



## October infringements package: key decisions

Brussels, 12 November 2021

### Overview by policy area

In its regular package of infringement decisions, the European Commission pursues legal action against Member States for failing to comply with their obligations under EU law. These decisions, covering various sectors and EU policy areas, aim to ensure the proper application of EU law for the benefit of citizens and businesses.

The key decisions taken by the Commission are presented below and grouped by policy area. The Commission is also closing 46 cases in which the issues with the Member States concerned have been solved without the Commission needing to pursue the procedure further.

For more information on the EU infringement procedure, see the full [Q&A](#). For more detail on all decisions taken, consult the [infringement decisions' register](#).

## 1. Environment and fisheries

(For more information: Vivian Loonela – Tel.: +32 229 66712, Daniela Stoycheva – Tel.: +32 229 53664)

### **Environment**

#### *Letters of formal notice*

### **Waste: Commission calls on BULGARIA, CROATIA, GREECE, ROMANIA and SLOVAKIA to improve their treatment of waste**

The Commission is calling on **Bulgaria, Croatia, Greece, Romania** and **Slovakia** to correctly apply the Landfill Directive ([Directive 1999/31/EC](#)) and the Waste Framework Directive ([Directive 2008/98/EC](#)). The Landfill Directive sets standards for landfills to prevent adverse effects on human health, water, soil and air. Under this Directive, Member States must take measures to ensure that only waste that has been subject to treatment is landfilled. The [European Green Deal](#) and the [Zero Pollution Action Plan](#) set a zero pollution ambition for the EU, which benefits public health, the environment and climate neutrality.

In its [judgment of 15 October 2014](#), the Court of Justice of the European Union ruled that, before landfilling, waste must be treated in the most appropriate way to reduce negative impacts on the environment and human health as far as possible. Following this ruling, in 2015, the Commission launched a study to investigate the landfilling of untreated non-hazardous municipal solid waste in Member States.

In Bulgaria, the study revealed shortcomings in all visited sites. In 52 landfills, waste is not subject to treatment that includes an adequate selection of waste streams and stabilisation of organic waste. Also, the network of installations for treatment of waste before landfilling for mixed municipal waste and bio-waste is insufficient.

In Croatia, the study analysed five landfills of non-hazardous waste in five different counties. The study revealed shortcomings in all visited sites and that municipal waste is being landfilled without any treatment. The landfills subject to investigation are lacking infrastructure capacities and so are the counties where these landfills are located.

For Greece, the study revealed a lack of sufficient treatment facilities in the country, insufficient

separate collection in relation to glass, metals, and biodegradable waste, and that the majority of organic waste is landfilled without prior stabilisation.

For Romania, the study revealed shortcomings in all visited sites and that most of the waste is landfilled without any treatment. The landfills subject to investigation are lacking infrastructure capacities and so are the counties where these landfills are located. In addition, in the case of Romania, following another investigation, the Commission found that landfills located in Bucharest do not respect EU legislation requirements as these either do not hold a permit in line with the Waste Framework and the Landfill Directives.

In Slovakia, shortcomings were found in all visited sites. Waste is being landfilled without appropriate treatment in 111 Slovak landfills as they do not have sufficient installations to ensure selection of different fractions of waste and the stabilisation of organic waste. Also, Slovakia did not correctly transpose the pre-treatment obligation into its national legislation and the network of installations for treatment of waste is insufficient.

Therefore, the Commission is sending letters of formal notice to the Member States concerned, which have two months to respond and address the shortcomings raised by the Commission. Otherwise, the Commission may decide to issue a reasoned opinion.

### *Reasoned opinions*

#### **Environmental Impact Assessment: Commission calls on PORTUGAL to enhance national rules on assessment of the environmental impact of public and private projects**

The Commission is calling on **Portugal** to address shortcomings in its transposition of the Environmental Impact Assessment (EIA) ([Directive 2011/92/EU](#)) into national law. The [European Green Deal](#) stresses the importance of Europe remaining on track to meet its environmental objectives. Portuguese law provides that in certain cases a lack of decision by the EIA authority means that the project will not be subject to an Environmental Impact Assessment. However, the Directive sets up a specific procedure to ensure that the competent authority makes its determination in the light of the information available and the screening criteria. A tacit negative screening determination therefore goes against the objective of the EIA Directive. In addition, any decision not to screen must be made public and justified, an obligation which would not be met in such cases. Moreover, Portuguese law is not in line as regards the information that has to be made publicly available or the need to agree on a reasonable time-frame for the duration of the consultation period in case of projects with transboundary impact. Portugal has not addressed these shortcomings following the formal notice given by the Commission. The Commission is therefore sending a reasoned opinion to Portugal, giving it two months to remedy the situation. Otherwise, the Commission may decide to refer the case to the Court of Justice of the European Union.

### *Referrals to the Court of Justice*

#### **Drinking water: Commission decides to refer IRELAND to the Court of Justice of the European Union over unsafe drinking water**

The Commission has decided to refer **Ireland** to the Court of Justice of the European Union for failure to comply with the requirements of the Drinking Water Directive ([Directive 98/83/EC](#)). The Directive requires Member States to ensure that water intended for human consumption is wholesome and clean, and does not pose a potential danger to human health. The Commission is referring Ireland to the Court of Justice as in a number of water supply zones across the whole country, the level of the chemical substance trihalomethanes (THMs) in drinking water have long exceeded the parametric value established in the Drinking Water Directive. Whilst the Commission welcomes the fact that Ireland has made progress in addressing elevated levels of THMs in the drinking water, today, more than three years after the opening of the infringement case, a number of water supply zones still do not comply with the requirements of the [Drinking Water Directive](#). The Commission is therefore referring Ireland to the Court of Justice of the European Union. More information is available in the [press release](#).

#### **Air quality: Commission decides to refer PORTUGAL to Court of Justice of the European Union for high levels of nitrogen dioxide**

The Commission has decided to refer **Portugal** to the Court of Justice of the European Union over poor air quality caused by high levels of nitrogen dioxide (NO<sub>2</sub>). When the limit values set by the EU's ambient air quality legislation ([Directive 2008/50/EC](#)) are exceeded, Member States are required to adopt air quality plans to ensure that appropriate measures are taken to keep the duration of the exceedance period as short as possible. The [European Green Deal](#) and the [Zero Pollution Action Plan](#) emphasise the importance of cutting air pollution, which is among the key factors negatively affecting human health. Portugal has exceeded the annual nitrogen dioxide (NO<sub>2</sub>) limit value in the air quality zones 'Lisboa Norte', 'Porto Litoral', and 'Entre Douro e Minho'. It has also failed to adopt appropriate measures to keep the exceedance period as short as possible. The Commission therefore considers that efforts by the Portuguese authorities have to date been unsatisfactory and insufficient, and is referring Portugal to the Court of Justice of the European Union. More information is available in the [press release](#).

### **Nature: Commission decides to refer BULGARIA to the Court of Justice of the European Union for failing to protect and manage its Natura 2000 network sites**

The Commission has decided to refer **Bulgaria** to the Court of Justice of the European Union for not respecting its obligations under the Habitats Directive ([Directive 92/43/EEC](#)). Within six years from the listing of their Sites of Community Importance, Member States must designate them as Special Areas of Conservation. The [European Green Deal](#) and the [European Biodiversity Strategy for 2030](#) set the objective for the EU to halt biodiversity loss by preserving our natural sites and restoring damaged ecosystems to good ecological status. Bulgaria has not yet designated 194 out of 229 Sites of Community Importance as Special Areas of Conservation within the required time limit and has failed to set site-specific conservation objectives and measures for these sites in breach of the Habitats Directive. The Commission considers that efforts by the Bulgarian authorities have to date been unsatisfactory and insufficient and is therefore referring Bulgaria to the Court of Justice of the European Union. More information is available in the [press release](#).

### **Landfills: Commission refers ROMANIA to the Court of Justice of the European Union over its failure to comply with the Court judgment**

The Commission has decided to refer **Romania** back to the Court of Justice of the European Union for failing to fully comply with the [Court judgment](#) of 18 October 2018, which found that Romania failed to meet its obligations under the Landfill Directive ([Directive 1999/31/EC](#)). According to this judgment, by 16 July 2009, Romania was obliged to close and rehabilitate all landfills that did not obtain a permit to operate. The Court found that Romania had failed to comply with this obligation with respect to 68 landfills. The Landfill Directive aims to provide measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment from landfilling of waste. The [European Green Deal](#) and the [Zero Pollution Action Plan](#) set a zero pollution ambition for the EU. Full implementation of the standards enshrined in EU legislation is important to effectively protect human health and safeguard the natural environment. Three years after the judgment, 42 landfills are still not closed. To comply with the Court judgment, Romania is expected to take all the necessary measures in order to ensure that these landfills are closed, sealed and rehabilitated as soon as possible due to the health and environmental risks they entail. This is a second referral to Court which may result in penalties for the time elapsed after the first judgement until achieving compliance. More information is available in the [press release](#).

### **Nature: Commission decides to refer MALTA to the Court of Justice of the European Union over finch trapping**

Today, the Commission decided to refer **Malta** to the Court of Justice of the European Union for failing to correctly apply the Birds Directive ([Directive 2009/147/EC](#)) by incorrectly applying a derogation regime and authorising the trapping of protected finches for research purposes. The Birds Directive requires a general system of protection for wild birds and allows derogations on hunting and trapping only subject to strict conditions. These are key requirements to protect biodiversity across the EU. The [European Green Deal](#) and the [EU Biodiversity Strategy for 2030](#) both indicate that it is crucial for the EU to halt its biodiversity loss by preserving natural sites and restoring damaged ecosystems to good ecological status. The issue of finch trapping was already subject to infringement proceedings in the past, leading to a [ruling](#) of the Court of Justice in 2018 declaring a similar trapping derogation unlawful. Subsequently, Malta repealed the relevant derogation regime and committed not to reopen it. However, in 2020, Malta re-authorized finch trapping, this time invoking another derogation provision, namely under research purposes. The Commission considers that, even

though the declared objective is 'research', several elements indicate that the scheme - in practice - allows for a large number of birds to be captured without being reported, contrary to the strict conditions for derogations set by the Birds Directive. The Commission therefore sent a [letter of formal notice](#) to Malta in December 2020, followed by a reasoned opinion in [June 2021](#). Although Malta repealed the incriminated legislation in early October, it did not allay the Commission's concerns: the trapping licences for the 2021 season had already been issued on the basis of the repealed 2020 framework, and new rules have been swiftly adopted with only minor changes compared to the previous legal regime. The Commission therefore considers the reply by the Maltese authorities to both the letter of formal notice and the reasoned opinion as unsatisfactory, and is therefore referring Malta to the Court of Justice of the European Union. More information is in the [press release](#).

## **Fisheries**

### *Letter of formal notice*

#### **Fisheries: Commission sends letters of formal notice to BELGIUM, IRELAND and THE NETHERLANDS over non-compliance with obligations regarding control and enforcement of the landing obligation**

The Commission has decided to open infringement proceedings against **Belgium, Ireland and the Netherlands** concerning non-compliance with obligations regarding the control and enforcement of the landing obligation under the Common Fisheries Policy (CFP) Regulation ([Regulation \(EU\) No 1380/2013](#)) and the Control Regulation ([Regulation \(EC\) No 1224/2009](#)). This obligation was introduced during the last reform of the common fisheries policy in 2013 to end the wasteful and unsustainable practice of discarding, when unwanted catches are returned to the sea. These issues also concern non-compliance with the obligations under the regulation on illegal, unreported and unregulated fishing (IUU Regulation - [Regulation \(EC\) No 1005/2008](#)).

In particular, Belgium, Ireland and the Netherlands failed to ensure the control and enforcement of the obligation that all catches of species subject to catch limits and species subject to minimum sizes are brought and retained on board fishing vessels, and then recorded, landed and counted against quotas, where applicable. Effective control and enforcement of fishing activities at sea and the accurate recording of catches and discarded quantities are essential for the implementation of the landing obligation and for supporting the long-term sustainability objectives of the Common Fisheries Policies. It is also important in order to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing. Therefore, the Commission has decided to send letters of formal notice to the Member States concerned, which have two months to respond to the letter and address the shortcomings raised by the Commission. Otherwise, the Commission may decide to issue a reasoned opinion.

### *Reasoned opinion*

#### **Fisheries: Commission calls on MALTA to comply with Bluefin tuna rules**

The Commission is calling on **Malta** to fulfil its obligations under the Control Regulation ([Regulation \(EC\) No 1224/2009](#)), the Regulation on illegal, unreported and unregulated fishing (IUU Regulation - [Regulation \(EC\) No 1005/2008](#)) and the Bluefin tuna Regulation ([Regulation \(EU\) No 2016/1627](#)). In particular, the Commission considers that Malta has failed to put in place an effective monitoring, control and inspection system for Bluefin tuna farming activities. The Commission considers that Malta has not taken the necessary steps to address all of the deficiencies identified by the Commission in several audit and verification missions, including failure to control consignments of Bluefin tuna leaving Malta, delayed investigations and failure to take action on operators in case of non-compliance. The Commission is therefore sending a reasoned opinion to Malta, giving it two months to remedy the situation. Otherwise, the Commission may decide to refer the case to the Court of Justice of the European Union.

## **2. Internal Market, Industry, Entrepreneurship and SMEs**

(For more information: Sonya Gospodinova – Tel.: +32 229 66953; Federica Miccoli – Tel.: +32 229 58300; Célia Dejond – Tel.: +32 229 88199)

### Reasoned opinions and additional reasoned opinion

#### **Free movement of services: Commission calls on BELGIUM, CYPRUS and IRELAND to ensure a well-functioning Single Market for professionals and services**

Today, the Commission decided to send a reasoned opinion to **Belgium, Cyprus and Ireland** as they have not adopted yet, fully or partly, national measures implementing [Directive 2018/0958](#) on a proportionality test before adoption of new regulation of professions. The deadline to implement the Directive into national law was 30 July 2020. This Directive aims to strengthen the Single Market for services by preventing the introduction of new discriminatory, unjustified or disproportionate restrictions for professional services.

The Commission is also addressing Ireland with a supplementary reasoned opinion. In November 2019, the Commission sent a reasoned opinion to Ireland regarding the non-conformity of their national legislation and practice with EU rules on the recognition of professional qualifications ([Directive 2005/36/EC](#)). On the basis of the Irish reply to the reasoned opinion, the Commission identified a new grievance related to the application of Directive 2005/36/EC for the professions of gas installers and electricians from other Member States.

Member States concerned have now two months to respond to the arguments put forward by the Commission. Otherwise, the Commission may decide to refer the matter to the Court of Justice of the European Union.

### **3. Migration, Home Affairs and Security Union**

(For more information: Adalbert Jahnz – Tel.: + 32 229 53156; Laura Bérard – Tel.: + 32 229 55721; Ciara Bottomley – Tel.: +32 229 69971)

#### Letters of formal notice

#### **Fight against terrorism: Commission urges HUNGARY, LATVIA, ROMANIA, SWEDEN, SLOVENIA and SLOVAKIA to ensure correct transposition of EU rules on combating terrorism**

The Commission has decided to open infringement proceedings against **Hungary, Latvia, Romania, Sweden, Slovenia and Slovakia** for failing to correctly transpose certain elements of the EU rules on combating terrorism ([Directive \(EU\) 2017/541](#)). These rules include provisions that criminalise and sanction terrorist-related offences, such as travelling abroad to commit a terrorist offence, returning to or travelling within the EU for such activities, training for terrorist purposes and financing terrorism. The rules also set up special provisions for victims of terrorism to ensure that they have access to reliable information, as well as professional and specialist support services, in the immediate aftermath of an attack and for as long as necessary. They are an important part of the EU's [Counter-Terrorism Agenda](#). Member States had to transpose them into national law by 8 September 2018. Hungary, Latvia, Romania, Sweden, Slovenia and Slovakia now have two months to respond to the arguments put forward by the Commission. Otherwise, the Commission may send a reasoned opinion.

#### Reasoned opinions

#### **Union exclusive external competence: Commission addresses a reasoned opinion to HUNGARY for voting against Union position at UN Commission on Narcotic Drugs**

The Commission decided today to send a reasoned opinion to **Hungary** for failure to follow the [Union's position](#) when voting on the World Health Organization recommendations on cannabis and cannabis-related substances at the United Nations Commission on Narcotic Drugs in December 2020. Those recommendations concern changes to the Schedules of the UN Convention on Narcotic Drugs

and of the UN Convention on Psychotropic Substances, listing the substances under international control. Decisions on the international scheduling of substances under those conventions fall under the exclusive competence of the Union. The Union position - adopted by the Council in November 2020 - is binding on EU Member States, who have to vote accordingly in the Commission on Narcotic Drugs, in line with Article 218(9) TFEU. Hungary voted contrary to the Union position twice during the vote on the WHO recommendations. Cannabis remains a drug subject to international control. The WHO recommendations aimed to ensure that cannabis and cannabis-related substances are subject to the most relevant international control reflecting current scientific and medical knowledge. The Commission launched the infringement procedure against Hungary with a [letter of formal notice](#) sent in February 2021. The reply from the Hungarian authorities to the letter of formal notice did not change the assessment of the Commission. Hungary now has two months to reply to the arguments raised by the Commission. Otherwise, the Commission may decide to refer the case to the Court of Justice of the European Union.

### Referrals to the Court of Justice

#### **Migration: Commission refers HUNGARY to the Court of Justice of the European Union over its failure to comply with Court judgment**

The European Commission has decided today to refer **Hungary** to the Court of Justice of the European Union, requesting that the Court order the payment of financial penalties for Hungary's failure to comply with a Court ruling in relation to EU rules on asylum and return. In its judgment of 17 December 2020 (Case C-808/18, [Commission v Hungary](#)), the Court of Justice of the European Union found that Hungary's legislation on the rules and practice in the transit zones situated at the Serbian-Hungarian border was contrary to EU law. In particular, the Court identified breaches of provisions of the Asylum Procedures Directive ([Directive 2013/32/EU](#)), the Reception Conditions Directive ([Directive 2013/33/EU](#)) and the Return Directive ([Directive 2008/115/EC](#)). As of today, Hungary has not addressed several aspects of the judgment. In particular, Hungary has not taken the measures necessary to ensure effective access to the asylum procedure. Hungary has also not clarified the conditions pertaining to the right to remain on the territory in case of an appeal in an asylum procedure, in the event where there is no "crisis situation caused by mass immigration". In view of the continued non-compliance with the Court's judgment, on 9 June 2021, the Commission sent Hungary a letter of formal notice under [Article 260\(2\) TFEU](#). Today, the Commission is asking the Court to impose financial sanctions in the form of a lump sum and a daily penalty payment. A full [press release](#) is available online.

## **4. Justice**

(For more information: Christian Wigand - Tel.: +32 229 62253; Katarzyna Kolanko - Tel.: +32 229 63444; Jördis Ferroli - Tel. +32 229 92729)

### Letters of formal notice

#### **Rights in criminal proceedings: Commission calls on ESTONIA, GREECE, HUNGARY, LITHUANIA, LUXEMBOURG and PORTUGAL to ensure correct transposition of EU rules on the right of access to a lawyer and to communicate upon arrest**

The Commission has decided to open infringement proceedings against **Estonia, Greece, Hungary, Lithuania, Luxembourg** and **Portugal** by sending letters of formal notice for failing to correctly transpose EU rules on access to a lawyer and the right to communicate upon arrest ([Directive \(EU\) 2013/48](#)). The Directive is part of the EU's legal framework on common minimum standards for fair trials ensuring that the [rights of suspects and accused persons](#) are sufficiently protected. The Commission considers that certain national transposition measures notified by the six Member States fall short of the requirements of the Directive. In particular, this includes possible derogations from the right of access to a lawyer as well as derogations from the right to have a third person informed when being deprived of liberty. Issues as regards the conditions under which the right of access to a lawyer can be waived and in relation to the right of access to a lawyer in the issuing Member State of a European arrest warrant were also identified. The six Member States now have two months to reply and take the necessary measures to address the shortcomings identified by the Commission. Failing this, the Commission may decide to go to the next stage of infringement proceedings by sending a

reasoned opinion. More details about the Directive can be found in the [factsheet](#).

### Reasoned opinions

#### **Data Protection: Commission sends a reasoned opinion to BELGIUM for lack of independence of its Data Protection Authority**

The Commission has decided to send a reasoned opinion to **Belgium** for failing to ensure full independence of its Data Protection Authority. The Commission considers that Belgium violates Article 52 of the [General Data Protection Regulation \(GDPR\)](#), which states that the data protection supervisory authority shall perform its tasks and exercise its powers independently. The independence of data protection authorities requires that their members are free from any external influence or incompatible occupation. However, some members of the Belgian Data Protection Authority currently cannot be regarded as free from external influence because they either report to a management committee depending on the Belgian government, they have taken part in governmental projects on COVID-19 contact tracing, or they are members of the Information Security Committee. On 9 June 2021, the Commission sent a [letter of formal notice to Belgium](#), giving two months to take corrective measures. Belgium's response did not address the issues raised in the letter of formal notice and the members concerned have remained in their posts. Belgium now has two months to take relevant action, failing which the Commission may decide to refer the case to the Court of Justice of the European Union. More information can be found online on [EU data protection rules](#).

## **5. Energy and climate**

(For more information: Tim McPhie – Tel.: +32 229 58602; Ana Crespo Parrondo – Tel.: +32 229 81325)

### Reasoned opinions

#### **Radioactive waste: Commission calls on IRELAND to adopt a national programme for radioactive waste management compliant with EU rules**

The Commission has decided to send a reasoned opinion to **Ireland** concerning a national programme for radioactive waste management it adopted which is not entirely compliant with the Spent Fuel and Radioactive Waste Directive ([Council Directive 2011/70/Euratom](#)). Radioactive waste is generated from the production of electricity in nuclear power plants, but also from the non-power-related use of radioactive materials for medical, research, industrial and agricultural purposes. This means that all Member States generate radioactive waste. The Directive establishes a Community framework requiring the responsible and safe management of spent fuel and radioactive waste to ensure a high level of safety and avoid imposing undue burdens on future generations. In particular, it requires Member States to draw up and implement national programmes for the management of all spent fuel and radioactive waste generated on their territory, from generation to disposal. The aim is to protect workers and the general public from the dangers arising from ionising radiation. The national programme notified by Ireland was found to be non-compliant with certain requirements of the Directive. Ireland now has two months to address the shortcomings identified by the Commission. In the absence of a satisfactory response, the Commission may decide to refer the case to the Court of Justice of the European Union.

## **6. Taxation and Customs Union**

(For more information: Veerle Nuyts – Tel.: +32 229 96302, Francesca Dalboni – Tel.: +32 229 88170)

### Letters of formal notice

## **Taxation: Commission calls on DENMARK, CROATIA and LITHUANIA to explain how they transposed the VAT e-commerce package into national law**

The Commission has decided to open infringement proceedings against **Denmark, Croatia** and **Lithuania** for non-communication of the explanatory documents in relation to the transposition of new EU-wide rules for VAT on e-commerce (Council Directives [\(EU\) 2017/2455](#) in the cases of both Denmark and Lithuania, and [\(EU\) 2019/1995](#) in the cases of both Denmark and Croatia). The new rules are intended to simplify VAT for companies and consumers involved in cross-border online sales within the EU and to create a fairer environment for EU sellers by removing the VAT exemption for low-value imports from outside the European Union. In line with Court of Justice [case law](#), Member States must indicate in a sufficiently clear and precise manner the national measures by which they transposed obligations imposed by an EU Directive. Since Denmark, Croatia and Lithuania have failed to provide clear explanations on the way they have transposed these directives, the Commission cannot check that these Member States have completely and correctly transposed the relevant provisions into national law. Denmark, Croatia and Lithuania now have two months to act. Otherwise, the Commission may decide to send reasoned opinions.

## **Taxation: Commission requests SPAIN to allow the deduction of directly related expenses when calculating withholding tax on cross-border royalty payments**

The Commission has decided to open infringement proceedings against **Spain**, requesting it to align its rules on withholding taxes charged on royalty payments received by non-resident taxpayers (Article 56 TFEU). The Spanish rules provide that the withholding tax is levied on the gross amount of income, without the possibility to deduct directly related expenses. While [case law](#) of the Court of Justice of the European Union allows a Member State to charge a withholding tax on cross-border royalty payments even if it does not levy withholding taxes on purely domestic payments, it must allow the deduction of directly related expenses when determining the tax due. Spain has two months to reply to the arguments raised by the Commission after which the Commission may decide to send a reasoned opinion.

## **7. Mobility and Transport**

*(For more information: Stefan de Keersmaecker – Tel.: +32 229 84680; Anna Wartberger - Tel.: +32 229 82054)*

### Letters of formal notice

## **Air transport: Commission calls on BELGIUM to duly implement EU rules in the flight licensing domain**

The Commission has decided to open infringement proceedings against **Belgium** requesting that it implements correctly the requirements of [Regulation \(EU\) 2018/1139](#) and [Commission Regulation \(EU\) No 1178/2011](#) on the establishment and maintenance of a management system in the flight crew licensing domain. According to these Regulations, the competent aviation authority must have sufficient personnel to perform its tasks. The staff must also be qualified to perform their allocated tasks and have the necessary knowledge, experience, and training. The European Union Aviation Safety Agency identified a critical shortage of such personnel in consecutive inspections carried out from 2018 to 2021 in Belgium. The situation directly impacts the safety of the Belgian aviation system. Belgium now has two months to respond to the concerns raised by the Commission. Otherwise, the Commission may decide to send a reasoned opinion to the Belgian authorities.

## **Rail Transport: Commission asks BULGARIA and GERMANY to correctly transpose EU rules on market opening and infrastructure governance**

The Commission has decided to open infringement proceedings against **Bulgaria** and **Germany** regarding the incorrect transposition of [Directive 2016/2370/EU](#). This Directive amends [Directive 2012/34/EU](#) on the opening of the market for domestic passenger transport services by rail, and the governance of railway infrastructure. It establishes a general right for railway undertakings established in one Member State to operate all types of passenger service everywhere in the EU, and it strengthens rules regarding the impartiality of infrastructure managers. Bulgaria and Germany now have two months to reply to the concerns raised by the Commission. Otherwise, the Commission



may send a reasoned opinion.

### **Road Transport: Commission calls on FRANCE to comply with EU internal market rules**

The Commission has decided to open infringement proceedings against **France** regarding its national legislation prohibiting daily and weekly rest periods inside Light Commercial Vehicles (LCVs). The Commission considers that French legislation introducing a ban on spending daily and weekly rest periods inside LCVs, i.e. vehicles which exceed 2.5 tonnes and up to 3.5 tonnes, is in breach of EU law, in particular [Regulation \(EC\) No 1072/2009](#). The Commission considers that the French rule unjustifiably and disproportionately restricts the freedom to provide road transport services in France, and runs counter to the objectives of the internal market. France now has two months to reply to the concerns raised by the Commission. Otherwise, the Commission may decide to send a reasoned opinion.

## **8. Jobs and social rights**

(For more information: Veerle Nuyts – Tel.: +32 229 96302; Flora Matthaes – Tel.: +32 229 83951)

### Letters of formal notice

### **Coordination of social security: Commission calls on GERMANY to comply with EU rules on social security coordination and on free movement of workers**

The Commission has decided to open infringement proceedings against **Germany** for failing to comply with the EU rules on social security coordination ([Regulation \(EC\) No 883/2004](#)) and on free movement of workers ([Regulation \(EU\) No 492/2011](#)). The German State of Bavaria introduced a new scheme of family allowances for residents of Bavaria with young children (up to 3 years old). EU nationals who are working in Bavaria are entitled to this benefit on the same terms as German nationals regardless of whether their children live in Bavaria with them, or abroad. However, EU nationals whose children reside in one of the 15 Member States where the cost of living is lower than in Bavaria receive only a reduced amount of the benefit. The Commission raises concerns that this legislation breaches EU law, as it does not treat EU citizens equally and therefore constitutes discrimination. Moreover, this legislation breaches EU rules on the free movement of workers and on social security coordination, which prohibit any residence requirements. Germany now has two months to address the comments raised by the Commission. Otherwise, the Commission may decide to send a reasoned opinion.

### **Labour Law: The Commission requests PORTUGAL to enact EU law on fixed-term work**

The Commission has decided to open infringement proceedings against **Portugal** for failing to comply with EU law on fixed-term work (Framework Agreement annexed to [Council Directive 1999/70/EC](#)). Portuguese law contains less favourable employment conditions for fixed-term teachers working in Portuguese public schools compared to permanent teachers, notably in relation to salary and seniority. The Commission raises concerns based on the principle of non-discrimination. According to the Framework Agreement, differences in treatment are only permitted when they are justified on objective grounds. Such justification is lacking in the Portuguese law. In addition, Portuguese law does not include adequate measures to prevent possible abuses that could arise from the use of successive fixed-term employment contracts or relationships applicable in the territory of the Azores. Portugal now has two months to address the shortcomings identified by the Commission. Otherwise, the Commission may decide to send a reasoned opinion.

### Reasoned opinions

### **Free movement of workers: The Commission calls on GREECE to remove the requirement of Greek nationality to access high-level posts in public service**

The Commission has decided to send a reasoned opinion to **Greece** for its failure to comply with EU law when it comes to access to high-level posts in public service. Greek law restricts access to high-

level posts in the Greek public administration and in a number of public entities to Greek nationals. This concerns the posts of Director-General, Director and Head of Department. This legislation breaches EU rules on the freedom of movement for workers and on the prohibition of discrimination based on nationality between workers in the EU. Article 45 of the Treaty on the Functioning of the European Union (TFEU) establishes the principle of non-discrimination based on nationality between workers of different Member States. The public service benefits from an exception that the Court of Justice of the European Union has interpreted restrictively. [The Court has confirmed](#) that Member States can reserve a post in their public service for their own nationals only if the post involves direct or indirect participation in the exercise of powers conferred by public law, and duties designed to safeguard the general interests of the State or of other public authorities. This has to be decided on a case-by-case basis, based on the nature and responsibilities of the post. A generalised exclusion of EU workers who are not Greek nationals from public posts based on their hierarchical level is contrary to EU law. Greece now has two months to take the necessary measures to comply with the reasoned opinion. Otherwise, the Commission may refer the matter to the Court of Justice of the European Union.

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

(For more information: Veerle Nuyts – Tel.: +32 229 96302, Aikaterini Apostola - Tel.: +32 229 87624)

### Letters of formal notice

#### **Anti-Money Laundering: Commission urges CZECHIA to amend its transposition of the 5<sup>th</sup> Anti-Money Laundering Directive**

The Commission has decided to open infringement proceedings against **Czechia** on grounds of incorrect transposition of the [5<sup>th</sup> Anti-Money Laundering Directive](#). The deadline for transposing the Directive was 10 January 2020 and Czechia had declared partial transposition. The Commission assessed the notified national measures and concluded that there are several instances of incorrect transposition (non-conformity) of the Directive into national law, which affect, among others, some fundamental aspects like the definition of beneficial ownership and the proper functioning of the beneficial ownership registers. Without the proper functioning of publicly accessible beneficial ownership registers, the person actually owning or controlling an asset, can easily remain behind the scene by setting up anonymous companies or trusts in jurisdictions that do not require registering the beneficial owner of the company - or by hiring nominees or proxies to sign the papers. This practice opens doors possible for corruption, money laundering and other illicit financial practices. EU rules on anti-money laundering are part of the Commission's commitment to protect EU citizens and the EU's financial system from money laundering and terrorist financing. Money laundering scandals over the past years have highlighted once again the importance of proper implementation and efficient supervision. Legislative gaps occurring in one Member State have an impact on the EU as a whole. Without a satisfactory response from Czechia within two months, the Commission may decide to address a [reasoned opinion](#).

#### **Audit: Commission urges ITALY to complete the transposition of audit rules**

The Commission has decided to open infringement proceedings against **Italy** on the grounds of non-communication of some measures transposing [Directive 2014/56/EU](#) amending [Directive 2006/43/EC](#) on statutory audit on annual accounts and consolidated accounts (Audit Directive). The Commission services have concluded that the transposition of several provisions of the Audit Directive still appears incomplete. The transposition appears incomplete on fundamental aspects of the EU audit legislation such as: (i) the rules to avoid conflicts of interest of reviewers and between the experts carrying out specific assignments and the auditors, (ii) the designation of only one competent authority bearing the ultimate responsibility for the oversight tasks, and (iii) the conditions for the registration of third country auditors and audit entities in Italy and for exchanges of audit working papers when the audit is performed in the framework of cooperation with competent authorities of third countries. The completeness of the transposition of the Audit Directive would ensure the application of uniform and enhanced rules on audit throughout all the EU Member States helping to restore the confidence of investors in financial information of companies. Without a satisfactory response from Italy within two months, the Commission may decide to address a [reasoned opinion](#).

## Reasoned opinions

### **Payments: Commission requests SWEDEN to fully transpose the Payment Services Directive**

The Commission has decided to send a reasoned opinion to **Sweden** for failure to fully transpose [Directive 2015/2366](#) or the Payment Services Directive (PSD2), which was due to be transposed by 13 January 2018. The objective of the PSD2 is to ensure that consumers can use internet payment services in an easier and safer manner by strengthened consumer rights and by better protecting consumers against fraud, abuse, and payment problems. PSD2 also promotes innovative mobile and internet payment services. Following the assessment of the notified measures and of the explanations offered by the Swedish national authorities, the Commission services have concluded that the transposition of several provisions of the PSD2 still appears incomplete. The full transposition means, among other provisions, that ensuring that the burden of proof lies with the payment services providers. This is a fundamental aspect of the consumer protection in the PSD2 legal framework. Sweden now has two months to take the necessary measures to fully transpose PSD2, otherwise the Commission may decide to refer the case to the [Court of Justice of the European Union \(CJEU\)](#).

### **Anti-Money Laundering: Commission calls on IRELAND to complete the transposition of the 5<sup>th</sup> Anti-Money Laundering Directive**

The Commission has decided to send a reasoned opinion to **Ireland** for an incomplete transposition of the [5<sup>th</sup> Anti-Money Laundering Directive](#). Despite the fact that the transposition deadline for the 5<sup>th</sup> AML Directive was 10 January 2020, on the date of adopting the reasoned opinion, Ireland had declared only partial transposition of the Directive. The Commission assessed the notified national measures and concluded that Ireland had not completely transposed the obligation to fully identify who actually holds or controls payment accounts and bank accounts and safe-deposit boxes. The delayed access to information by the competent authorities on the identity of holders of bank and payment accounts and safe-deposit boxes hampers the detection of transfers of funds relating to money laundering and terrorism. [EU AML rules](#) are part of the Commission's commitment to protect EU citizens and the EU's financial system from money laundering and terrorist financing. Legislative gaps occurring in one Member State have an impact on the EU as a whole. Without a satisfactory response from Ireland within two months, the Commission may decide to refer the case to the [Court of Justice of the European Union \(CJEU\)](#).

## **10. Digital economy**

(For more information: Johannes Bahrke – Tel.: +32 229 58615; Charles Manoury - Tel.: +32 229 13391)

## Reasoned opinions

### **Digital: The Commission calls on four Member States to fully comply with EU digital and media laws**

The Commission has decided to send reasoned opinions to request **Romania** and **France** to complete the transposition of the Audio-Visual Media Services Directive, as well as to **Belgium** and **Czechia** to fully transpose the European Electronic Communications Code into their national laws. The Audio-Visual Media Services Directive, which was revised in 2018, aims to ensure a fair single market for broadcast services that keeps up with technological developments, leading to a safer, fairer and more diverse audio-visual landscape, including both traditional TV broadcasters, on-demand video services and video-sharing platforms. The European Electronic Communications Code modernises the EU telecom rules to give consumers more rights and choices, as well as better quality of electronic communications services, while guaranteeing operators regulatory predictability and encouraging investment in better, faster networks. The two Directives aim to create a regulatory framework fit for the digital age and had to be transposed during the last quarter of 2020. The reasoned opinions sent today follow the [letters of formal notice the Commission sent to 23 Member States in November 2020](#) for not adopting the measures transposing the Audio-Visual Media Services

Directive, and the [letters of formal notice sent to 24 Member States on 4 February 2021](#) for not enacting the European Electronic Communications Code. Since authorities notified national laws that are incomplete, the Member States concerned have two months to remedy the situation and adopt and notify the national transposing measures for these pieces of EU legislation. Otherwise, the Commission may decide to refer their cases to the Court of Justice of the European Union.

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