such procedures in 2010. Ranking 23rd in the EU-27, this result is worse than that of all Member States in the reference group except for Italy.

The policy areas where the UK experienced serious challenges in transposing EU directives are transport (13 late transposition infringements), internal market & services (11) and enterprise & industry (9).

In no case in 2011 did the Commission refer the UK to the Court with a request for financial sanctions (Article 260(3) TFEU) due to late transposition of directives.

### COMPLAINTS

The Commission received 192 complaints against the UK in 2011, which is the seventh-highest result among the EU-27.

Most of the alleged irregularities were in relation to the free movement of persons (delays in issuing residence permits, requiring a visa from EU citizens' family members, restrictive calculation of presence period for the purpose of permanent residence, and discrimination on racial, ethnic or religious grounds; 57 complaints). Citizens and businesses frequently reported problems in the areas of internal market (public procurement and professional recognition; 31 complaints) and environment (inadequate impact assessment of fishing and wind-farm

activities; 29). Disabled persons' limited access to sickness benefits and the conditions for receiving jobseeker's allowance generated a number of objections, too.

### EARLY RESOLUTION OF INFRINGEMENTS

At the end of 2011, the Commission and the UK authorities were working on 192 open files, which was the fourth-highest caseload in the EU-27. The Commission forwarded 69 new EU Pilot dossiers to the UK authorities during 2011. These figures called for a strong response from the UK, which managed to keep its average EU Pilot response time (66 days) within the 10-week benchmark.

The Commission was able to terminate infringements in 2011 because the UK adopted new anti-discrimination laws and modified its practices on issuing residence documents to EU citizens and their family members, amended its laws to comply with the Drinking Water Directive<sup>337</sup> and corrected its tax rules in three areas (VAT exemptions of postal services, income tax exemption for resident seafarers, and real estate tax discounts for students studying in England or Wales).

### IMPORTANT JUDGMENTS

The Court delivered important preliminary rulings during 2011 relating to residence rights and access to social security benefits.

In particular, the Court ruled that short-term incapacity benefit in youth must be deemed as an invalidity benefit under EU law; thus, it cannot be reduced or withdrawn when claimed by persons residing outside the Member State that pays the benefit.<sup>338</sup> The Court also held that although the Free Movement Directive does not apply to a Union citizen who has never exercised her right to free movement, Article 21 TFEU protects such person against national measures which would deprive her of her essential rights as a Union citizen (including free movement).<sup>339</sup> The Court declared that an EU citizen who resided in the host Member State with a valid residence document (granted under earlier laws) but without meeting the residence conditions cannot rely on such periods to acquire permanent residence right; and that periods before 30 April 2006 cannot be taken into account when calculating the five-year stay leading to permanent residence.<sup>340</sup>

### KEY INFRINGEMENTS

- 'Right to reside test': discrimination against UK-resident EU nationals in relation to rights to certain social benefits<sup>341</sup>
- Free movement of persons (e.g. special residence documents for workers from new Member States; excessively broad detention rights and no coverage in public health-care scheme)<sup>342</sup>
- Non-transparent access conditions to the natural gas transmission networks<sup>343</sup>
- Channel tunnel: violation of rail transport rules aimed at market opening and fair competition<sup>344</sup>

<sup>337</sup> Directive [98/83/EC](#)

<sup>338</sup> [Stewart, C-503/09](#)

<sup>339</sup> [McCarthy, C-434/09](#)

<sup>340</sup> [Dias, C-325/09](#)

<sup>341</sup> [IP/11/1118](#)

<sup>342</sup> [IP/11/981](#)

<sup>343</sup> [IP/10/836](#)

<sup>344</sup> [IP/11/1099](#)

<sup>334</sup> Member States with equal or close to equal voting weights in the Council; for the United Kingdom: Germany, France, Italy, Spain and Poland.

<sup>335</sup> [IP/11/439](#)

<sup>336</sup> [IP/10/795](#)

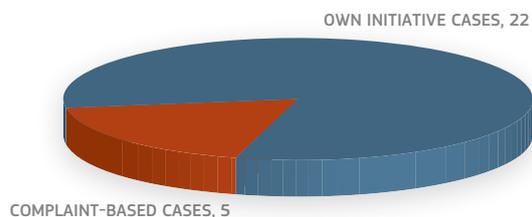
ANNEX II  
POLICIES

## AGRICULTURE AND RURAL DEVELOPMENT

### GENERAL STATISTICS

In the area of agriculture and rural development, 27 infringements were open at the end of 2011. This was the thirteenth-highest number of cases among the Commission's 20 reporting policy areas. The table below shows the distribution of these cases according to their origin:

#### 27 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



The Commission launched 34 new infringement procedures in 2011. 20 Member States seem to have violated the EU's exclusive competences by passing resolutions in the OIV,<sup>345</sup> which called into question both the EU's exclusive competences and the loyal cooperation principle (Article 4(3) TEU). And France may have contravened EU rules on wine by authorising the sale of spirit drinks with labels referring to 'wine', though these drinks were distilled from by-products of winemaking.<sup>346</sup> The Commission brought a Court case against the Czech Republic for extending the sales designation 'pomazánkové máslo' (spreadable butter) to products not complying with the EU laws on minimum milk-fat and maximum water content for butter.<sup>347</sup>

In two agriculture cases, the Commission could not confirm by the end of 2011 that Member States had complied with an earlier Court judgment condemning their measures. In the first case, the Commission monitored whether Portugal had reimbursed (with interest) the charges it had deducted from the amounts received by beneficiaries from the structural funds.<sup>348</sup> In the second, the Commission brought an action against Italy for the incorrect implementation of the Directive on cocoa and chocolate products.<sup>349</sup>

### LATE TRANSPOSITION OF DIRECTIVES

Member States had to transpose the directive on fruit juices<sup>350</sup> by 1 January 2011. The Commission initiated infringements against 11 Member States due to late and/or partial transposition of this Directive. Following rapid Member State compliance, the Commission was able to close all procedures by the end of 2011.

### COMPLAINTS HANDLING

There were 86 new complaints on agricultural issues during 2011 (up from 58 in 2010). Of the 69 complaints processed by the Commission, 25 resulted in pre-infringement discussions with the Member State concerned.

Complaints mainly targeted the following issues: protected designations (wine and spirits); temporary exceptional support measures (fruits and vegetables); and milk designations and milk quotas (animal products). Several complainants questioned the compatibility of national provisions with the 'full payment clause'<sup>351</sup> as well as the selection by national authorities of the beneficiaries of payments and support measures.

### OWN INITIATIVE CASES

The infringement procedures that were launched against 20 Member States in parallel because of their resolutions in the OIV were based on the Commission's own findings. In addition, the use of protected geographical indications and Member States' labelling rules are often subject to pre-infringement enquiries by the Commission.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 32 new files in EU Pilot on agricultural matters and processed 24 dossiers during 2011. In 21 instances, the Commission accepted the Member States' explanations or undertakings. There were still 16 open files in EU Pilot related to the agricultural sector by the end of last year.

The EU agricultural disputes that were resolved without a Court procedure in 2011 included the repeal of Greek laws prohibiting the repackaging of potatoes (incompatible with the principle of free movement of goods) and the abolition of Spanish rules on the geographical indication '*Viñedos de España*' (Member State names may be protected only in exceptional cases).

### PROMINENT JUDGMENTS

In 2011, the Court delivered no judgments on EU agricultural law under the Articles 258 and 260 TFEU procedures.

However, preliminary rulings from the Court gave guidance on: the conditions when beneficiaries of support may be considered as obstructing on-the-spot checks;<sup>352</sup> and the registration of a trade mark that contains such geographical indication with which it cannot comply.<sup>353</sup>

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

<sup>345</sup> [Organisation internationale de la vigne et du vin](#)

<sup>346</sup> [IP/12/179](#).

<sup>347</sup> [IP/10/1224](#).

<sup>348</sup> *Commission v Portugal*, [C-83/04](#).

<sup>349</sup> *Commission v Italy*, [C-47/09](#).

<sup>350</sup> Directive [2009/106/EC](#).

<sup>351</sup> The aid coming from the EU directly to producers may not be subject to deductions due to national, regional or local rules.

<sup>352</sup> *Marija Omejc*, [C-536/09](#).

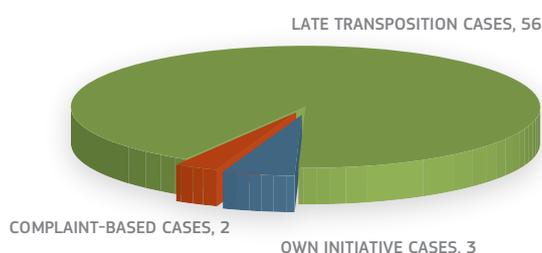
<sup>353</sup> *Bureau National Interprofessionnel du Cognac*, [C-4/10](#) and [C-27/10](#).

## CLIMATE ACTION

### GENERAL STATISTICS

The Commission managed 61 open infringement cases in the area of climate action at the end of 2011, which is the tenth-highest caseload among the 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:

#### 61 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



In 2011, the Commission opened 38 new infringement cases in this area, mostly due to late transposition. None of the climate action cases reached the stage of referral to the Court during 2011. Likewise, there were no Court judgments in 2011 which the Commission had to follow up in order to ensure Member States' compliance.

### LATE TRANSPOSITION OF DIRECTIVES

Of the 38 new cases, 35 infringement cases had to be opened during 2011 because there were no or only partial national implementing rules.

The Directive on the geological storage of carbon dioxide<sup>354</sup> was not transposed in time by 26 Member States. A further nine late transposition infringements had to be initiated due to delays in notifying national implementing rules for the Directive on fuel quality.<sup>355</sup> Although a few Member States did then notify their implementing rules, none of these infringements could be closed by the end of 2011.

### COMPLAINTS HANDLING

The Commission received six complaints on climate matters during 2011. They concerned directives on the geological storage of carbon dioxide and on the greenhouse gas emission allowance trading scheme, and the regulation on various fluorinated greenhouse gases.<sup>356</sup> One of the complaints has been transferred to EU Pilot.

The Commission also received a petition from the European Parliament relating to an exploration project for carbon capture and storage in France, which was followed up by contacts via EU Pilot.

### OWN INITIATIVE CASES

The Commission sent letters of formal notice to Malta, Luxembourg and Italy for the bad application of the regulation on various fluorinated greenhouse gases.<sup>357</sup>

The Commission did not receive implementing measures from some Member States by the initial deadline under the decision on the allocation of free emission allowances to stationary installations covered by the EU Emission Trading Scheme. As a result, the Commission has opened a horizontal investigation in EU Pilot involving 18 Member States.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 21 climate change files in EU Pilot during 2011 (one complaint and 20 own-initiative files), bringing the number of active EU Pilot cases in the climate action area to 23. Of these, two dossiers were processed in 2011. One assessment was positive. The Commission rejected the explanation provided by the Member State in the other case. 21 climate action files were open at the end of 2011.

The Commission closed two ongoing infringement cases against Romania and Bulgaria as they had completed their yearly greenhouse gas emission statements. The Commission also closed an infringement case against Spain, having been reassured by the Member State about effective monitoring of fuel consumption and release of CO<sub>2</sub> emission in line with the directive.<sup>358</sup> An infringement procedure against Luxembourg was closed as its authorities fulfilled the requirements of the regulation on various fluorinated greenhouse gases by adopting the necessary certification and training measures for companies and personnel working with such gases.

### PROMINENT JUDGMENTS

The Court delivered no material judgments in 2011 or preliminary rulings relevant to the application of EU law by the Member States in the area of climate action.

*Further information available at:*

[http://ec.europa.eu/clima/news/index\\_en.htm](http://ec.europa.eu/clima/news/index_en.htm)

<sup>354</sup> Directive [2009/31/EC](#).

<sup>355</sup> Directive [2009/30/EC](#).

<sup>356</sup> Regulation [842/2006](#).

<sup>357</sup> More detailed overview in [IP/12/415](#) (Malta and Italy).

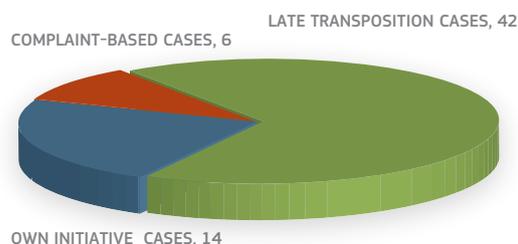
<sup>358</sup> Directive [1999/94/EC](#).

## COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

### GENERAL STATISTICS

The Commission had 62 open infringement cases in the area of communications networks, content and technology at the end of 2011, making this the ninth-highest caseload among the 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:

#### 62 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



In addition to the 45 new infringements initiated in this area during 2011, the Commission stepped up its efforts against sector-specific taxes on telecommunication service providers, on the grounds that they are incompatible with the administrative charges allowed by EU rules: Hungary received a reasoned opinion<sup>359</sup> and both France and Spain were referred to the Court.<sup>360</sup>

Three Member States had to comply with earlier Court judgments in order to avoid financial sanctions under Article 260(2) TFEU. The judgments in question related to: the 'must-carry' rules<sup>361</sup> and incorrect implementation of the Universal Services Directive<sup>362</sup> under Belgian law; the imposition of retail tariffs for high-speed internet access without market analysis in Poland;<sup>363</sup> and the incorrect implementation of the Universal Services Directive under Portuguese law.<sup>364</sup>

### LATE TRANSPOSITION OF DIRECTIVES

39 infringements had to be opened during 2011 because there were no or only partial national implementing rules in the area of communications networks.

In 2011, the transposition deadline expired for two key directives that modernise the regulatory framework for electronic communications: (1) infringements had to be launched against 20 Member States due to the late transposition of the Citizens' Rights Directive;<sup>365</sup> (2) as regards the transposition of the Better Regulation Directive,<sup>366</sup> 19 Member States had failed to notify their national measures by the deadline. However, this poor transposition record had improved by the end of 2011 for both directives.

A further eight late transposition infringements were closed under the Audiovisual Media Services Directive<sup>367</sup> (AVMSD) as Member States notified their national implementing measures.

### COMPLAINTS HANDLING

The Commission received 32 complaints on matters relating to communication networks during 2011, well down on 2010 (49 incoming complaints). National telecommunication rules provoked the most complaints from citizens and organisations in 2011.

The Commission processed 40 complaints in this policy field last year. Half of the files were closed with the Commission's full response to the complainant (21). By contrast, 16 complaints on communications networks were transferred to EU Pilot for Member States to react on them. There was no petition or question from the EP or MEPs that would have triggered an infringement procedure under EU law on communications networks.

### OWN INITIATIVE CASES

The Commission has increasingly used the EU Pilot in order to screen implementation issues regarding EU laws on electronic communications (e.g. radio spectrum, consumer protection including privacy). Another initiative was launched to detect implementation concerns surrounding the Audiovisual Media Services Directive (AVMSD).

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 61 new EU Pilot files on electronic communications issues during 2011 and processed 31 files in this period. 27 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (87 % success rate). Early resolution prevented a few potential infringements on radio spectrum management and on the '112' European emergency number. 51 EU Pilot files remained open by the end of last year.

Significant infringements on electronic communications were closed before Court proceedings in 2011 as Latvia, Lithuania Romania and Slovenia ensured the independence of their respective national regulatory authorities.<sup>368</sup>

### PROMINENT JUDGMENTS

The Court found that Spanish rules tolerated the broadcasting of advertising spots in excess of the time limits set by the Directive on television broadcasting activities (89/552/EEC).<sup>369</sup> In a preliminary ruling, the Court interpreted the concept of 'incitement to hatred on grounds of race, sex, religion or nationality' in the context of the Directive on television broadcasting activities.<sup>370</sup>

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

359 [IP/11/308](#) and [IP/11/1108](#)

360 [IP/11/309](#)

361 *Commission v Belgium*, [C-134/10](#).

362 *Commission v Belgium*, [C-222/08](#).

363 *Commission v Poland*, [C-545/08](#).

364 *Commission v Portugal*, [C-154/09](#).

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

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

367 Directive [2010/13/EU](#)

368 For example, [IP/11/412](#).

369 *Commission v Spain*, [C-281/09](#).

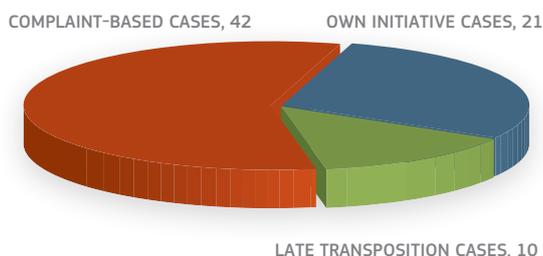
370 *Commission v Poland*, [C-244/10](#).

## EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

### GENERAL STATISTICS

The Commission managed 73 open infringement cases on employment matters in 2011 – the seventh-highest number of cases among the 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:

#### 73 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



Among the 37 new infringements launched by the Commission, Luxembourg received a letter of formal notice because its study grants are subject to a residence condition for migrant workers and their children. The Dutch purchasing power allowance (an old-age benefit) may also be contrary to EU rules to the extent that it is not 'exportable'.

The Commission decided to refer four cases to the Court last year, including nationality-based discrimination on the index-linking of pensions in Belgium;<sup>371</sup> the preferential treatment afforded by the law of an Italian province to residents applying for public sector posts;<sup>372</sup> and non-conformity in the Dutch implementation of employee participation provisions in the event of cross-border mergers.<sup>373</sup>

There was only one employment case where the Commission was not able to confirm Member State compliance with a Court judgment: Germany should abolish the residence condition for granting benefits for the blind, the deaf and the disabled<sup>374</sup> if it does not want to be exposed to financial sanctions under Article 260(2) TFEU.

### LATE TRANSPOSITION OF DIRECTIVES

17 infringements had to be opened during 2011 because there were no or only partial national implementing rules on employment matters. 10 late transposition infringements remained open in this policy area by end-2011. 15 infringements were initiated due to lack of or incomplete Member State notifications under the Directive on temporary agency work.<sup>375</sup>

### COMPLAINTS HANDLING

The Commission received 269 complaints during 2011, well down on 2010 (321). In the area of free movement of workers, most of the complaints concerned access and working conditions in the public sector, which is a persistent problem area. Rules on many kinds of social security benefits provoked complaints: pensions, special non-contributory benefits, restrictive access to statutory health insurance and residence/presence conditions for sickness benefits for disabled. In the area of health and safety, complaints concerned mainly incorrect national provisions or ineffective application of preventive services, training and responsibilities of the employer.

The Commission processed 260 employment complaints last year, notably those relating to working time. They included especially the files that had been closed without further steps due to the Commission's full response to the complainant (183) or its lack of competence (7). 26 employment complaints were transferred to EU Pilot so that Member States could react to them.

Petitions from the European Parliament led to infringement proceedings against Greece for the inadequate recognition of foreign professional experience in its public sector; and against Italy due to the incorrect transposition of the workplace health and safety rules<sup>376</sup> into its national law.

### OWN INITIATIVE CASES

In the area of health and safety at work, own-initiative cases are most frequently linked to the continuous monitoring of the framework directive on health and safety at work (as Member States are continuously making amendments to their national legislation in this field) and the high-risk sectors (e.g. fishing, construction).

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 35 new files in EU Pilot during 2011 and processed 59 dossiers in this period. 47 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (80 % success rate). 56 files remained open in EU Pilot by the end of 2011.

Concerning ongoing infringement cases, there was major progress, with the closure of 16 infringements on working time.

### PROMINENT JUDGMENTS

The Court confirmed that EU citizens are able to enjoy their rights of free movement in the EU without comprising their social security protection. Requiring a condition of past presence of the claimant in the State to the exclusion of any other relevant element to establish a genuine link between the claimant and the social security system of that Member State is contrary to EU law.<sup>377</sup> The Court also ruled that the working time directive does not prevent national law limiting the accumulation of annual leave by setting up a carry-over period, which, once expired, terminates the right to paid leave.<sup>378</sup>

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

371 [IP/11/165](#).

372 [IP/11/1269](#).

373 [IP/11/1422](#).

374 *Commission v Germany*, [C-206/10](#).

375 Directive [2008/104/EC](#).

376 Directive [89/391/EEC](#).

377 *Lucy Stewart*, [C-503/09](#).

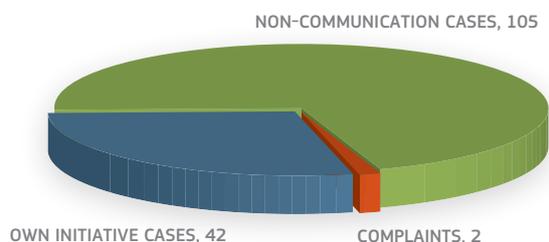
378 *KHS AG*, [C-214/10](#).

## ENERGY

### GENERAL STATISTICS

The Commission had 149 open infringements in the area of energy at the end of 2011. This was the fifth-highest number of cases among the Commission's 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:

#### 149 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



Almost all the 122 new infringements were due to the late transposition of energy directives by Member States.

The Commission decided to refer three energy-related matters to the Court, a Spanish case related to shortcomings in the transposition of the directive on the energy performance of buildings<sup>379</sup> and Bulgarian and Romanian cases related to lack of compliance with the requirements of the Gas Regulation.<sup>380</sup>

Despite making significant progress, Belgium was still under possible financial sanctions under Article 260(2) TFEU at the end of 2011 due to the only partial implementation of two Court judgments<sup>381</sup> concerning the Second Energy Package (Directives 2003/55/EC and 2003/54/EC).

### LATE TRANSPOSITION OF DIRECTIVES

121 infringements had to be opened in the area of energy during 2011 because there were no or only partial national transposition rules in all key energy sectors. Member States have been making rather slow progress with the transposition of energy directives: 105 such cases remained open by the end of 2011.

The Third Energy Package<sup>382</sup> caused the most transposition problems in Member States; 38 infringements had to be launched against 19 Member States. No Member State was able to transpose the directive on renewable energy<sup>383</sup> in time; accordingly, 27 infringements were launched. Finally, the directive on nuclear safety<sup>384</sup> has triggered infringements against 12 Member States due to missing or partial transposition.

### COMPLAINTS HANDLING

The Commission received 57 complaints on energy matters during 2011, a slight increase in comparison with 2010 (50 incoming complaints). Complaints concentrated on the Third Energy Package and the renewable energy legislation. The Commission processed 42 energy complaints. It provided most complainants with a full response (27). By contrast, 11 complaints on energy issues were transferred to EU Pilot so that Member States could examine the problem.

### OWN INITIATIVE CASES

The Commission continued investigating the conformity of national transposition rules with EU energy law. In particular, the Commission pursued infringements against several Member States which have incorrectly implemented the Second Energy Package and the directive on buildings' energy performance.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 24 new EU Pilot files on energy issues during 2011 and processed 23 dossiers in this period. The Commission accepted the explanations or undertakings of the Member State concerned in 20 cases (87 % success rate). 43 energy files remained open in EU Pilot by the end of 2011.

Major infringements that were resolved before Court proceedings included the Polish rule obliging gas importers to maintain stocks in home facilities<sup>385</sup> and the refusal of the Italian authorities to recognise guarantees of origin from other Member States for the purposes of renewable electricity production.<sup>386</sup>

### PROMINENT JUDGMENTS

The Court issued two preliminary rulings of special importance. In the first case, it gave guidance on the conditions and limits of state intervention in the internal energy market. The Court found that the Italian regime on tender obligations of essential installations was compatible with the EU laws on the electricity market and dispatching services as long as these rules pass the proportionality test, which the national courts must carry out.<sup>387</sup> In the second case – an Italian law imposing an absolute ban on wind turbines (beyond self-consumption) in a Natura 2000 site (without an impact assessment) – the Court ruled that the ban was not necessarily contrary to the aim of the directive on renewable energy, provided that the national law complies with the principles of proportionality and non-discrimination.<sup>388</sup>

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

379 Directive [2009/21/EC](#)

380 Regulation [1775/2005](#) (replaced by Regulation [715/2009](#)).

381 Commission v Belgium, [C-475/08](#) and [C-474/08](#).

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

383 Directive [2009/28/EC](#).

384 Directive [2009/71/Euratom](#).

385 [IP/10/945](#).

386 [IP/09/1799](#).

387 Enel Produzione SpA, [C-242/10](#).

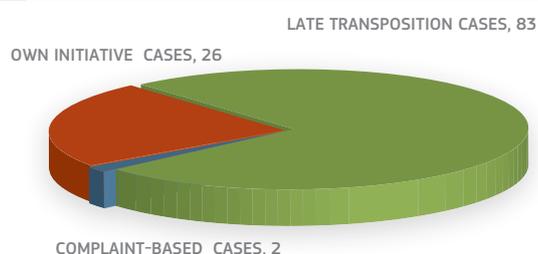
388 Azienda Agro-Zootecnica Franchini, [C-2/10](#).

## ENTERPRISE AND INDUSTRY

### GENERAL STATISTICS

The Commission had 111 open infringement cases in the area of enterprise & industry by the end of 2011. This is the sixth-highest number of cases among the 20 reporting policy areas. The table below shows the distribution of these cases as per their origins:

#### 111 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



Applying the Treaty provisions on the free movement of goods continued to represent the bulk of the infringement work. The 125 new infringements invoking enterprise & industry matters in 2011 included two letters of formal notice to Greece due to the incorrect implementation of the late payment directive;<sup>389</sup> and an infringement against Italy due to the incorrect application of the construction products directive.<sup>390</sup>

The Commission decided to bring three enterprise & industry cases before the Court: one against Greece because of the obstacles to market bake-off products;<sup>391</sup> and two other cases against Poland and Lithuania due to their ban on registering cars with the steering wheel on the right.<sup>392</sup> The Commission urged the Greek authorities to fully comply with the second Court judgment in order to halt the payment of daily penalties imposed by the Court due to the total ban on games machines.<sup>393</sup>

### LATE TRANSPOSITION OF DIRECTIVES

In the area of enterprise & industry, 117 infringements had to be opened during 2011 because there were no or only partial national implementing rules for various directives.

Fifteen infringements had to be initiated due to late transposition of the toy safety directive,<sup>394</sup> but all of them were closed before the end of 2011. A further 19 infringements were launched due to the delayed transposition of the directive on the transfer of defence-related products;<sup>395</sup> however, nine Member States had notified their implementing measures before the end of the year, thus allowing the Commission to close these infringements once the measures had been assessed. The directives amending the legislation in the automotive sector<sup>396</sup> generated 23 late transposition infringements altogether, with 11 of them still open at the end of 2011.

### COMPLAINTS HANDLING

The Commission received 124 complaints in the area of enterprise & industry during 2011, a moderate decrease over 2010 (156 incoming complaints). The vast majority of complaints continued to target the Treaty provisions on the free movement of goods,<sup>397</sup> especially in the motor vehicles sector (registration, taxes, etc.), pharmaceutical products and foodstuffs and food supplements.

The Commission processed 117 enterprise and industrial complaints last year. Most files (66) were closed without further action following the Commission's full response to the complainant. 35 complaints were transferred to EU Pilot so that Member States could react to them.

No petition or question arrived from the EP or MEPs that would have triggered an infringement procedure.

### OWN INITIATIVE CASES

Only a small number of own-initiative cases were launched.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 35 new EU Pilot files on enterprise & industry matters during 2011 and processed 42 dossiers in this period. 35 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (83 % success rate). 48 files remained open in EU Pilot by the end of last year.

Major infringements in this policy area that were settled without litigation before the Court included three procedures against France on adaptations to the regulatory framework for phyto-pharmaceutical products; and one procedure against Denmark to lift the total ban on the sale of certain energy drinks.

### PROMINENT JUDGMENTS

The Court passed two important judgments in the field of enterprise & industry in 2011. In the first, it ruled against the sectoral driving ban imposed by Austria for heavy goods vehicles on its A12 motorway.<sup>398</sup> In the second, it ruled on Poland's failure to transpose the framework directive on the approval of motor vehicles.<sup>399</sup>

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

389 Directive [2000/35/EC](#).

390 Directive [89/106/EEC](#).

391 [IP/11/1415](#).

392 [IP/11/1111](#) and [IP/11/1251](#).

393 *Commission v Greece*, [C-65/05](#) and [C-109/08](#).

394 Directive [2009/48/EC](#).

395 Directive [2009/43/EC](#).

396 Directives [2010/62/EU](#), [2010/52/EU](#), [2010/22/EU](#) and [2010/19/EU](#).

397 Articles [34-36 TFEU](#).

398 *Commission v Austria*, [C-28/09](#).

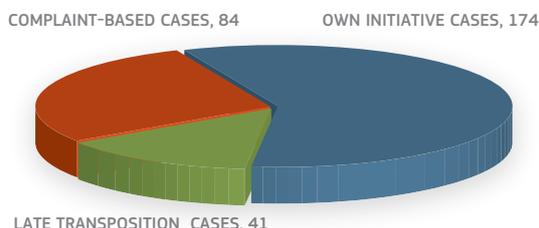
399 *Commission v Poland*, [C-311/10](#).

## ENVIRONMENT

### GENERAL STATISTICS

Most of the active infringement cases in 2011 (299) were in the environment field among the 20 reporting policy areas. The following table shows the origins of these cases:

#### 299 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



114 new environmental infringements were initiated during 2011. The Commission decided to submit 18 environmental cases to the Court, including four referrals for the late adoption of river basin management plans under the water framework directive,<sup>400</sup> three referrals due to the lack of Integrated Pollution Prevention and Control (IPPC) permits for factories<sup>401</sup>, and two referrals for non-compliance with PM10 limit values.<sup>402</sup> Still, many infringements remained open due to non-compliance with IPPC permits and PM10 values.

By the end of 2011, 56 Court judgments still awaited full implementation by Member States. The Commission is monitoring closely the actions taken by Member States which, in some cases, take a certain time to ensure full compliance. One of the key challenges is the correct implementation of EU waste law. In 2011 a second referral was decided in three cases, against Ireland (two cases on improper checks on septic tanks and insufficient impact assessment legislation) and Luxembourg (inadequate urban waste water treatment).<sup>403</sup>

### LATE TRANSPOSITION OF DIRECTIVES

58 infringements were opened during 2011 because of late transposition of environmental directives.

In particular, the Commission launched infringement cases against 23 Member States for failure to transpose timely the waste framework directive in good time.<sup>404</sup>

Poland was referred to the Court with a request for financial sanctions under Article 260(3) TFEU<sup>405</sup> due to the late transposition of the directives on ambient air quality<sup>406</sup> and marine strategy framework.<sup>407</sup>

### COMPLAINTS HANDLING

The Commission received 604 complaints on environmental matters during 2011, which indicates a slight decrease in registered files over 2010 (669 incoming complaints).

The three sectors receiving the most complaints were nature protection (±200), waste (±100) and water (±60). 605 environmental complaints were processed last year. Nearly two thirds of them (395) were closed with a full response, while 149 were transferred to EU Pilot for Member States to react.

Two infringement cases (against Greece and Cyprus) and 27 bilateral discussions were launched by the Commission upon petitions and questions from the European Parliament and MEPs, most of them (18) invoking nature protection and environmental impact policy issues.

### OWN INITIATIVE CASES

The Commission systematically monitors correct transposition of key environmental directives especially in the sectors of waste, impact assessment and water and all new EU legislation. Most of the Commission's own initiative cases are related to the environment.

Bad application of EU environmental *acquis* by the Member States also triggered infringements, for example: failure to close all sub-standard landfills, non-compliance with EU air quality standards (PM10); violation of hunting rules or derogation conditions; tolerating installations without IPPC permits; lack of river basin management plans.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 358 new environmental files in EU Pilot during 2011 and processed 399 dossiers in this period. 350 assessments were positive i.e., the Commission accepted the explanations the undertakings of the Member State concerned (88 % success rate). 335 Environment files remained open in EU Pilot by the end of 2011. In 2011, important cases were closed due to Member State compliance, e.g. the corrections made in Polish law increased the compliance with the environmental impact assessment rules and the Czech authorities correctly designated special protection areas for birds.<sup>408</sup>

### PROMINENT JUDGMENTS

The Court delivered four major environmental rulings in 2011. It confirmed that Ireland incorrectly transposed the environmental impact assessment directive,<sup>409</sup> and ruled against Spain for lack of conservation measures in the Macaronesian bio-geographical region.<sup>410</sup> Two important judgements interpreted the Environmental Impact Assessment Directive. In the first the Court ruled that this directive did not apply to projects that had been adopted by a specific legislative act, if the directive's objectives have been achieved in the law-making process.<sup>411</sup> The second confirmed that NGOs may contest a decision on a project's environmental effects by relying on rules protecting only the general public interest (without defending individual interests).<sup>412</sup>

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

400 [IP/11/438](#)

401 [IP/11/305](#), [IP/11/433](#) and [IP/11/593](#)

402 [IP/11/435](#) and [IP/11/596](#)

403 [IP/11/168](#), [IP/11/592](#) and [IP/11/1273](#)

404 Directive [2008/98/EC](#).

405 [IP/11/1434](#)

406 Directive [2008/50/EC](#)

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

408 [IP/07/938](#)

409 Commission v Ireland, [C-50/09](#).

410 Commission v Spain, [C-90/10](#).

411 Boxus and Others, [C-128/09](#).

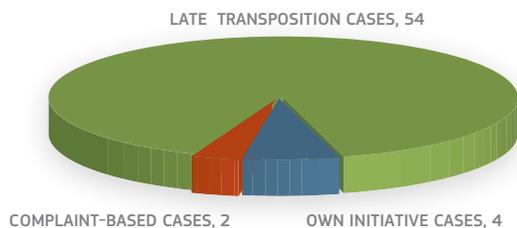
412 Trianel, [C-115/09](#).

## HOME AFFAIRS

### GENERAL STATISTICS

The Commission had 60 open infringement cases in the area of home affairs at the end of 2011. This is the eleventh-highest number of cases among the 20 reporting policy areas, broken down as follows:

#### 299 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



The 78 new infringements initiated by the Commission in relation to home affairs included three cases against Germany, Romania and the Czech Republic on the Data Retention Directive.<sup>413</sup> In October 2011, the Commission sent a reasoned opinion to Germany and Romania.<sup>414</sup> The Court had already ruled against Greece, Ireland, Sweden and Austria due to their failure to transpose the same directive.<sup>415</sup> In the absence of compliance with the judgment, the Commission decided to refer Sweden to the Court for the second time under Article 260(2) TFEU with a request for financial penalty.<sup>416</sup> Austria made significant progress on complying with the judgment by the Court. After adoption of national legislations transposing the directive, the proceedings against Greece and Ireland were closed.

### LATE TRANSPOSITION OF DIRECTIVES

76 infringements had to be opened during 2011 because there were no or only partial national implementing rules for directives. Member States had to transpose key home affairs directives in 2011. However, 20 of them missed the deadline for the Blue Card directive;<sup>417</sup> 20 infringements each were launched due to the late transposition of the directive on employer sanctions<sup>418</sup> and of the Return Directive<sup>419</sup>; and 13 such infringements were launched under the critical infrastructures directive.<sup>420</sup>

### COMPLAINTS HANDLING

The Commission received 123 home affairs complaints during 2011, a significant increase over 2010 (72 incoming complaints). Most complaints concerned visa policy ('unfair' visa imposition on third-country nationals, visa facilitation agreements with Eastern Partnership countries and Russia). Of the 73 complaints processed, more than half (44) were closed after a full reply had been sent to the complainant. 10 complaints were transferred to EU Pilot so that Member States could react to them.

The Commission launched investigations upon a petition from the European Parliament on the functioning of the EU-Russia Visa Fee Waiver Agreement, which was later closed due to the compliance of the Member State. Investigations on the application of the Long-Term Residents Directive<sup>421</sup> in a Member State were still open at the end of the year.

### OWN INITIATIVE CASES

The Commission launched investigations against five Member States in order to examine whether their border measures (obstacles to fluid traffic flow, camera surveillance and the application of carrier's liability on intra-Schengen flights) were compatible with the Schengen Borders Code. The investigations were still open by the end of the year. Commission investigations regarding the use of phallometric testing in asylum procedures were closed as the Member State concerned ceased the practice.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 19 new home affairs files in EU Pilot in 2011. It processed ten dossiers in this period; six of them with a positive result, i.e. the explanations or undertakings of the Member State were accepted (60 % success rate). 22 home affairs files remained open in EU Pilot by the end of last year.

Two infringement proceedings could be closed without the need to refer the Member States to the Court: France removed the obstacles to fluid traffic flow at its internal borders with Belgium, Spain and Luxembourg;<sup>422</sup> and Austria amended its laws on foreign students' access to the labour market in order to make it compatible with the Students Directive.<sup>423</sup>

### PROMINENT JUDGMENTS

Two preliminary rulings from the Court clarified the extent to which the Return Directive allows national laws to criminalise irregular stays in a Member State. In principle, imprisonment may not be imposed on the sole ground that a person remains on the territory of a Member State contrary to a leave order;<sup>424</sup> however, the unjustified illegal stay may lead to such sanction, if the person concerned was subject to the return procedure.<sup>425</sup>

*Further information available at:*

[http://ec.europa.eu/dgs/home-affairs/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/index_en.htm)

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

414 [IP/11/1248](#) (The reasoned opinion to the Czech Republic was sent in March 2012).

415 Commission v Greece, [C-211/09](#), Commission v Ireland, [C-202/09](#), Commission v Sweden, [C-185/09](#) and Commission v Austria, [C-189/09](#).

416 Commission v Sweden, [C-270/11](#).

417 Directive [2009/50/EC](#).

418 Directive [2009/52/EC](#).

419 Directive [2008/115/EC](#).

420 Directive [2008/114/EC](#).

421 Directive [2003/109/EC](#).

422 Regulation [562/2006](#).

423 Directive [2004/114/EC](#).

424 PPU – El Dridi, [C-61/11](#).

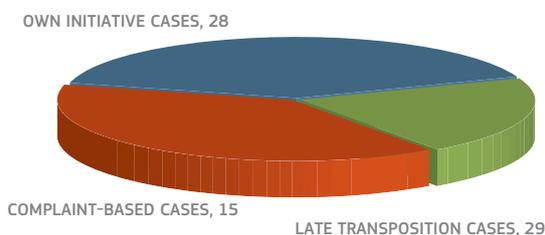
425 Achughbabian, [C-329/11](#).

## JUSTICE, FUNDAMENTAL RIGHTS AND CITIZENSHIP

### GENERAL STATISTICS

The Commission had 72 open infringement cases in this area at the end of 2011. This was the eight-highest number of cases among the 20 reporting policy areas, broken down as follows:

#### 72 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



Out of 87 new infringements initiated in the area of justice, 12 concerned a general action against 12 Member States relating to citizens' rights to free movement.<sup>426</sup> In addition, infringements were launched concerning the draft Hungarian legislation on the retirement age of judges and prosecutors, and on the independence of the data protection supervisory authority and of the judiciary.

The Commission referred two cases to the Court claiming that the Belgian doorstep selling ban on goods or services in excess of € 250 breached the directive on unfair commercial practices,<sup>427</sup> and contesting the Italian laws for failing to grant reasonable accommodation at work to disabled persons.

In the only case where a Member State did not comply with a previous Court judgment,<sup>428</sup> Commission action led Germany to take measures to ensure the independence of its data protection supervisory authority in order to avoid financial sanctions under Article 260(2) TFEU.

### LATE TRANSPOSITION OF DIRECTIVES

71 infringements were opened because there were no or only partial national rules transposing justice directives.

In particular, 19 Member States missed the transposition deadline for the directive on mediation in civil and commercial matters 429 (but only four received reasoned opinions). 15 Member States failed to transpose the directive on timeshares<sup>430</sup> on time, but almost all took action by the end of 2011.

### COMPLAINTS HANDLING

The Commission received 433 complaints on justice matters during 2011, a slight decrease over 2010 (456 incoming complaints). Justice complaints covered all policy areas, especially the right to free movement (residence cards, family members' rights, and expulsions), discrimination and consumer protection (unfair contract terms and practices, faulty products). Citizens are increasingly raising fundamental rights issues, such as manifestations of racism and xenophobia or access to justice. The first Annual Report on the Charter of Fundamental Rights<sup>431</sup> serves also as guidance for complainants on how the rights and freedoms in the Charter are protected.

The Commission processed 524 justice complaints last year. In most cases, the Commission delivered a full response to complainants (338). Ten complaints were transferred to EU Pilot for Member States' reaction. Upon petitions and questions from the European Parliament and MEPs, the Commission launched two infringements against the UK (on visa requirements and the acquisition of permanent residence by EU citizens from new Member States) and three preliminary investigations (on issuing civil status certificates in view of same-sex marriages or partnerships, on storage of biometric data in travel documents and on residence right for third-country family members of EU citizens).

### OWN INITIATIVE CASES

Besides the above general action against 12 Member States, the Commission verified the correctness of national transposition measures for the anti-discrimination and unfair commercial practices directives.<sup>432</sup>

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 54 new files in EU Pilot and processed in total 59 files in 2011. In 48 cases, the Commission accepted the Member States' explanations or undertakings (81% success rate). By end 2011, 62 files remained open in EU Pilot.

Concerning the repatriation of Roma, the action taken by France ensured compliance with the free movement directive. Other infringements settled out of Court included the cases on belated delivery of residence documents in the UK and the non-enforceability of a judgment issued by an Italian court in Latvia in a case of child abduction.

### PROMINENT JUDGMENTS

Greece had to pay a penalty of € 3 million for the late transposition of the directive on compensation to crime victims.<sup>433</sup>

In preliminary rulings, the Court held that: a derogation from the unisex rule in individuals' insurance premiums and benefits is invalid as of end 2012,<sup>434</sup> Member States cannot take measures forcing EU citizens to leave the EU,<sup>435</sup> they are obliged to respect the Charter of Fundamental Rights when implementing EU law.<sup>436</sup>

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

426 [IP/11/981](#) and [IP/12/75](#).

427 [IP/11/1096](#).

428 *Commission v Germany*, [C-518/07](#).

429 Directive [2008/52/EC](#).

430 Directive [2008/122/EC](#).

431 [Report](#) on the Application of the EU Charter of Fundamental Rights.

432 Directives [2000/43/EC](#), [2000/78/EC](#) and [2005/29/EC](#).

433 *Commission v Greece* [C-407/09](#) and [IP/12/168](#)

434 *Association Belge des Consommateurs Test-Achats*, [C-236/09](#)

435 *Ruiz Zambrano* [C-34/09](#)

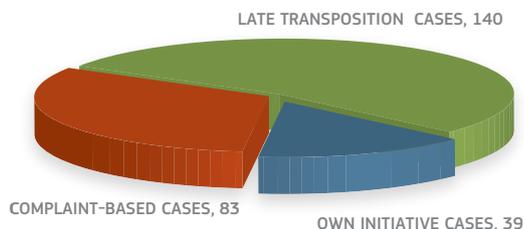
436 *N. S. and Others* [C-411/10](#) and [C-493/10](#)

# INTERNAL MARKET AND SERVICES

## GENERAL STATISTICS

The Commission was managing 262 open infringement cases in the area of internal market & services by the end of 2011. This is the third-highest caseload among the 20 reporting policy areas, broken down as follows:

### 262 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



The 228 new internal market infringements launched by the Commission during 2011 included letters of formal notice against Malta (due to incorrect transposition of the directive on new public procurement remedies), Poland (on the possibly unjustified exclusion criteria in the national procurement law), and the UK (public bids for software submitted to the Office of Government Commerce).

Four Member States were referred to the Court due to internal market infringements: Greece (restricted investment in strategic companies),<sup>437</sup> Italy (the state's special rights under the privatisation law),<sup>438</sup> Cyprus (restrictions on buying secondary residences)<sup>439</sup> and Slovenia (incorrect transposition of the Third Non-Life Insurance Directive).<sup>440</sup>

There were 28 internal market infringements at the end of 2011 where the Court had ruled against the Member States but they had not complied with the judgments. Depending on the Member States' progress in implementing these judgments, financial sanctions under Article 260(2) TFEU may be requested by the Commission.

## LATE TRANSPOSITION OF DIRECTIVES

198 infringements were initiated during 2011 due to no or only partial national implementing rules in the internal market area.

In particular, 23 infringements were initiated under each of the following three key directives: one on defence and security procurement,<sup>441</sup> another on the powers of the European Supervisory Authorities for Banking, Insurance, Pensions, and Securities,<sup>442</sup> and a third implementing the UCITS IV rules.<sup>443</sup> Besides, infringements were pursued against the three Member States which had still not transposed the Services Directive.<sup>444</sup>

Efforts had to be maintained at a very high level in the financial services sector (due to a new wave of directives) and in the field of public procurement.

## COMPLAINTS HANDLING

The Commission received 530 complaints on internal market matters during 2011, a slight decrease over 2010 (597 incoming complaints). Public procurement, freedom to provide services, freedom of establishment and regulated professions (mutual recognition of diplomas) attracted the most complaints in 2011.

The Commission processed 531 internal market complaints last year. Many of them (378) had been followed up and closed with the Commission's full response to the complainant. 97 complaints had been transferred to EU Pilot for Member States to consider.

## OWN INITIATIVE CASES

The Commission's 39 own-initiative infringements covered problems in the areas of public procurement, free provision of services, insurance and pensions and free movement of capital.

## EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 128 new internal market files in EU Pilot during 2011 and processed 188 dossiers in this period. 168 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (89 % success rate). 129 internal market files remained open in EU Pilot by the end of last year. The internal market developments taken during 2011 before a Court ruling included the adoption of a new Czech law on the public procurement of certain goods to be used in the military sector;<sup>445</sup> the decision of the Portuguese authorities to organize a public tender for the supply of notebooks to students and teachers;<sup>446</sup> the elimination of the ban on foreign currency mortgages by Hungary; and the new Austrian laws on agricultural land acquisition in Vorarlberg.

## PROMINENT JUDGMENTS

In a series of judgments, the Court found that the nationality requirement imposed on public notaries was incompatible with the Treaty.<sup>447</sup> However, the Court dismissed a Commission action against Spain because the contracts within the framework of 'integrated action programmes' in the Valencian Community did not aim primarily at the performance of works that required public tendering.<sup>448</sup> By contrast, the Court found that several Spanish restrictions on the opening of hypermarkets in certain areas were contrary to the freedom of establishment.<sup>449</sup>

*Further information available at:*

[http://ec.europa.eu/dgs/internal\\_market/index\\_en.htm](http://ec.europa.eu/dgs/internal_market/index_en.htm)

<sup>437</sup> [IP/11/179](#)

<sup>438</sup> [IP/11/1443](#)

<sup>439</sup> [IP/11/1442](#)

<sup>440</sup> [IP/11/181](#)

<sup>441</sup> Directive [2009/81/EC](#)

<sup>442</sup> Directive [2010/78/EU](#)

<sup>443</sup> Directive [2009/65/EC](#)

<sup>444</sup> Directive [2006/123/EC](#)

<sup>445</sup> [IP/11/1440](#)

<sup>446</sup> [IP/11/83](#)

<sup>447</sup> Court press release no. [50/11](#)

<sup>448</sup> Commission v Spain. [C-306/08](#)

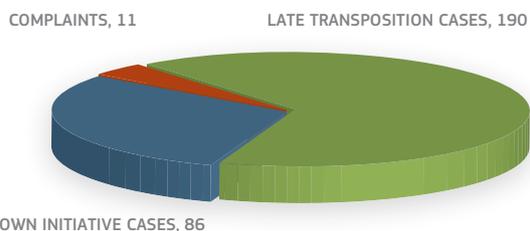
<sup>449</sup> Commission v Spain. [C-400/08](#)

## MOBILITY AND TRANSPORT

### GENERAL STATISTICS

The Commission had 287 open infringement cases in the area of mobility and transport at the end of 2011. This is the second-highest number of cases among the 22 reporting policy areas. The following table shows the distribution of these cases according to their origins:

#### 287 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



284 infringements were initiated in relation to transport issues during 2011, including two general actions: one against 22 Member States for their bilateral air services agreements with Russia<sup>450</sup>, and another involving 12 Member States for excluding self-employed drivers from the scope of the drivers' working time directive (2002/15/EC).

Five transport-related infringements were referred to the Court in 2011. In particular, Italy and Luxembourg were claimed to have improperly implemented the First Railway Package.<sup>451</sup>

In the only transport-related case where Member State compliance with a previous Court judgment was still lacking, Spain made significant efforts to follow the Court ruling<sup>452</sup> on service provision in ports of general interest (harbour dues).

### LATE TRANSPOSITION OF DIRECTIVES

The 12 transport-related directives with transposition deadline in 2011 triggered 240 infringements because there were no or only partial national implementing rules. By the end of the year, 190 late transposition infringements remained open.

Late transposition of the directive on driving licences<sup>453</sup> called for infringement procedures against 20 Member States. 21 late transposition infringements were started under the airport charges directive<sup>454</sup> and another 15 under the directive on ship owners' insurance against maritime claims.<sup>455</sup>

The Commission decided to refer to the Court two further cases with a proposal for financial sanctions under Article 260(3) TFEU: both cases are related to railway transport and are against Germany.<sup>456</sup>

### COMPLAINTS HANDLING

The Commission received 65 complaints on mobility and transport matters during 2011, a notable decrease over 2010 (93 incoming complaints).

Most of the complaints claimed a violation of passenger rights, especially the rights of air passengers. The road safety sector likewise attracted numerous complaints, in particular on driving licence matters. The Commission processed 76 transport complaints last year. Most files were closed without further steps due to the Commission's full response to the complainant (48). Nine transport complaints were transferred to EU Pilot so that Member States could react to them.

No petition or question arrived from the EP or MEPs that would have triggered an infringement procedure under EU transport law.

### OWN-INITIATIVE CASES

Both general actions highlighted in the first section (bilateral air services agreements with Russia and self-employed drivers) were started at the Commission's own initiative. In addition, the Commission launched infringements against five Member States on bad application of quality control rules in the civil aviation security sector.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 170 new mobility and transport files in EU Pilot during 2011 and processed 58 dossiers in this period. 37 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State (64 % success rate). 129 mobility and transport files remained open in EU Pilot at the end of last year. Significant infringements in the field of transport that the Commission was ready to close upon Member States' compliance in 2011 included the dispute on the Irish air travel tax,<sup>457</sup> the discriminatory treatment of 'Class 66' locomotives by Polish authorities; and the Greek rules restricting the freedom to provide services related to maritime cabotage.

### PROMINENT JUDGMENTS

The Court did not hand down any major judgment in the transport field in 2011. Judgments are awaited on a series of cases relating to the First Railway Package.

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

450 [IP/11/186](#)

451 A detailed description is available [here](#).

452 *Commission v Spain*, [C-18/09](#)

453 [Directive 2006/126/EC \(recast\)](#)

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

455 [Directive 2009/20/EC](#)

456 [Directive 2008/57/EC](#) on the interoperability of the rail system within the Community and [Directive 2008/110/EC](#) on safety on the Community's railways

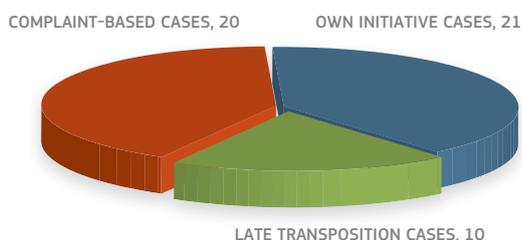
457 [IP/11/734](#)

## HEALTH AND CONSUMERS

### GENERAL STATISTICS

The Commission had 51 open infringement cases in the area of health & consumers at the end of 2011. This is the twelfth-highest number of cases among the 20 reporting policy areas, which broke down according to origin as follows:

#### 215 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



The 174 new infringements that the Commission launched in the field of health & consumers in 2011 included actions due to the non-cooperation of German customs services with the Food and Veterinary Office and the incorrect Slovak and Slovene transposition of the directive that protects consumers' interests with injunctions.<sup>458</sup>

The Commission decided to refer five disputes to the Court on points of EU health & consumer law in 2011: the Polish ban on genetically modified (GM) feed<sup>459</sup> and the incorrect transposition of the directive on the contained use of GM micro-organisms;<sup>460</sup> the French refusal to apply the decision on scrapie<sup>461</sup>, and the incorrect Italian and Swedish transpositions of the directive on distance marketing of financial services.<sup>462</sup> In six cases, Member States failed to comply by the end of 2011 with a Court judgment condemning their measures. To avoid penalties under Article 260(2) TFEU, Greece has to apply correctly the regulation on animal by-products not intended for human consumption,<sup>463</sup> improve animal welfare<sup>464</sup> and increase its control resources;<sup>465</sup> and Poland has to abolish its ban on GM seed varieties.<sup>466</sup>

### LATE TRANSPOSITION OF DIRECTIVES

164 infringements were opened during 2011 due to no or only partial national transpositions in the health & consumers area.

Of the key policy instruments in this field with transposition deadline in 2011, 19 Member States failed to notify their national transposition measures for the directive on the sustainable use of pesticides<sup>467</sup>. The directive on derogations for the marketing of fodder plant seed mixtures triggered late transposition infringements against 14 Member States.

### COMPLAINTS HANDLING

The Commission received 99 complaints on health & consumers matters during 2011, a slight decrease over 2010 (121 incoming complaints). Complaints targeted the public health, food safety and animal welfare sectors.

The Commission processed 130 health & consumers complaints last year. Most of the files (79) were closed with the Commission's full response to the complainant. 36 complaints were transferred to EU Pilot so that Member States could react to them.

At the initiative of the European Parliament, the Commission investigated six petitions, claiming an infringement of EU rules on animal by-products, plant health, pet transport, medical devices, public health and food safety.

### OWN INITIATIVE CASES

Two general actions were prepared in the health & consumers field during 2011: one aimed at monitoring compliance with the prohibition on rearing laying hens in un-enriched cages;<sup>468</sup> the other targeted the correct transposition of the directive on protecting consumers' interests with injunctions. In addition, sustained efforts were necessary to ensure the proper transposition of directives on consumer protection and GM organisms.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 63 new EU Pilot files on health & consumers matters during 2011 and processed 86 dossiers in this period. 67 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State concerned (78 % success rate). 94 files remained open in EU Pilot by the end of last year. Of the infringements in this field that were closed without Court proceedings in 2011 it is useful to note the corrections made by the Czech Republic, Ireland and the United Kingdom to comply with the directive on the contained use of GM micro-organisms;<sup>469</sup> similar efforts were made by the Netherlands, Spain and Slovenia to achieve correct transposition of the directive on distance marketing of financial services.<sup>470</sup>

### PROMINENT JUDGMENTS

The Court ruled that Portugal and Luxembourg have to refund the costs of non-hospital medical care<sup>471</sup> and medical biology analyses,<sup>472</sup> respectively, when done in another Member State.

The Court dismissed the French application for the partial annulment of the TSE Regulation<sup>473</sup> by confirming that determining what risk is deemed unacceptable for society is a policy choice and not a court decision.<sup>474</sup>

*Further information available at:*

[http://ec.europa.eu/dgs/health\\_consumer/index\\_en.htm](http://ec.europa.eu/dgs/health_consumer/index_en.htm)

458 [IP/12/184](#)

459 [IP/11/292](#)

460 [IP/11/293](#)

461 [IP/11/601](#)

462 [IP/11/1091](#) and [IP/11/98](#)

463 [Commission v Greece, C-248/08](#).

464 [Commission v Greece, C-416/07](#).

465 [Commission v Greece, C-331/07](#).

466 [Commission v Poland, C-165/08](#).

467 [Directive 2009/128/EC](#).

468 [Directive 1999/74/EC](#).

469 [Directive 2009/41/EC](#).

470 [Directive 2002/65/EC](#).

471 [Commission v Portugal, C-255/09, IP/08/1517](#).

472 [Commission v Luxembourg, C-490/09, IP/08/1517](#).

473 [Regulation 999/2001](#).

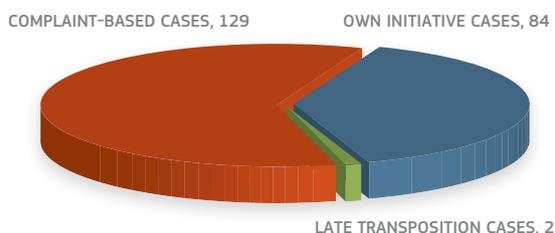
474 [France v Commission, T-257/07, IP/11/601](#).

## TAXATION AND CUSTOMS UNION

### GENERAL STATISTICS

The Commission was managing 215 open infringement cases in the taxation area at the end of 2011. This is the fourth-highest number of cases among the 20 reporting policy areas. The following table shows the distribution of these cases according to their origins:

#### 215 INFRINGEMENTS RELATING TO EU LEGISLATION IN THIS AREA



In addition to the 80 new tax cases initiated during 2011, the Commission delivered reasoned opinions to Ireland and Spain due to their tax rules on leased or rented cars.<sup>475</sup>

The Commission decided to take 23 tax cases to the Court last year, including referrals against nine Member States for incorrectly applying the special VAT margin scheme for travel agencies;<sup>476</sup> and against Spain for its discriminatory tax on inheritance and gifts.<sup>477</sup>

In 16 tax cases, the Commission was unable to confirm that Member States had complied with the Court judgment condemning their measures. These Member States might be exposed to financial sanctions under Article 260(2) TFEU.

### LATE TRANSPOSITION OF DIRECTIVES

38 infringements had to be opened during 2011 because there were no or only partial national implementing rules in the area of taxation. Thanks to rapid compliance, only two such cases remained open by the end of last year.

As a particular example, the transposition of VAT refund rules<sup>478</sup> into national law required particularly serious efforts from national authorities. Even though 12 infringements had to be launched because of partial or no notifications by the deadline (end of 2010), the Commission was able to close all cases by mid-2011.

### COMPLAINTS HANDLING

The Commission received 411 complaints on taxation matters during 2011. This is a notable increase over 2010 (375 incoming complaints) and is probably due to the fact that some Member States introduced tax measures during the financial crisis that were questionable under EU law. Tax-related complaints echo the public opinion that car registration taxes are contradictory to the idea of an internal market.<sup>479</sup> Many citizens' complaints concerned discriminatory taxation of cross-border workers. And many complaints concern Member States' double taxation treaties. The Commission processed 384 tax complaints last year.

This included especially the files that had been closed without further steps due to the Commission's full response to the complainant (244) or its lack of competence (6). 70 tax complaints were transferred to EU Pilot so that Member States could react to them.

In all tax issues raised by the European Parliament in complaints or petitions during 2011, the Commission had already engaged in discussions with the Member State.

### OWN INITIATIVE CASES

Because of their potential impact on the EU's own resources, the Commission closely scrutinises tax exemptions. It also monitored the correct application of the Court's case law on the leasing and use of company cars. Discriminatory taxes on inheritance and gifts as well as 'exit taxes' (payable when companies' headquarters or individuals' residences are transferred) continue to trigger many own-initiative cases.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 169 new tax files in EU Pilot during 2011 and processed 94 dossiers in this period. 70 assessments were positive, i.e. the Commission accepted the explanations or the undertakings of the Member State (74 % success rate). 117 tax files remained open in EU Pilot by the end of last year.

Significant tax problems that were resolved during the formal infringement procedure included the discriminatory tax amnesty in Greece<sup>480</sup> and the VAT exemption granted for postal services in Spain, Austria, Finland, Italy and Slovenia.

### PROMINENT JUDGMENTS

The Court confirmed that a reduced VAT rate could not be applied to the sale of race-horses.<sup>481</sup> A German dividend tax was also judged to be contrary to the free movement of capital<sup>482</sup> because it was higher on dividends that were paid to foreign companies than those due on dividends paid to domestic companies.

Further information available at:  
[http://ec.europa.eu/taxation\\_customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/index_en.htm)

475 [IP/11/1281](#)

476 [IP/11/76](#) and [IP/11/716](#)

477 [IP/11/1278](#)

478 Council Directive [2010/66/EU](#)

479 The Council did not support the Commission's 2005 proposal for a Directive abolishing car registration taxes.

480 [IP/11/161](#)

481 Commission v the Netherlands, [C-41/09](#), Commission v Austria, [C-441/09](#)

and Commission v Germany, [C-453/09](#)

482 Commission v Germany, [C-284/09](#)

## FINANCIAL PROGRAMMING AND BUDGET

### GENERAL DEVELOPMENTS

In 2011, the Commission detected 309 anomalies in the area of traditional own resources and set 67 VAT reservations.<sup>483</sup> Subsequently, 844 accounting actions for traditional own resources and 185 for VAT were generated for potential corrective payments (principal amounts and belated interest) by Member States. Most of the newly detected anomalies were solved at an early stage in bilateral discussions with Member States, including senior-level management meetings, or in the Advisory Committee on Own Resources.

However, a letter of formal notice was sent to Portugal because it changed its GNI data for a period subject to a Commission reservation without adjusting the GNI- and VAT-based contributions to be paid to the EU budget accordingly.

### PROMINENT JUDGMENTS

The Court passed two important judgments in the field of financial programming and the budget in 2011. In the first case, it held that the Court of Auditors cannot be hindered by Member States in conducting audits of VAT cooperation mechanisms between Member States, as they are linked to the EU's own resources.<sup>484</sup> In the second case, the Court held Member States financially responsible for administrative errors (such as the acceptance of customs declarations which do not state the real weight of the imported goods), which result in the loss of traditional own resources for the EU budget.<sup>485</sup>

483 Regulation [1553/1989](#) and Regulation [1150/2000](#).

484 Commission v Germany, [C-539/09](#).

485 Commission v Portugal, [C-23/10](#).

### FOLLOW-UP OF COURT JUDGMENTS

The Commission referred several infringements to the Court because of loss of traditional own resources related to the importation of military and dual-use goods by seven Member States (Denmark,<sup>486</sup> Finland,<sup>487</sup> Germany,<sup>488</sup> Greece,<sup>489</sup> Italy,<sup>490</sup> Portugal,<sup>491</sup> and Sweden<sup>492</sup>). While all Member States concerned paid the principal amount after the judgments, they still owed the EU the belated interest, which amounted to approximately € 300 million. The Commission requested data from these Member States in order to calculate the accurate amounts of belated interest. By the end of 2011, all the Member States paid the amounts of interest due to the EU budget.

Further information available at:

[http://ec.europa.eu/dgs/budget/index\\_en.htm](http://ec.europa.eu/dgs/budget/index_en.htm)

486 Commission v Denmark, [C-461/05](#).

487 Commission v Finland, [C-284/05](#).

488 Commission v Germany, [C-372/05](#).

489 Commission v Greece, [C-409/05](#).

490 Commission v Italy, [C-387/05](#) and [C-239/06](#).

491 Commission v Portugal, [C-38/06](#).

492 Commission v Sweden, [C-294/05](#).

## COMPETITION

### GENERAL DEVELOPMENTS

In 2011 a key priority for the Commission in the area of compliance with competition rules were the substantial spectrum resources (the 'digital dividend') freed up by the introduction of digital terrestrial television broadcasting. This provides an opportunity to authorise further television channels and increase competition and consumer choice. The Commission continued investigating several Member States that have assigned parts of the 'digital dividend' to incumbent operators under procedures which do not appear, *prima facie*, to be based on transparent, objective and non-discriminatory criteria.

Accordingly, the Commission sent a letter of formal notice to Bulgaria because the national law that governed the tenders for the assignment of the digital terrestrial broadcasting spectrum potentially violates the directives on electronic communications<sup>493</sup> and the competition directive.<sup>494</sup> In addition, a reasoned opinion was sent to France requiring it to allocate digital TV broadcasting frequencies in a non-discriminatory fashion.<sup>495</sup>

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

494 Directive [2002/77/EC](#).

495 [IP/11/1115](#)

### FOLLOW-UP OF STATE AID DECISIONS

Ordering a Member State to recover incompatible State aid following a Commission decision and Court judgment under Article 108 TFEU constitutes an important component of the infringement work in the area of competition. These proceedings are governed by Article 260(2) TFEU, which means that the Commission may request financial sanctions against the defaulting Member State.

One of the infringement procedures against Spain regarding the fiscal aid schemes in the three Basque Provinces (Álava, Guipúzcoa and Vizcaya) was closed since the entire aid plus recovery interest had been recovered from all beneficiary companies.

### PROMINENT JUDGMENTS

The Court ruled against Italy because of its failure to recover illegal State aid for employment under training and work experience contracts and imposed a lump sum penalty of € 30 million as well as periodic penalties, which can decrease proportionately to any aid still unrecovered.<sup>496</sup>

Further information available at:

[http://ec.europa.eu/dgs/competition/index\\_en.htm](http://ec.europa.eu/dgs/competition/index_en.htm)

496 Commission v Italy, [C-496/09](#).

## MARITIME AFFAIRS AND FISHERIES

### VERIFYING COMPLIANCE WITH COURT JUDGMENTS

In the field of EU law related to maritime affairs and fisheries the following developments are worth noting:

The Court ruled against Spain finding that it did not carry out sufficient controls on landings and marketing of undersized fish and did not take the necessary repressive action against those acting in breach of the corresponding EU rules.<sup>497</sup> The Spanish authorities have notified the Commission the measures they have taken in order to apply the judgment. The Commission carried out an inspection in late 2011 to verify whether these measures were being fully implemented. The results were under assessment at the end of 2011.

The Court found that France breached the EU rules relating to the restricted use of driftnets by not monitoring the relevant fishing activities sufficiently thoroughly and not enforcing the corresponding rules properly.<sup>498</sup> The Commission has launched a procedure to verify the correct application of the Court judgment. It was found that the French authorities had introduced legislative, administrative and control measures for the purpose of ensuring full compliance with the EU rules.

The French authorities indicated that they had strengthened their national regulatory framework on driftnets and tightened up their checks. The Commission's on-site inspections confirmed the effectiveness of these measures; the infringement procedure was therefore closed in 2011.

### NON-COMPLIANCE WITH COURT JUDGMENTS

The Court ruled against Italy for failing to apply effectively the EU rules restricting the use of driftnets and failing to control the corresponding fishing activities.<sup>499</sup> In response to the Commission's inquiry, the Italian authorities provided information on the measures they had taken in order to comply with the judgment. However, the subsequent Commission inspections concluded that those measures were not satisfactory; it therefore maintained the infringement procedure against Italy by sending a letter of formal notice under Article 260(2) TFEU.<sup>500</sup>

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

497 Commission v Spain, [C-189/07](#).

498 Commission v France, [C-556/07](#).

499 Commission v Italy, [C-249/08](#).

500 [IP/11/1088](#).

## REGIONAL POLICY

### GENERAL REMARKS

In the area of regional policy, the number of complaints received by the Commission over recent years has increased considerably. Accordingly, the number of EU Pilot files on regional policy is also significant. However, with many complaints still at the preliminary investigation phase, the Commission did not open any infringement procedures in this area in 2011.

### COMPLAINTS HANDLING

The Commission registered 92 new complaints in 2011. Even if 137 were submitted in 2010, the number of complaints has increased by around 65% since 2009.

Complainants typically claimed that their application for financial support had been erroneously rejected or that certain projects were not in line with EU law (especially environmental or public procurement rules) or that the projects selected for co-financing suffered from other defects (e.g. poor performance of installations).

The Commission processed 53 complaints related to regional policy in 2011. Several files were closed without further steps due to the Commission's response to the complainant (22) or its lack of competence (14). Eleven complaints were transferred to EU Pilot so that Member States could react to them.

The European Parliament submitted eight petitions to the Commission in relation to regional policy. Some of them were not related to projects co-financed by the EU; for the rest, there was no evident breach of EU law.

### OWN INITIATIVE CASES

The Commission opened an EU Pilot file against a Member State as a preparatory step for a possible infringement procedure for non-cooperation (Article 4(3) TEU) in the closure of the projects co-financed by the Cohesion Fund for the programming period 2000-2006. An assessment of the Member State's response was pending at the end of 2011.

### EARLY RESOLUTION OF POTENTIAL INFRINGEMENTS

The Commission opened 11 new files in EU Pilot during 2011 and processed 13 dossiers in this period. 12 processed files had a positive assessment, i.e. the Commission accepted the explanations or the undertakings made by the Member State concerned (83 % success rate). 14 regional policy files remained open in EU Pilot by the end of last year.

### PROMINENT JUDGMENTS

Five judgments<sup>501</sup> were handed down by the Court on regional policy issues in 2011. In all of these, Member States had appealed against Commission decisions ordering financial correction measures due to irregular public procurement procedures and/or ineligible expenditures in various projects co-financed by the European Regional Development Fund.

*Further information available at:*  
[http://ec.europa.eu/regional\\_policy/index\\_en.cfm](http://ec.europa.eu/regional_policy/index_en.cfm)

501 Provincie Groningen and Provincie Drenthe v Commission, [T 69/09](#); the Netherlands v Commission, [T 70/09](#); Portugal v Commission, [T 387/07](#); Caixa Geral de Depósitos, SA v Commission, [T 401/07](#) and Greece v Commission, [T-81/09](#)

## OTHER POLICY AREAS

### EDUCATION AND CULTURE

In the area of EU legislation related to education and culture, five infringement procedures were open at the end of 2011. The Commission closed two procedures following compliance by Member States during 2011.

In one case, a UK university was charging higher fees for its distance learning courses if the student was a resident outside the UK. Following the intervention of the Commission, the university agreed to limit the additional charges to no more than could be justified by objective reasons (such as the extra cost of running examination centres in other countries). In the other case, Germany eliminated the restriction making study grants available only for residents who wished to follow distance learning courses at German institutions. They extended the grant's availability to distance learning courses offered by foreign institutions so long as the foreign studies fulfilled all other support conditions.

### ENLARGEMENT

In this area there is one case worthy of particular mention: An earlier Court judgment had ruled that the Netherlands was charging disproportionately high fees for issuing residence permits for Turkish nationals who had acquired the right of residence.<sup>502</sup> The Dutch authorities aligned the fees charged for provisional residence permits and residence permits issued to Turkish citizens with those charged for similar documents issued to EU citizens. The Commission is examining whether these measures are sufficient to fully comply with the judgement.

<sup>502</sup> Commission v the Netherlands, [C-92/07](#).

### STATISTICS ON EUROPE

With regard to legal obligations on Member States to provide sound statistics to the Commission, the following case is worthy of mention: The Commission sent a reasoned opinion to Greece because it appeared that Greece had failed to provide the Commission with data on its government deficit and debt for the purposes of the Excessive Deficit Procedure. To deal with the problems raised by the Commission, Greece had to review its legislation and administrative structure. It adopted a law on the Hellenic Statistical System and established the independent Hellenic Statistical Authority, which were significant steps forward. However, the Commission also has to monitor the effective implementation of the new Greek legislation.

*Further information available at:*

[http://ec.europa.eu/dgs/education\\_culture/index\\_en.htm](http://ec.europa.eu/dgs/education_culture/index_en.htm)

[http://ec.europa.eu/enlargement/index\\_en.htm](http://ec.europa.eu/enlargement/index_en.htm)

<http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home>



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